

U.S. Rep. Duffy: Asks President Trump To Stand Up To France, Germany, Others On Pharmaceutical Free Riding

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Foreign trading partners put unfair burden on American patients & economy

Washington DC - Wisconsin Congressman Sean Duffy, Chairman of the Financial Services Subcommittee on Housing & Insurance, today sent a letter to President Trump requesting that his Administration addresses “free riding” by our trading partners on American innovative pharmaceuticals. The letter was also signed by 26 other members of Congress.

Read the letter below.

Dear Mr. President:

I am writing to express my strong concerns in regard to the “free riding” of our trading partners on U.S. innovative pharmaceuticals. Among these issues include foreign government price controls, market access barriers, and intellectual property (IP) theft. Developed countries like Germany, France, Japan, and Australia consistently undermine American companies through longstanding, impermissible practices that place an unfair burden on U.S. patients, cost our economy jobs, and rob us of new treatments and cures.

“Free riding” creates a difficult choice for the U.S. pharmaceutical industry. Innovative companies can either accept a very low reimbursement rate for cutting-

edge medicines (which then ripples through the rest of the global pricing system, as developing nations peg their own reimbursements to Europe, Japan, Korea or Australia), or face the very real threat of a compulsory license. Once the drug has lost its patent, generic companies move into these countries and undercut in price the original innovative drug.

Perhaps the most effective way to prevent free riding is through trade enforcement and strong trade disciplines in our new free trade agreements (FTAs). You have already shown tremendous leadership on trade, demonstrating through the renegotiated U.S. Korea FTA (KORUS) that strong trade policy can create a level playing field for U.S. innovators. By negotiating with Korean officials to provide full access to the government reimbursement system previously reserved for Korean companies, U.S. innovators can now compete fairly in the Korean market, enabling them to invest more in R&D and jobs here in the U.S.

Over the past few months, a number of U.S. companies have met with Commerce Secretary Ross, USTR Lighthizer, and other members of your senior staff to discuss similar solutions to the free-riding issue. Foreign systems are frequently government-controlled, over-regulated, and contrary to international conventions like the World Trade Organization's (WTO) GATT and TRIPS Agreements, as well as numerous bilateral obligations. This requires a strong U.S. government response.

Ongoing trade talks with Canada and Mexico related to NAFTA and use of trade tools like Special 301 and Section 301 can hold the worst actors accountable (Canada's Patented Medicine Prices Review Board is one of the worst government price control bodies among developed economies). These opportunities can serve as a vehicle for aggressive Administrative action to eliminate practices that undervalue U.S. innovation.

Most notably, Canada continues to propose and implement pricing and reimbursement policies that do not value innovation, leaving the U.S. to shoulder a disproportionate burden of global R&D. Canada is currently proposing to remove the U.S. and Switzerland from the basket of comparator countries for price determinations using international reference pricing, while also considering disclosure of confidential rebates that do not justify the intended policy objective. The U.S. government should begin to address the free-riding issue in Canada via a two-pronged approach, and then branch out to the EU and other countries:

1. **Trade Negotiation Strategy**- To date, Canada has refused to include pricing

and reimbursement issues in NAFTA negotiations. However, building off the recent success of the KORUS agreement, we believe that USTR should require that this issue be resolved as part of a modernized NAFTA agreement.

2. **Trade Enforcement-** Other approaches are to work through the U.S. Trade Representative's (USTR) use of the annual "Special 301" process or to start a Section 301 process under U.S. trade law. Under these processes, USTR could find that pricing practices abroad undermine US intellectual property rights and constitute an unfair trade practice, which could lead to trade sanctions if unresolved. Using these tools to level the playing field for U.S. innovators will bring new R&D here at home, more new medicines and a more competitive marketplace for US patients.

As you've noted in the past, the free-riding issue is an ongoing drain on the U.S. innovation economy, threatening thousands of high-paying jobs across the country. I extend my congratulations to you and Ambassador Lighthizer on your handling of the KORUS renegotiations, and stand ready to support your efforts to negotiate fair trade agreements for the United States. More wins like KORUS can help us bring an end to this vexing issue.