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Negotiation Watch:  
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1. Concerns Grow Over Pharmaceutical Pricing in US-Australia FTA Talks,  
By Luke Eric Peterson

As Australian Trade Minister Mark Vaile travels to Washington in an effort to iron out the remaining obstacles to a Free Trade Agreement (FTA) between the US and Australia, concerns have grown that the pact could occasion a rise in the cost of prescription drugs in Australia.

Last week, US Congresswoman Nancy Pelosi, the Democratic Party leader in the House of Representatives, and eight colleagues wrote to President George W. Bush warning that confidential proposals being pushed by the US trade negotiators could threaten the "broad access that Australians currently enjoy" to prescription medicines.

Noting that the proposed FTA with Australia is being held out as a template for future trade pacts, Pelosi and her colleagues warned: "Given that far too many Americans cannot afford access to life-saving or life-prolonging medicines, it is astounding that the United States may seek to impose these shortcomings not only on Australia today, but on the rest of the world tomorrow."

The letter also expresses fears that proposals pushed by the Bush Administration would tie the hands of the US government in future - thereby precluding it from introducing its own forms of price-controls in the event that the US should see a shifting of political winds.

The concerns raised by Pelosi and her colleagues have garnered considerable attention in Australia, where public concern remains high that the US is looking to undermine Australia's Prescription Benefits Scheme (PBS).

As matters currently stand, the PBS subsidises the cost of drugs for Australian consumers. Consumers pay a small portion of the total cost to fill a prescription (up to 23 Australian Dollars), with the remainder covered by the Government. At the same time, the Government, in line with most Western nations, uses its purchasing power to force manufacturers to agree to price-discounts.

For a drug to be listed on the PBS, a special advisory committee reviews a number of factors including: "the medical conditions for which the medicine has been approved for use in Australia, its clinical effectiveness, safety and cost-effectiveness (value for money) compared with other treatments."

Meanwhile in the US, the price of prescription medicines has been a particularly fraught issue as of late. Americans pay the highest prices in the world for pharmaceuticals and have lately begun to notice that other nations pay much less for the same brand-name drugs. In recent months, numerous US states, cities, and individual citizens have turned to neighbouring Canada in an effort to purchase cheaper medicines - a practice which the Bush Administration and US-based pharmaceutical companies have frowned upon.

Late last year, a bill passed by the US Congress declined to legalize the so-called re-importation of prescription drugs from abroad. At the same time, the legislation foreswore the use of government-imposed price-controls as a tool for reining in spiraling drug costs. And a number of US politicians have called for the Bush Administration to take a tougher line in international trade negotiations with other nations which impose such price controls. To date, however, the US Trade Representative has played its cards close to its chest with respect to its demands in the Australia trade negotiations. As a legal matter, it is not clear to what extent US concerns about PBS are being dealt with in negotiations on investment rules, intellectual property rights, or through some other chapter of the proposed agreement.

What is known is that in December of 2003, reports indicated that US negotiators was merely seeking to improve the transparency of the process by which drugs are evaluated under Australia's PBS scheme. However, these suggestions have been dismissed by the Chairman of Australia's Prescription Benefits Advisory Committee, the body which evaluates drugs for placement on the PBS.

Dr. Lloyd Sansom told the Australian Financial Review that such claims were a "ploy" and that drug manufacturers are already privy to the

minutes of all meetings his committee.

"We've got nothing to hide," Sansom told the paper, "They know exactly the reasons upon which we make decisions. If they don't agree with us, that's not lack of transparency, that's a difference of opinion. If they want transparency ... I'm prepared to run the PBAC meetings at the Sydney Opera House."

Some hint as to broader US demands can be seen in an article this week by Inside U.S. Trade, a Washington-based trade news service. According to Inside U.S. Trade, the US is requesting that Australia index the cost of drugs on an annual basis - and perhaps at a steeper rate than standard consumer price indices. Sources also told Inside U.S. Trade that the US may push for an easing of Australian restrictions on pharmaceutical advertising, as well as for recognition of "the intrinsic value of innovation in the creation of new drugs when setting prices." As matters currently stand, the PBS takes a dim view of costly new medicines which don't show marked clinical improvement over existing drugs.

While Australian trade minister Mark Vaile has insisted that he will not permit the cost of medicines to increase for Australians, critics have pressed for a further declaration that the Australian taxpayer will not bear a greater financial burden. In other words, it might be possible for Vaile to acquiesce to some or all US demands - but to keep the price paid by consumers for prescription medicines at current levels, by increasing the taxpayer subsidy which covers the larger (and hidden) portion of drug costs which are directly paid to manufacturers.

Opposition parties have warned that they could move to block the trade deal when it comes up for vote in the Australian Senate, if it is seen to undermine the PBS or increase the price of medicines.

Sources:

"USTR Pushes Australia to Change Drug Scheme Over House Objections", Inside U.S. Trade, January 23, 2004

"Drug Demand Threatens Trade Deal", By Mark Davis and Morgan Mellish, Australian Financial Review, January 22, 2004

"Growing Concerns Senate May Scuttle Parts of FTA", AAP Newsfeed, January 21, 2004

"Drug Price Jump Ruled Out", The Cairns Post, January 21, 2004

"Trade Fears Grow Over Medicine Cost", Queensland Courier Mail, January 21, 2004

"US Demanding PBS Price Rises", By Mark Davis, Australian Financial Review, January 20, 2004

2. Korean-US Bilateral Investment Treaty Talks to Resume After Korean Elections,  
By Luke Eric Peterson

A long-running diplomatic tussle over Korean policies designed to favour domestic cinematic productions continues to stand in the way of the conclusion of a bilateral investment treaty with the United States.

Recently, the President of the American Chamber of Commerce in Korea, William Oberlin, called upon the Korean Government to show flexibility in dismantling its current rules which require that cinemas show at least 40% of homegrown movies.

Meanwhile, the Korean Finance and Economy minister has said that formal talks are likely to resume after parliamentary elections in April.

Although, the US is reported to have moderated its demands - seeking a gradual phase-out of the quotas, rather than immediate abolition - this has done little to appease critics of the proposal, including large portions of the cultural community and Culture Minister Lee Chang-Dong, himself a renowned film director.

Recent reports in the Korean press suggest that US negotiators are also calling for the abolition of quotas which require minimum levels of local content on television broadcasts.

President Roh Moo-hyun, and economic officials in his administration are reported to favor an end to the impasse, in order to conclude the long-delayed investment treaty with the United States.

Sources:

"Movie Quota Talks to be Held After Elections: Korea's DPM", Asia Pulse news service, January 13, 2004

"AmCham President Renews Call for Investment Treaty", Korea Times, January 7, 2004

### 3. UK Development Agency Wants Binding International Corporate Responsibilities

A new report by a UK development agency, Christian Aid, calls for the creation of binding international legal responsibilities for firms investing in the developing world.

The release of the report, *Behind the Mask: the Real Face of Corporate Social Responsibility*, is timed to coincide with the World Economic Forum in Davos, Switzerland.

According to Christian Aid researchers, company rhetoric on CSR has not translated into reality in many instances; the report points to several case-studies: Shell's operations in Nigeria; Coca-Cola's investment in India; and British American Tobacco's contracting of farmers in Kenya and Brazil.

While acknowledging that some voluntary initiatives can have salutary impacts, the Christian Aid report highlights a string of

company-sponsored "community development" projects - including schools, clinics and wells - which have failed to live up to their promises.

Pointing to the precedent of the 1997 OECD Convention on Bribery, Christian Aid has called upon the UK Government to lead the move for other mandatory forms of international business regulation.

At the national level, the organization has requested that the UK government introduce compulsory corporate social and environmental reporting, as well as disclosure obligations for firms doing business abroad (including with respect to payments made to foreign governments).

In addition, Christian Aid has called for a legal "duty of care" on the part of company directors, with respect to the social and environmental impacts of a company's overseas operations; the organization also seeks a legal avenue for individuals harmed by a UK firm's overseas operations to seek redress in UK courts.

Sources:

"Report Reveals the True Face of Corporate Responsibility", Christian Aid press release, January 21, 2004,  
[www.christian-aid.org.uk/news/media/pressrel/040121p.htm](http://www.christian-aid.org.uk/news/media/pressrel/040121p.htm)

"Call for Multinationals' responsibilities", The Financial Times, January 21, 2004

"Social Responsibility is Just a PR Tool for Businesses, says Report", The Guardian, January 21, 2004,  
[www.guardian.co.uk/business/story/0,3604,1127373,00.html](http://www.guardian.co.uk/business/story/0,3604,1127373,00.html)

#### 4. Angola Reported to have Misplaced More Than \$4 Billion in Oil Revenues

A report by US-watchdog Human Rights Watch condemns the African nation of Angola for its egregious mismanagement of substantial oil revenues. Its report, *Some Transparency, No Accountability*, relies upon data drawn from transparency initiatives championed by the International Monetary Fund (IMF).

The report offers words of praise for the oft-maligned IMF, noting that the organization has been an "important force pushing for greater fiscal transparency in Angola".

According to Human Rights Watch, available data from 1997 to 2002 reveal that (US) \$4.22 billion in oil revenues from the state-owned oil company Sociedade Nacional de Combustiveis de Angola (Sonangol) have bypassed Angola's Central Bank, and been put to unaccounted-for uses.

Human Rights Watch notes that this sum is equivalent to total social spending in the country during those same years - highlighting the foregone benefits which might have accrued to a population which has been wracked by poverty, deprivation and a long-running (but recently concluded) civil war.

The full report is available at:

<http://www.hrw.org/reports/2004/angola0104/>

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Arbitration Watch:  
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#### 5. Investor Loses Investment Treaty Case Against Morocco, By Luke Eric Peterson

An arbitral tribunal at the International Center for Settlement of Investment Disputes (ICSID) has dismissed a claim against the Government of Morocco alleging breaches of the Italy-Morocco bilateral investment treaty.

The case of R.F.C.C. v. Morocco had been brought to ICSID by an Italian contractor involved in the construction of a highway in Morocco, and claimed breaches of the firm's contract with a state-owned company, as well as of the investment treaty. According to sources familiar with the case, the investor has sought to obtain additional payments from the Morocco Government following complications which arose during the construction process.

An ICSID tribunal convened to hear the case declined to consider the investor's claims of contractual breach, but upheld its jurisdiction to consider alleged breaches of the treaty (including contractual breaches which were sufficient to trigger a breach of the treaty).

However, in an award handed down on Dec. 22, 2003, the tribunal dismissed all of the investor's claims on the merits - finding that Morocco was liable for no breaches of the bilateral investment treaty.

Sources at ICSID confirm that they are seeking the permission of the parties to publish the final award on ICSID's website. The R.F.C.C. case bore close similarities to another dispute, Salini Costruttori S.p.A. v. Morocco, brought by a second foreign contractor involved in work on a separate portion of the same highway. Notably, the tribunal hearing the Salini claim consisted of the same three members as the tribunal which arbitrated the R.F.C.C. claim.

Although the tribunal upheld jurisdiction to examine Salini's claims, the parties to the dispute - in what might be viewed as a fortuitous move for the investor - elected to settle the claim before the tribunal reached a determination on the merits.

The terms of this settlement have not been disclosed by the parties.

Sources:

INVEST-SD interviews

[www.worldbank.org/icsid](http://www.worldbank.org/icsid)

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