

Latest amendments to Canada Patent Act a good start, but still need work

Ottawa, 20 April 2004 - Médecins Sans Frontières (MSF), Oxfam Canada, the Canadian HIV/AIDS Legal Network and the Canadian Council for International Cooperation (CCIC) congratulate the government for making major improvements in Bill C-9, the high profile legislative initiative to facilitate poor countries' access to low-cost medicines. But the bill remains unnecessarily burdened by several provisions that could seriously stifle competition and hamper the process of exporting much needed generic medicines to the world's poor.

"We are very pleased to see that the government has listened to our concerns in the committee process and removed the contentious 'right of first refusal' clause in the bill," said Richard Elliott, Director of Legal Research and Policy with the Canadian HIV/AIDS Legal Network.

"The bill has come a long way," notes David Morley, Executive Director of MSF Canada, "but the government still needs to address several outstanding concerns." First, there remains a serious concern with having a list of medicines covered by the legislation. The list is not required by the WTO Decision of August 30th 2003, which is the basis for Bill C-9, and will establish burdensome red-tape in the process of obtaining medicines for developing countries. "Having a list, when such proposals have already been emphatically rejected at the WTO, also sets a poor international precedent suggesting that developing countries may only get a few medicines at cheaper prices," added Mr. Morley. MSF stressed that the legislation must allow the export of generic fixed-dose combination products, such as those anti-HIV drugs approved and recommended by the World Health Organization as critical elements of the global effort to scale up access to AIDS treatment.

The government has also maintained a list of eligible countries that could import Canadian generics. "We commend the government for expanding this list to include many developing countries that do not belong to the WTO," said Gauri Sreenivasan, trade policy officer at the Canadian Council for International Cooperation. But the government's proposed amendments retain a complex procedure through which a non-WTO member country must pass before being considered eligible for importation. This includes a requirement that the country declare a national emergency. In addition, a country would be eligible to import from a Canadian producer only on a product-by-product basis. "This is not the way to protect public health in those countries needing cheaper medicines," added Ms. Sreenivasan.

Finally, the government is proposing an unnecessary amendment that could invite lengthy and vexatious litigation by patent-holding companies seeking to strip generic producers of their validly acquired licences, or impose higher royalties than those determined by applying the legislated formula. This goes beyond anything required by WTO rules and would likely act as a disincentive for generic producers to compete in the market. "This humanitarian initiative depends on the engagement of for-profit companies motivated by commercial purposes. Undermining incentives for those companies to enter the market could undermine the objective of this bill," warned Mr. Elliott.

The Prime Minister has proudly referred to this legislation as an act of leadership by Canada on the world stage. The government has made great progress. However, in order to set a positive global precedent, Canada must address the remaining concerns with the bill and the government amendments "Canada must not falter with this initiative to facilitate easy access to more affordable medicines by the world's poor," urged Rieky Stuart, Executive Director of Oxfam Canada. "We see this as one important element in creating the growing global momentum to tackle the AIDS crisis and other health needs of developing countries, and call upon the Government to significantly enhance its financial support for the Global Fund to Fight AIDS, TB and Malaria and the WHO's initiative to get AIDS treatment to 3 million people by 2005."

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For additional background material on Bill C-9, see:

<http://www.aidslaw.ca/Maincontent/issues/cts/patent-amend.htm> [English]

<http://www.aidslaw.ca/francais/Contenu/themes/sointraitements/brevet-amend.htm>
(français)