Congress of the United States
House of Representatives
Washington, DC 20515

January 15, 2004

The President
The White House
Washington, D.C.

Dear Mr. President:

We are writing as members of the Democratic leadership of the House of Representatives and senior Democratic Members of the Committee on Ways and Means to express serious concerns about the Administration's effort to modify Australia's national pharmaceutical reimbursement program as part of the negotiations for a free trade agreement (FTA) with Australia. Key elements of the proposal appear designed to increase drug prices in Australia at a time when the Bush Administration has failed to reduce drug costs for Americans.

We recognize and support the right of the U.S. pharmaceutical industry to protect its intellectual property rights in foreign markets, including markets such as Japan, Korea and France that have applied discriminatory pricing schemes to benefit domestic industries to the disadvantage of our innovative industry. We also support efforts to improve transparency in foreign markets, including Australia's, so that our businesses have a fair chance to compete and make the case for selling their products.

Unfortunately, the proposal tabled by U.S. Trade Representative Robert Zoellick goes much farther. Since the proposal has not been shared with the public in either the United States or Australia, we cannot reference its specific language. However, there are at least four major problems with the proposal.

First, we are deeply concerned about the proposal's implications for the United States. A number of elements of the proposal, if applied to public and private programs in the United States, could harm American veterans and others by raising drug prices and restricting choice or access, among other potential consequences. Individuals potentially affected by the proposal include the elderly who receive Medicare, working people on Medicaid, veterans who receive health benefits through the Veterans Administration, and active military men and women who participate in the Department of Defense TRICARE program, as well as other people who participate in programs administered by the Indian Health Service, the Public Health Service, and a myriad of state and local governments throughout the United States. This impact comes at a time when the Bush Administration has done little if anything to address the serious need to broaden access here at home.

In this regard, some have suggested that the United States would be exempt from application of this proposal. We do not know whether the Government of Australia would be willing to accept such a one-way mandate in the FTA; however, regardless of what its position might be, we believe it is inappropriate to seek changes in other countries' policies or programs that we would not be willing to accept here at home.

Second, U.S. Trade Representative Zoellick has stated that proposals made in FTA negotiations should become models for all future FTAs. We have been concerned with the attempt of USTR to utilize provisions of one FTA as a "model" for others, even where circumstances are very different. Given this serious problem, it is essential that this proposal be more carefully considered – with respect to both its ramifications on current U.S. programs as well as how it may constrain Congress' ability to expand access to medicines in the future – before we lock ourselves into a web of international commitments. Moreover, 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 those shortcomings not only on Australia today but on the rest of the world tomorrow.

Third, the proposal's potentially wide-ranging mandates and constraints are likely to raise costs both for the Australian government and its citizens. Regardless of whether one supports Australia's universal health care system, it is indisputable that Australians on the whole have far better access to affordable prescription drugs than do many Americans either on their own or through various public and private insurance programs. The broad access that Australians currently enjoy would be undoubtedly threatened if prices increased.

That said, given that the recently enacted Medicare law failed to take steps to reduce, in any meaningful way, the cost of prescription drugs for the elderly in the United States, perhaps it is understandable that the Administration would seek to raise prices in other countries as well. However, if the Administration proceeds along this track in the name of preventing "free ridership" by countries and their citizens, we respectfully request to see the Administration's plan to lower prices correspondingly for American purchasers.

Fourth, it is not clear that this proposal comports with, let alone is called for by, the principal trade negotiating objectives of the Trade Act of 2002. The Act states clearly that the objective of eliminating price controls and other practices applies when those measures "*provide a competitive advantage to [the foreign country's] domestic producers...and thereby reduce market access for United States goods.*" It is far from clear that the Australian system as currently structured provides any net advantages to Australian producers in competition with U.S. pharmaceutical companies – and to date, this reason has not been offered as the basis for the proposal.

Given these concerns, we urge you to direct USTR Zoellick to withdraw the proposal and replace it with one that is derived after a meaningful dialogue with Congress and reflects the views of a broad, bipartisan cross-section of Congress. This is the traditional basis on which trade agreements have been negotiated and implemented throughout the postwar era by Republican and Democratic Presidents alike, particularly from the time of President Ford through President Clinton. We also urge you to immediately release the proposal so that a full public debate of its merits can occur.

Sincerely,

Nancy Pelosi
Democratic Leader

Steny Hoyer
Democratic Whip

Charles B. Rangel
Ranking Democrat,
Committee on Ways and Means

Pete Stark
Ranking Democrat,
Committee on Ways and Means
Subcommittee on Health

Robert T. Matsui
Ranking Democrat,
Committee on Ways and Means
Subcommittee on Social Security

Sander M. Levin
Ranking Democrat,
Committee on Ways and Means
Subcommittee on Trade

George Miller
Ranking Democrat
Committee on Education and the Workforce

John Spratt
Ranking Democrat
Budget Committee

Jim Clyburn
Vice Chairman
House Democratic Caucus