

CHRISTINE O. GREGOIRE  
Governor



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March 13, 2006

Ambassador Rob Portman  
Office of the United States Trade Representative  
600 - 17<sup>th</sup> Street NW  
Washington, D.C. 20508

Dear Mr. Ambassador:

I am deeply troubled over the potential impact that intellectual property rights provisions in recent trade agreements may have on state programs for managing pharmaceutical drug costs.

As you are aware, spending on prescription drugs is the fastest growing component of state health care costs. In recent years, states have introduced innovative measures such as preferred drug lists, the negotiation of bulk discounts, and drug importation programs to address this worrisome price trend.

The language of the U.S.-Australian Free Trade Agreement (AUFTA) indicates that the agreement covers pharmaceutical and reimbursement decisions made by federal health care agencies. I am extremely concerned that the AUFTA could be interpreted as covering state Medicaid programs, including preferred drug lists and expanded rebates, as these are proposed under federal guidelines and approved by federal officials.

The most alarming implication of AUFTA's coverage of state Medicaid programs is that the agreement mentions only safety, quality, and efficacy as legitimate principles in evaluating prescription drug programs. It does not list *cost* as a legitimate criterion for determining which drugs will be subsidized through a government drug-purchasing program – even though reduction of pharmaceutical costs is an enormously important issue for states. The ambiguous language might be interpreted as providing the federal government with a legal basis for preempting state drug-purchasing programs, by citing U.S. international trade commitments.

I strongly urge you to work with Australian officials on an Interpretative Note that definitively asserts that the agreement does not cover the administration of Medicaid programs by U.S. states. Such an action will help avoid any misunderstanding that could lead to an unwelcome trade dispute.

I also am disturbed by provisions in trade agreements with Singapore, Morocco, and Australia which could be used to prevent the re-importation of U.S. pharmaceuticals into our country. Including provisions that essentially would preempt federal and state lawmaking in this area is highly questionable, particularly when there is broad support at both levels of government for some form of parallel importation.

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In light of this, I strongly support the language contained in the recent appropriations bill that funds the Office of the United States Trade Representative. As you are aware, it prohibits that office from including provisions relating to drug re-importation in trade agreements.

Thank you in advance for your attention to these matters.

Sincerely,

A handwritten signature in cursive script that reads "Christine O. Gregoire". The signature is written in black ink and is positioned above the printed name.

Christine O. Gregoire  
Governor

cc: Washington State Congressional Delegation