

CPATH ♦ Center for Policy Analysis on Trade and Health

Bringing a Public Health Voice to Trade and Sustainable Development

CPATH in South Korea: Public Health and KORUS FTA

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Public Health Sounds Alarm on KORUS

Health professionals, policy-makers, and advocates in South Korea are in ferment over the KORUS FTA, the proposed U.S.- Korea Free Trade Agreement. Although U.S. trade officials are attempting to ease threats to affordable drugs in pending trade agreements with poor countries like Peru, they have contended that in thriving economies like Korea's the market for medicines is fair game. CPATH (the Center for Policy Analysis on Trade and Health) countered that trade agreements should not jeopardize public health, and rather should remedy the serious problems of many in advanced economies like Korea and the U.S. who can't afford life-saving medicines. CPATH's widely-disseminated Public Health Report Card analyzed KORUS' implications for access to affordable drugs as well as tobacco control and the encroachment of privatized, for-profit health care.

The National Health Insurance Corporation (NHIC) of Korea invited us (Ellen Shaffer and Joe Brenner) as CPATH Co-Directors, to visit and discuss our views at a variety of events early in June. The NHIC administers Korea's national health coverage system.

Our visit was co-sponsored by the Korean Federation for Health Rights, an advocacy group of health professionals founded by Dr. Seockyun Woo, an indefatigable physician with long roots in the Korean democracy movement, and Heeseob Nam, an activist patent lawyer.

Health advocates are deeply concerned that KORUS will send the health care system veering off in just the wrong direction at just the wrong time.

We spoke at a seminar with distinguished academics at the NHIC, chaired by former NHIC Director, Sung Jae Lee, now a candidate for the legislature.



We addressed a panel of legislators and other government officials at the National Assembly (Korea's Congress), spoke at numerous media events, and met with the Korean generic drug association. Mike Palmedo of the Program on Information Justice and Intellectual

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Property, and Sanya Reid Smith, a brilliant lawyer from Third World Network based in Malaysia, rounded out our group. When we returned to the U.S., Dr. Woo emailed CPATH: “We understand that Korean government officials related to the KORUS FTA are very annoyed and angry with your visit. Therefore we think our meetings and conferences were very successful.”



U.S. officials are now reconsidering some provisions of the KORUS FTA, and may review some of its health-related proposals. An exciting development – and a clear opportunity for cross-border communication and cooperation among public health advocates and policy-makers.



Public Health Animated by KORUS

We found scores of doctors, pharmacists, nurses, and dentists – and untold thousands of activists - energetically opposed to the agreement. They are intimately familiar with and conversant about the details of KORUS. Korean entertainment stars have vocally opposed the FTA, fearing that they will be run over by Mickey Mouse due to the Agreement’s provisions on copyrights. While rallies are generally banned, the first of several that we observe at City Hall is an upbeat, engaging and passionate anti-FTA event.

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Much of the controversy in the U.S. over KORUS has centered on whether Korea will agree to accept exports of US cars and beef, and other agricultural exports. But health advocates are deeply concerned that KORUS will send the health care system veering off in just the wrong direction at just the wrong time.

A World in Transition

After centuries of hierarchical regimes, repeated invasions by the Japanese, the Cold War-instigated war against the North, and subsequent military dictatorships, many Koreans have firsthand knowledge of the fight for democracy. While the country regained its moorings after an economic crash in 1997, 60% of employees in Seoul are referred to as “irregulars,” without a permanent position or job security. 10% of workers belong to unions, a little less than in the US. Half the population lives in Seoul. The rural population, while declining in number and aging, are still a political force. The president has a 12% approval rating, and been largely abandoned by his centrist ruling party. The conservative Grand National Party, capitalizing on the mood of economic insecurity, may be picking up steam for the December presidential elections. A new progressive electoral party emerged in 1999; the Korean Democratic Labor Party is helping to lead the opposition to the Korea-US Free Trade Agreement.

The cultural shifts are also noticeable. A newspaper reports on massive proposed reform legislation to recognize both patrilineal and matrilineal lines when families are officially registered, and to better acknowledge single parent families.

The Challenge: Affording and Expanding Universal Health Care

With half the GDP of the U.S., South Korea has accomplished what the U.S. has not: publicly-financed universal health coverage for all Koreans. The National Health Insurance Corporation (NHIC) provides and administers the program. The delivery system – health care professionals and hospitals – is mostly private, and entirely non-profit. The NHIC gets high marks for fighting for budgets that have let it expand coverage and services. But the rub is that it can still only cover 70% to 80% of medical and drug expenses. Individuals pay the balance, through co-payments. Middle and low income people

Korea aims to control drug expenditures and make care more affordable. KORUS aims to block that move.

can find that they cannot afford to pay the expenses for a complex or long-term chronic condition, such as cancer or diabetes.

A thriving domestic generic drug industry enjoys some price supports from the government. It is not the preferred environment for transnational brand-name pharmaceutical companies.

To control drug expenditures and thereby make care more affordable, the Korean government has proposed moving to a “positive list” system for offering and pricing drugs. Similar to the system used by many states and some federal US programs, the system would choose and then offer the best drug in each therapeutic category, and negotiate a fair price for those drugs with their producers.

KORUS aims to block that move. It calls for Korea, and some federal programs in the US that negotiate reimbursement rates for drugs, to follow a new set of rules. They must set prices at “market rates” (a contradiction in itself, since in this case a market rate really means the monopoly price big pharma is able to extract in the face of no competition), or adhere to an exhaustive series of challenges to government determinations about drug selection and price, that are little more than thinly disguised opportunities for Pharma to badger the government into making a different decision. One of the final steps is an “independent” review board to review government decisions both about which drug was

selected and about the price it will pay. As written in the FTA the independent board is not authorized explicitly to overturn government decisions. If the agreement is enacted it will remain to be seen whether the national legislation implementing the agreement will grant the review board this power.

The executive branch agency that negotiates FTAs, the U.S. Trade Representative (USTR), routinely proposes additional boilerplate language specifically to strengthen and lengthen the pharmaceutical industry's rights to sell brand-name drugs at monopoly prices for as long as the industry can contrive to extend its patents. During the 20 year patent period, no competing generic drugs can come to the market. As monopoly providers, drug companies can largely name their price, and the price of patented drugs is high. Once the patents expire generic competition typically slashes the price. The trade rules on drugs that extend patents are therefore a license to prop up high drug prices even longer, putting them out of reach of many.

Drug companies argue that patents are their reward for sinking millions into research and development. Others claim that the patents are a bad deal, and extending them is a worse one. Pharma spends only 15% of its take on research and development, while raking in 19% and profits, and spending 37% of revenues on marketing and advertising, with little to show over the last decade in innovating new products that are significantly better than drugs already on the market.

The standard pharma trade program nudges even U.S. law further in its own interest. The tactics to delay price-slashing competition include: Data protection, which delays generic companies' access to needed clinical trial data; requiring drug regulatory agencies to link to patent office files to determine whether patented substances are involved when generic companies seek approval; and a range of grounds for outright patent extensions.

USTR recently acknowledged that its Pharma-generated program is just too onerous for low income countries, and has renegotiated some elements of the medicines-related provisions of the recent trade agreement with Peru. But in the case of Korea, considered a developed economy, the USTR has held firm.

U.S Drug Programs Also at Risk

The FTA would also jeopardize the ability of some federal programs in the U.S. to continue to make drugs available to vulnerable populations at affordable prices. Section 340 of the Public Health Service Act authorizes lower reimbursement rates for drugs offered by safety net providers including community clinics. The pharmaceutical industry has already launched two separate initiatives through the Bush administration to undermine or eliminate the program. In addition, a section of Medicare part B. provides for negotiated rates for some in-hospital drugs.

The FTA excludes Medicaid coverage from these provisions. Other large federal purchasers, including Veterans Affairs, the Department of Defense and Coast Guard, would also see few if any changes.

Tobacco Control and KORUS

Korean tobacco control advocates are justly proud of the progress they have achieved over the last 12 years, since they passed the National Health Promotion Act. The smoking rate among males has dropped from 67% to 45% since 2001, according to the Korean Association of Smoking and Health.

Lung cancer is the leading cause of death. KORUS would eliminate the 40% tariff on foreign cigarettes.

But smoking is still more prevalent than health concerns would dictate, and lung cancer is the leading cause of death. Experts believe that women are increasingly turning to smoking, though they may do so less publicly than men.

The FTA would eliminate Korea's recently enacted 40% tariff on foreign cigarettes. Making cigarettes cheaper it is a sure fire way to increase consumption. The main US brand in Korea, Phillip Morris of Marlboro fame, switched tactics after the 40% tariff was imposed in 2004, and started producing in Korea. But they still use American tobacco. This could give them standing to file a trade dispute charge that could discourage or overturn new tobacco control measures Korea might enact, even if the measures apply equally to both foreign and domestic tobacco companies. Under free trade agreements foreign companies have rights that domestic companies do not have to file trade charges against a government. Trade rules on intellectual property, for example, forbid countries from interfering in companies' uses of brands and trademarks. Korea's proposal to eliminate tobacco product advertising, an action consistent with the World Health Organization's Framework Convention On Tobacco Control, could well run afoul of the FTA.

Privatizing and Deregulating Health Care

The Korean national health system is planning to celebrate its 30th anniversary and looks forward to expanding. As in the U.S., however, there is pressure to forge ahead with private market-based solutions to the need for more care, raising the prospect of higher costs, two-tier care, and unaccountable services. Private health insurance companies already compete with the NHIC for some aspects of care. For-profit hospitals have explored opening facilities in Korea, though the language barrier has so far kept out most US hospital corporations. But the FTA authorizes private US insurance companies and hospital corporations to do business in certain parts of Korea already designated as free economic zones. U.S. health professionals will be able to operate freely in these areas, with no additional licensing or other qualifying exams. Codifying the rights of health care corporations in a trade agreement will make it exceedingly difficult for the country to change course and eliminate any foreign for-profit health care corporations that do establish themselves. According to the trade advisory committee on the subject, this restriction on the government's ability to take future action was one of their key objectives in asking the US to negotiate these provisions.

Cross-Border Solidarity: Renegotiate A Healthy KORUS Trade Agreement

Koreans are forging a path toward trade policy and politics that improve and protect the public's health. As the U.S. debates how to improve access to health care, we should assure that trade agreements respect and protect the public's health. KORUS' threats to access to medicines, health care services, tobacco control, and other public health protections, must not stand.