

CONFERENCE OF LEADERS OF RELIGIOUS INSTITUTES IN NEW SOUTH WALES

CLRI (NSW)

ABN: 52 476 362 010
Member of the Catholic Church Religious Group

The Honourable Mark Vaile
Minister for Trade
Parliament House Canberra ACT 2600

24 February 2006

Dear Mr Vaile

The Conference of Leaders of Religious Institutes (NSW) has over three thousand members in NSW. The organisation works to support and advocate on behalf of poor and disadvantaged people in Australia through its social justice committee.

We wish to express our concerns about reports that the US Trade Representative plans to lobby for the removal of the 'evergreening' amendment and for other changes to Australia's medicines policy at the upcoming joint review of the Australia & US Free Trade Agreement in March.

As you know, the A&US FTA implementing legislation inserted a new section into the Therapeutic Goods Act that requires generic medicine producers to give prior notice to patent holders of their intention to produce cheaper drugs and to certify that such production would not infringe a patent. This requirement for prior notice before the production of generic drugs makes it easier for patent holders to raise legal objections in order to extend patents and delay the appearance of cheaper drugs on the market. In the US, patent holders have used such legal delaying tactics aggressively, even when they have no prospect of winning the case. The high price of patented drugs means that six months or a year's delay can result in billions of dollars of additional revenue for large pharmaceutical companies and a lag in affordable medicines for consumers. The evergreening amendment addresses this problem by requiring that patent holders who want to commence legal action have to certify that they do so in good faith, that they have reasonable prospects of success and that they will proceed without unreasonable delay. Damages may be claimed if the court finds that the legal action does not conform to these reasonable requirements.

We believe that the evergreening amendment must be retained. The loss of the evergreening amendment would have a long-term impact by delaying the availability of cheaper generic drugs in Australia. It is the PBS comparison of the price of newer drugs with cheaper generic drugs of the same medical effectiveness that keeps the prices of prescribed medicines three to ten times lower here than they are in the US. In addition, patent holders cannot delay the addition of drugs to the PBS by launching legal action that is frivolous or unmeritorious.

SOCIAL JUSTICE COMMITTEE

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We are also gravely concerned that the US government is pressuring the Australian Government to change its policy for a 12.5% cut in the reference pricing of generic drugs. We strongly urge you not to bow to such pressure and to ensure that Australia's policies on affordable medicines are retained.

It is of particular concern that Australian medicines policy is being put at risk at a time when the trade figures have revealed an increased trade deficit in the first year of the A&US FTA. The government claims that there may be no clear economic benefits from the agreement for five to ten years. If this is the case, medicines policy should not be put at risk in the meantime and the Government should consider giving 6 months notice to withdraw from the A&US FTA.

Governments have an overall responsibility for the common good. It is for the common good of all Australians that our medicines policy should be maintained.

Yours sincerely

Suzette Clark rsc
CLRI (NSW)

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