

May 6, 2003

Re: U.S. – Singapore Free Trade Agreement

Dear Senator:

I am writing regarding the recently negotiated U.S.-Singapore Free Trade Agreement, specifically Chapter 16 which governs intellectual property rights (IPR). **Oxfam America has serious concerns about the public health and development implications of this chapter.** We believe the provisions of Chapter 16 contravene the Doha Declaration and the direction Congress gave to the Administration under Trade Promotion Authority to support the goals of the Doha Declaration in trade negotiations. We strongly recommend that the IPR provisions of Chapter 16 not be used as a template for future Free Trade Agreements.

Oxfam America is concerned about several provisions mandating stringent intellectual property protections, which favor of patent holders at the expense of broader community interests such as public health. At the root of IPR systems is a balance between the interests of patent holders and the public interest. The provisions of the U.S.-Singapore FTA tip this balance inappropriately in favor of rights holders and, as a consequence, may limit access to affordable medicines.

Singapore is a member of the WTO and thus already subject to the high standards of IPR protection mandated by the TRIPS Agreement. This agreement requires member countries to honor and enforce patents, while providing safeguards to protect public health. The U.S.-Singapore FTA includes “TRIPS plus” patent protections which restrict or eliminate such safeguards.

Among the troubling aspects, the U.S.-Singapore Free Trade Agreement:

-limits use of “compulsory licensing”, an important mechanism for governments to obtain affordable medicines. The U.S.-Singapore FTA will make it more difficult for Singapore to temporarily override patents in the public interest. The compulsory licensing provisions of this FTA go beyond TRIPS, restricting the circumstances under which this procedure can be used and expanding the rights of patent holders at the expense of the government and the public interest;

-delays or impedes the introduction of generic competition by (a) linking marketing approval to patent status, thereby preventing the immediate introduction of generic competition upon patent expiry, (b) mandating the protection of test data for five years, again delaying the development of and marketing approval for bioequivalent generic drugs, and (c) mandating the disclosure of applicants for generic marketing approval;

-extends the term of patent protection to compensate for delays in regulatory approval. **This would also delay the introduction of generic competition.** Twenty years of patent

protection is an adequate monopoly for patent holders to recover investments and generate profit. Extending this monopoly unfairly favors patent holders to the detriment of the public interest in accessing affordable medicines;

-restricts parallel importation of medicines placed on a foreign market at a lower price than in the home market. “Parallel importation” is a key means of obtaining affordable drugs and is not limited under the WTO agreement on intellectual property (TRIPS). This FTA makes Singapore responsible for policing IPR violations abroad, by requiring Singapore to restrict parallel importation of certain drugs based on the terms of licensing contracts in other countries.

In 2001, the primacy of public health over patent rights was affirmed in the Doha Declaration by all WTO members, including the United States. In 2002, Congress restated this commitment as part of Trade Promotion Authority by instructing the USTR to respect the Declaration in trade negotiations. Unfortunately, this commitment to public health is not being upheld by the USTR. It continues to seek “TRIPS plus” provisions in free trade agreements despite their adverse impact on access to affordable medicines, especially in poor countries facing health crises. Congress should insist that the TPA mandate be respected.

We urge you to look closely at the U.S.-Singapore FTA and to reject its use as a template for future free trade agreements. If you have questions or need any additional information, please do not hesitate to call me or Jen Brant at (202) 496-1196.

Best regards,

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Oxfam America