EpiPen and the Trans-Pacific Partnership

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In recent weeks, the soaring price of EpiPen has been somewhat of a national scandal in the United States. EpiPen is a fast-acting delivery device for epinephrine, which could be a life-saving treatment for people suffering from an allergic reaction to foods or other items.

As a result, the system is widely used by people with serious allergies. They will who typically carry an EpiPen device with them all times. Schools and other public facilities also often keep them in stock as part of their first aid kits.

While epinephrine has been available as a cheap generic for decades, Mylan, the maker of EpiPen, holds a patent on the delivery system in Epipen. This patent has recently expired, but no generic producer has yet successfully entered the market.

Mylan has taken advantage of its effective monopoly to repeatedly jack up the price. Most recently it doubled the price to $600 for its standard two-pack. This two-pack sold for around $40 a decade ago. If it were sold in a free market, where any manufacturer could compete, it would likely sell for between $10 and $20 per pack.

This sort of price gouging has become increasingly common with prescription drugs. The hepatitis C drug Sovaldi has a list price of $84,000 for a three month course of treatment. High quality generic versions are available in India for less than $500. Many of the new cancer drugs sell for over $100,000 for a year's treatment, while generics would generally sell for less than $1,000.

In addition to the exorbitant prices for these new drugs, there have been a number of instances, where generic producers have managed to get a monopoly on life-saving drugs with a relatively limited market. In some cases they have taken advantage of these short-term monopolies to raise prices by several hundred percent, or even several thousand percent.

The extraordinary markup on drugs is worth considering in the context of the Trans-Pacific Partnership (TPP) agreement. President Obama still is hoping Congress will approve the TPP before he leaves office in January. The TPP is being sold as a "free-trade" agreement, with the opponents being labeled as enemies of

free trade.

The irony of this situation is that there is very little in the TPP that has anything to do with free trade. The United States already has trade agreements with six of its eleven partners in the TPP, which eliminated most traditional trade barriers. Even in the case of the other five countries, most tariff barriers are already low.

For this reason, the standard “gains from free trade” argument has little relevance to the TPP. We’re talking about taking some tariffs that are currently 5-10 percent and making them zero. So the imported shirt that now costs $22 may cost $20 when the TPP is fully implemented. It’s nice to save $2 on a shirt, but this is not a major economic policy.

One of the areas where the TPP will have considerable impact is prescription drugs. The chapter on intellectual property is written to make patent and related protections stronger and longer. The chapter on transparency will make it more difficult for governments to take measures like implementing price controls in order to limit what drug companies can charge.

The TPP also provides for an Investor-State Dispute Settlement mechanism where foreign investors, including foreign subsidiaries of U.S. companies, can contest any law or regulatory measure which threatens their profits. This will give the drug companies a new extra-judicial outlet where they can take their complaints about government efforts to restrict prices.

Incredibly, the proponents of the TPP have managed to disguise this effort to make drug patent monopolies stronger and longer as “free trade.” They want the public to focus on saving $2 on imported shirts, or other comparable tariff reductions, and to ignore the 1000 percent or 10,000 percent increase on drugs and other protected products that might result from the TPP.

The recent scandals around drug prices in the United States should be prompting serious discussions of alternative mechanisms for funding drug development which would allow drugs to be sold at their free market price. It is not impossible to develop such mechanisms.

The United States already spends more than $30 billion a year funding biomedical research. Most of this money goes to fund basic research, but there is no reason that the funding could not be greatly expanded with the additional money going to

support the development and clinical testing of drugs. It is long past time for a serious discussion of such alternatives, both for the United States and the world as a whole. After all, people throughout the world will benefit from a medical breakthrough, regardless of where it takes place.

Contrary to the arguments of TPP proponents, it is precisely because people believe in the merits of free trade that they should be upset about the drug patent and related provisions in the TPP. It doesn't make sense to be upset about a 10 percent tariff on imported shirts, but think a patent monopoly that raises drug prices by 1000 percent is fine. The lobbyists might try to sell this story, but there is no reason for anyone who isn't taking their money to buy it.

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