

2. Pharmac

Pharmac's [2012 annual report](#) shows it saved the NZ taxpayer \$5 billion over the past 12 years and expanded access to medicines while staying within budget. Other countries view it as a best practice model. That is why US pharmaceutical companies do not like it. As a market, NZ is peripheral. As a precedent, NZ is crucial.

National is playing word games when it says it will protect the 'fundamentals' of Pharmac. The TPPA would not force Pharmac to be dismantled. The US proposals aim to [undermine how Pharmac operates](#). The goal is to bust the hard funding cap that gives Pharmac bargaining power with the pharmaceutical companies. Leaked texts and other information show two strategies to attack Pharmac through the TPPA:

- (i) The original leaked US proposals on **patents** would affect the price Pharmac uses to decide what subsidies it offers for what medicines. All TPPA countries have rejected the US proposals.

New Zealand and four other countries have proposed an alternative that would require much more than our existing law. The US will not accept that.

The US has informally proposed an alternative that would give poorer countries more flexibility than OECD countries. This would impact on NZ and Pharmac most because we are the only OECD country in these talks that does not have an FTA with the US.

- (ii) The US pharmaceutical industry has accused Pharmac of an 'egregious' lack of due process. The **Transparency** annex on healthcare technologies (medicines and medical devices like artificial limbs or eye lenses) aims to give Big Pharma more access to, and ability to contest, the information and formulae that Pharmac uses, more opportunities for input, and review and appeal mechanisms.

These are designed to give leverage over Pharmac's processes and decisions and could seriously blow out Pharmac's budget, if the current level of access and subsidies are maintained. The unpalatable alternative would be to reduce availability of affordable medicines. An [Australian review](#) said restrictions on generic drugs under the Australia-US FTA was costing their Pharmaceutical Benefits Scheme \$200 million more a year for drugs and warned against repeating the mistake in the TPPA.

There are also risks that drug companies would threaten or bring disputes under the TPPA's investment chapter over decisions about patents by the Patent Office or the courts. US drug company [Eli Lilly has just claimed](#) \$500 million in compensation from Canada under the investment chapter in NAFTA, the model for the TPPA. Canada's Supreme Court refused to grant patents for medicines because Eli Lilly had not shown the drugs would have the benefits that they asserted. Such claims aim to frighten governments and courts to find in the drug companies' favour.

The US insists the general exception for public health measures in the TPPA does not apply to the investment chapter. Even if it did, it wouldn't guarantee protection, because it has many provisos and is only a defence to a legal challenge.

A successful assault on Pharmac via the TPPA would mean medicines cost more, or subsidised drugs are less available. Drug companies would gain more leverage to increase their profits at the expense of the taxpayer or the sick and the poor.