Canadian HIV/AIDS Legal Network | Réseau juridique canadien VIH/sida

July 17, 2007

Lesia Stangret
Assistant Deputy Director
Intellectual Property, Information and Technology Trade Policy Division
Department of Foreign Affairs and International Trade
125 Sussex Drive
Ottawa, Ontario K1A 0G2

Dear Ms. Stangret:

Re: Intellectual property issues in bilateral FTA negotiations

As one of the civil society organizations that has been actively engaged over several years in policy discussions with the federal government regarding the issue of intellectual property law and access to affordable medicines in developing countries — and in particular the provisions of Canada's Access to Medicines Regime (CAMR) — we write to raise our concern at the recent announcement by the Department of Foreign Affairs and International Trade (DFAIT) that it is assessing "the extent of Canadian intellectual property interests" in Peru, Colombia and the Dominican Republic, in the context of initiating trade agreement negotiations with these countries.

We note that Canada has not generally pursued the inclusion of intellectual property (IP) provisions in bilateral free trade agreements. For example, Canada's agreements with the Central American countries, Chile and Costa Rica do not include chapters on IP. Indeed, in previous discussions with DFAIT representatives over the last several years, we have been told repeatedly that, in contexts such as the negotiations regarding a Free Trade Area of the Americas (FTAA), Canada is not a proponent of additional IP provisions beyond those agreed at the World Trade Organization (WTO). To the best of our knowledge, NAFTA's chapter on intellectual property, which pre-dated and provided the basis for the WTO's *Agreement on Trade-Related Aspects of Intellectual Property* (TRIPS), is the only example of including such provisions in a bilateral/trilateral agreements to which Canada is a party.

As you know, the TRIPS provisions have become highly controversial in recent years, in particular with respect to the impact of patents and other IP rules on access to affordable medicines, a concern thrown into especially stark relief by the global HIV pandemic. In light of these and other concerns, there are significant global discussions underway in various fora, including the World Intellectual Property Organization (WIPO) and the WHO's new Intergovernmental Working Group on Public Health, Innovation and Intellectual Property (which is chaired by Canada), to re-think the implications of such rules for developing countries and to adopt instead rules that better support development objectives, including access to medicines and the protection and promotion of public health more broadly.

Notwithstanding the extensive analysis and research that has demonstrated the adverse consequences for developing countries of adopting even TRIPS standards, countries such as the United States have continued to push for new, "TRIPS-plus" standards in bilateral trade deals. To the extent that any policy flexibility is preserved under TRIPS for developing countries to address health or other development concerns, such bilateral agreements further undermine or restrict the options available to countries. We are, therefore, concerned at the suggestion that Canada may now be moving to incorporate provisions on intellectual property into bilateral treaties.

The DFAIT website indicates that the Government's interest "stems from the increasingly important role intellectual property plays in the knowledge-based economy in Canada and abroad" and that "the competitiveness of Canadian firms and other creators or owners of IP often depends on their ability to protect their intellectual assets and enforce their rights." We stress that Canada's interest also lies in complying with its binding human rights obligations under international treaties, such as the *Charter of the United Nations* and the *International Covenant on Economic, Social and Cultural Rights*, to solve international health problems and to promote access to medicines as part of realizing progressively the human right to the highest attainable standard of health — an obligation that includes a duty of international cooperation and assistance with other countries in achieving this goal. Indeed, as Canada and the vast majority of other states in the world declared in the 1993 *Vienna Declaration on Human Rights*: "Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments."

We note as well that the DFAIT website survey is focused on consulting with the private sector. But, as we have suggested, Canada's negotiating position and approaches to the question of IP provisions in trade agreements has far-ranging implications, and it would be entirely inappropriate to limit consultation to simply private sector interests. In the interests of transparency and accountability, we urge you to engage a wider range of stakeholders in such a discussion, including civil society organizations and parliamentarians, before making the decision to include IP issues in bilateral trade negotiations, and indeed to seek out a broader range of perspectives in shaping all of Canada's priorities for international trade and investment agreements.

We look forward to the opportunity for discussing these issues in greater depth through a transparent process that involves meaningful consultation with civil society.

Sincerely,

Richard Elliott
Deputy Director