

HIV/AIDS, Drugs and Free Trade

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One of the most significant issues surfacing at the International AIDS conference is the way intellectual property rights and free trade agreements have undercut the ability of countries to provide generic antiretroviral drugs to save people with HIV/AIDS.

People were shocked when they heard the news from Canada that not one generic antiretroviral pill had yet to be sent to Africa, even after the Jean Chretien Pledge to Africa in 2004. The public had thought the issue of getting generic drugs to those who need it had been solved, but what was not resolved was the power of Big Pharma, the US, and other governments to use unfair trade rules and procedures to throw up obstacle after obstacle to protect the drug trade.

In a special Toronto Globe and Mail question and answer response (August 16th, 2006) during the International AIDS Conference, Stephen Lewis the UN special envoy on AIDS to Africa responded as to why Canada has not acted on generic drug exports to support antiretroviral treatment.

Stephen Lewis said, "There are no barriers. The WTO exemption to getting manufactured drugs in Canada, or any donor country, and sending them to Africa, that exemption emerged in 2003 and it was consolidated as a permanent part of the WTO just a couple of months ago. To suggest that there are WTO problems is to raise a fraudulent red herring."

Stephen Lewis pointed out, "The problem is the big pharmaceutical companies. They are negotiating with the generic companies forever, always stalling, and because governments -- both Liberal and Conservative -- don't seem to have the backbone to stand up to these pharmaceutical companies, this never gets resolved. What you have to do here is issue a compulsory license. That's what it's called. That's the procedure. If the big pharma companies will not grant to the generic companies . . . a voluntary license, then the government steps in and amends the regulations and delivers a compulsory license, which the legislation allows them to do and provides for.

Lewis concluded, "The fact that they [the government] haven't done this is what is stalling this process. And this [current government] review is just another delay. So we'll be 3.5 to 4 years before a pill ever leaves Canada which, in the context of the pandemic, is outrageous."

The Canadian government pledge to Africa was passed in accordance with decisions of the World Trade organization going back to the Doha Declaration passed in Qatar in 2001, adopted after intense pressure from global civil society. The Doha Declaration placed the protection of the public health above the protection of private commercial interests and confirmed the right of countries to use safeguards such as compulsory licences to overcome patents in order to protect public health and medicines for all. In August 30th, 2003 the WTO reaffirmed public health flexibilities in intellectual property rules that would allow the export of low cost generic drugs to developing nations that do not have the capacity to produce such medicine domestically. Governments can declare a public health emergency, and issue compulsory licenses that permit the manufacture of a patented drug without consent from the owner.

However, notwithstanding these international decisions, Canada seemingly lacks the initiative and ability to implement them. Rachel Kiddell-Monroe, Canadian Head of Médecins Sans Frontières (MSF) (Doctors Without Borders) in a recent commentary piece in the Toronto Globe and Mail stated they MSF, "were among the first try to use the international decision by placing an order for antiretroviral drugs -- medication urgently needed by AIDS patients in our field projects -- as soon as the law is passed. But, two years on, not a single pill has left Canada."

Rachel Kiddell-Monroe commented, "instead of faxing an order to a drug company and paying the bill, obtaining medicine under the WTO August 30th decision means pushing for the government to agree to import under these circumstances, and identifying a drug company willing, and able, to produce the drugs. It means waiting for obligatory prior negotiations between the generic firm and the patent holder to have concluded";

She pointed out that in the instance of Canada even more stringent bureaucratic rules were applied such as the antiretroviral drugs having to be approved by Health Canada (although already approved by the World Health Organization) and being added on to a Canadian list of acceptable drugs for export which takes months to do.

Médecins Sans Frontières is deeply concerned that Canada's inability to carry out the WTO agreement in getting generic antiretroviral drugs to those who need them, coupled with international patent protection been forced on countries through free trade agreement means, "the doors to generic production and export are closing fast...and millions will have no option but wait out the 20 year patent terms before they can have access to essential medicines. They state, "it is vital to address the failings of the August 30th, 2003 WTO Decision on

generic drug export, and the Canadian law so that essential medicines can be exported to countries that cannot produce their own drugs.”

Trading Away People’s Health

In addition to the obstacles arising from implementing the WTO generic drug use decision, free trade agreements will effectively stop the ability to import or manufacture antiretroviral generic drugs. The US is introducing stronger intellectual property rights in bilateral trade agreements – 12 so far – to eliminate the ability of developing countries to create access to affordable drugs for millions of people. Countries pressured with these agreements range from Thailand to Korea to Malaysia, Panama, the Andean Community (Bolivia, Colombia, Ecuador, Peru) Botswana, Namibia, South Africa, and the Middle East Free Trade Agreement.

During the International AIDS Conference MSF led an aggressive education component both inside and outside the Toronto Convention Centre talking about how access to medicines are at risk because of Free Trade Agreements with the United States. They pointed out that, “one by one countries are trading away their people’s health in free trade agreements with the United States. Countries are being pushed to accept extremely restrictive intellectual property provisions that could put an end to competition from generic medicine producers.”

MSF states, “by deliberately restricting the availability of low cost medicines, these agreements will have a direct impact on the health of people in developing countries”.

Signing regional and bilateral Free Trade Agreements would mean countries give up the right to public health care for their people. This in the face of an UNAIDS estimated 40 million people living with HIV/AIDS. The full enormity is that five to six million people will die in the next two years in low and middle income countries if they do not receive antiretroviral treatment. Only 700,000 people in the world now have access to antiretroviral drug treatment. Costs for antiretroviral therapy through big pharma can be up to 10,000 (US) a year – with generic drug access costs have fallen to 140.00 (US) a year. This makes a huge difference in a country’s ability to meet its public health commitments. Meanwhile, Big Pharma garner massive profits making a 20 per cent return on investment.

Inter Press News Service quotes Robin Malpani of Oxfam International on the seriousness of the US strategy in eroding global public health. “Under the name of Free Trade, the US is pushing for a monopoly on new medicines, thus driving up the cost for some of the world’s poorest people”, says Robin Malpani.

Thailand and Korea – A Case In Point

Citizens in Thailand and Korea are on the frontline in trying to keep their governments from being pushed into the restrictive US Free Trade Agreements.

AIDS activists from Korea attending the International AIDS Conference proclaimed, “people do not die because of AIDS, but because they do not have access to the medicine”. They spoke of how trans national pharmaceutical companies want a free playground where they can change world rules by property rights and expedite the commercialization of the health care system. They are deeply concerned that the Free Trade Agreement presently being negotiated between Korea and the US will increase the drug price, lead to a monopolistic position for trans national drug companies, and the collapse of their National Health Insurance.

Thailand has been in a bitter struggle as well over the imposition of a Free Trade Agreement and its impact on people accessing affordable drugs for antiretroviral treatment. (Thailand has a large population of people living with HIV/AIDS. There are at least 29,000 new HIV/AIDS each year.)

The Thai Network of People Living with AIDs (TNP+) is extremely concerned that under a USA FTA, “the right to produce patented drugs will be restricted and it is feared that local pharmaceutical companies currently producing generic antiretroviral medication and the Government Pharmaceutical Organization of Thailand will be unable to turn a profit in manufacturing generic drugs, or will be unable to afford to produce them”.

Inter Press News Service reports that Thailand is currently implementing a treatment program for over 80,000 people based on a generic drug fixed dose combination recommended by the World Health Organization. This generic drug combination is 10 times cheaper than patented brand names. Patented drugs sold by the big pharmaceuticals in Thailand can cost up to 589 dollars per month, and the state produced version costs 32 dollars a month. The implementation of a US FTA with Thailand will seriously compromise access to these generic drug sources by strengthening existing patents on medicine.

The Thai Network of People living with AIDS (TNP+) are equally concerned about how final decisions will be made on whether Thailand signs a Free Trade Agreement with the United States. They point out that Thailand does not require the FTA to pass through any parliamentary process before being signed thereby denying any civil society input or scrutiny. Also, the talks and the FTA text are all in the English language creating a distinct advantage for the US, and a

power imbalance in negotiations.

The TNP+ has staged numerous protests (including at the International AIDS Conference) working in alliance with other AIDS activists and organizations from Malaysia and Korea. They are hoping to forge alliances with other groups being threatened in the Free Trade Agreement negotiations such as farmers and workers from the agricultural sector.

An Appeal from Medicine Sans Frontiers

Médecins Sans Frontières (MSF) is making a worldwide warning and appeal to countries involved in Free Trade negotiations with the US saying that, "the devil is in the details". Nations will be asked to adopt provisions that, "contradict the spirit of the 2001 DOHA Declaration on TRIPS and public health by placing commercial interests, before public health". Because the US was not successful in the World Trade negotiations they are trying through these Free Trade bilateral and regional agreements to, "extend the exclusive marketing position pharmaceutical firms have in the medicine market". MSF further states this will, "undermine the capacity to have lower prices and turn national drug regulatory agencies, whose job is to ensure the safety, quality and efficacy of medicines, into enforcers of the private property rights of corporations". MSF urges that, "health should not be under negotiation in these talks. This is the only way that governments can uphold their right and obligation to protect public health and guarantee access to essential medicines for their people".

There is Hope

At the International AIDS Conference there were some hopeful signs that things were starting to turn around. Botswana reported that HIV mortality rates have fallen since the roll out of a free antiretroviral therapy program. Although the findings are preliminary they indicate that antiretroviral therapy is reducing premature mortality in Botswana. And, may represent the first evidence at the population in any African country that the introduction of antiretroviral therapy could be extending the life expectancy of populations. Botswana started its antiretroviral therapy in 2002, and has been one of the most successful reaching 85 per of those estimated to need treatment. (Unfortunately, Botswana is on the list as well of the countries to be part of the US Free Trade Agreement discussions.)

Another hopeful sign was on the preventative side with the emerging great world movement of women, grandmothers, youth organizing to address issues of poverty, gender and building healthy communities and through economic and social community development.

What You Can Do

People can demand that Prime Minister Harper follow through immediately on making Canada a leading nation in getting generic antiretroviral drugs to where there are desperately needed. The Prime Minister can be contacted at pm@pm.gc.ca.

Oxfam Canada is currently running a letter writing campaign that is encouraging the government to solidify its commitment to help fight the HIV/AIDS epidemic, and increase its support for health services and HIV/AIDS research. Campaign information is available at www.oxfamcanada.ca.

Citizens throughout the world can support strengthening global public health systems and access to generic antiretroviral drugs through Médecins Sans Frontières (MSF) Campaign for Access to Essential Medicines (www.accessmedmsf.org).

Poverty and debt are the key issues crushing community health and prevention strategies and the core fight against HIV/AIDS. You can support the Make Poverty History Campaign. For more information contact Joe Gunn at info@makepovertyhistory.ca.

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 Making the Links Radio

Sources:

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Information on TRIPS, AIDS and Generic Drugs – www.avert.org