



aidslaw
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SUBMISSION ON BILL C – 9 TO CANADA'S PARLIAMENTARY STANDING COMMITTEE

The global AIDS epidemic is one of the greatest threats to security and development in the world. Millions of people in developing countries are dying of AIDS, TB and malaria – while the first world sits idly by. High prices of medicines, protected from competition by patent law, make it impossible for poor people to protect themselves against illness and death.

For these reasons, South Africa's Treatment Action Campaign (TAC) and AIDS Law Project (ALP) welcome the decision by the Government of Canada to amend patent legislation to allow for the export of generic pharmaceuticals to countries in need of more affordable medicines. As organisations that have actively participated in the campaign for access to treatment for people living with HIV/AIDS, the TAC and ALP recognise the symbolic and practical significance of Canada's commitment to global public health. We strongly believe that if properly implemented, this brave step will make a significant contribution towards ensuring a sustainable supply of affordable essential medicines in the developing world.

With the introduction in Parliament of Bill C-9 (An Act to amend the Patent Act and the Food and Drugs Act), Canada has taken an important step toward improving access to medicines globally. It is the first country to follow through on a recent World Trade Organization (WTO) decision, in August 2003, that relaxed restrictive patent rules. That decision lets WTO members issue compulsory licences that would allow generic companies to produce cheaper copies of expensive patented medicines and export them to countries that lack sufficient capacity to produce their own – as is the case with many developing countries. This would enable developing countries to make effective use of compulsory licensing to import needed medicines at much lower prices.

While the agreement reached at the WTO has its shortcomings, it nevertheless goes some way towards ensuring that developing countries with no pharmaceutical manufacturing capacity will be able to access affordable medicines. In amending its patent law, Canada is urged to give full effect to the important public health safeguards contained in the agreement.

Canada's move to expand access to essential medicines is important for three key reasons. First, as producing countries (such as India and Brazil) implement their TRIPS obligations and provide full patent protection for pharmaceutical products, the supply of generics will inevitably dwindle. To ensure a sustainable supply of generics, more countries must be able and willing to produce for export. The greater the number of producing countries, the more likely generics will be available for import.

Second, increasing the number of generic products available promotes the financial sustainability of treatment programmes through competition.

Third, few developing countries have made use of their existing laws to increase access to essential medicines. Those with powers to issue compulsory licenses for import or local production have failed, or been scared, to act. Even fewer have taken legislative steps to amend their patent laws so as to take full advantage of the public health flexibilities and safeguards permitted under international law. As a member of the G7, Canada's move can only serve as an example to other countries to make full use of the access provisions in the WTO's rules on patents.

In amending its patent legislation, the TAC and ALP stress the importance of a regulatory framework that will be effective in clearing the way for developing countries to access cheaper, quality generic medicines. It must be able to deliver concrete benefits to poor people in developing countries. The initiative should not be an empty gesture that ultimately preserves the monopolies of the multinational pharmaceutical companies – and the profiteering that too often follows – at the expense of the thousands who die every day throughout the global South.

In this regard, we call on the Government of Canada to remove the so-called “right of refusal” provisions in the bill. These provisions run counter to the agreement, stated by all WTO Members in the November 2001 *Declaration on the TRIPS Agreement and Public Health*, that the WTO's treaty on intellectual property rights should be interpreted and implemented in a manner that supports countries' efforts to promote access to medicines for all.

These provisions would give multinational pharmaceutical companies the “right” to take over any contract negotiated between a Canadian generic company and an importing developing country, in essence inviting anti-competitive actions by companies holding patents on medicines and undermining the entire initiative. Poor people will pay the ultimate price for protecting the pharmaceutical companies' monopolies and profiteering.

The TAC and ALP further call on the Canadian government not to limit its initiative only to certain medicines. Death and suffering come not only from massive infectious diseases such as HIV, but also from a wide range of conditions. A developed country like Canada, in which most people have affordable access to a wide range of medicines for many illnesses and health problems, should not dictate to developing countries which health problems they can address through the use of cheaper medicines.

Canada's initiative has the potential to set a positive global precedent, a wealthy country demonstrating leadership in responding to the needs of the developing world. But equally, if Canada acts in bad faith in implementing the WTO consensus on improving access to generic pharmaceuticals, it will tarnish its own reputation and demonstrate that the most recent WTO decision is but the latest in a string of betrayals of sick, poor people needing medicines.

Canada's move comes at a time when the South African government is in the early stages of implementing its national antiretroviral treatment (ART) plan. In our submissions to the National HIV and AIDS Treatment Task Team last September, we recommended that the operational and implementation plan should commit the state to making full use of its powers under domestic and international law – if necessary – to ensure access to a sustainable supply of affordable medicines. If appropriately amended, Bill C – 9 has the potential to embolden South African policy makers as they implement our much awaited and needed national HIV/AIDS treatment plan.

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