

TRIPS from Doha to Cancún ... and on to Ottawa:

WTO PATENT RULES, CANADA'S BILL C-9, AND CIVIL SOCIETY TREATMENT ACTIVISM

RICHARD ELLIOTT — CANADIAN HIV/AIDS LEGAL NETWORK & GLOBAL TREATMENT ACCESS GROUP



CANADIAN R É S E A U
HIV • AIDS JURIDIQUE
L E G A L CANADIEN
NETWORK VIH • SIDA

417, Rue St-Pierre, Suite 408
Montréal, Québec,
Canada H2Y 2M4
tél: (514) 397-6828
fax: (514) 397-8570
EMAIL: info@aidslaw.ca
WEB: www.aidslaw.ca

1 Objectives

To amend Canadian law to allow compulsory licensing of patented pharmaceutical products for purposes of exporting cheaper, generic products to countries in need.

2 Background

People and countries with scarce resources need affordable medicines to treat HIV/AIDS and other health problems. Countries have obligations under international law to progressively realize the highest attainable standard of health, including by promoting access to medicines.

But strict patent laws support monopolistic pricing of medicines by patent-holding companies. All WTO members are bound by patent rules in the TRIPS Agreement on intellectual property. TRIPS restricts countries that can produce generics from issuing compulsory licences to authorize their production for export in any significant quantity. Countries without sufficient capacity and needing to import generic medicines therefore face difficulty in “making effective use” of compulsory licensing. WTO Members agreed in August 2003 to relax TRIPS rules on compulsory licensing for export.

3 Methods

The Global Treatment Access Group (GTAG) consists of Canadian civil society organizations (CSOs) doing joint advocacy on the right to health. GTAG did sustained advocacy for Patent Act amendments, including:

- media advocacy (opinion pieces, press releases and conferences, interviews);
- direct action (street theatre, marches and other actions in four cities);
- written and oral submissions to government;
- meetings with government officials, Ministers and the Prime Minister's Office;

- education and lobbying of Parliamentarians (in-person meetings, “info kit” for MPs, letters, e-mail Action Alerts)
- multiple oral and written submissions to the Parliamentary committee reviewing bill;
- public education events.

Collaboration with high-profile advocates (Stephen Lewis, UN Special Envoy on HIV/AIDS in Africa; Bono, celebrity founder of Debt AIDS Trade Africa) was critical in raising public awareness and government sensitivity to civil society's concerns.

4 Results

In November 2003, Canada became the first country to introduce legislation (Bill C-56) to implement the WTO August 2003 decision. Civil society welcomed the step, but identified numerous flaws in the bill, which did not proceed when Parliamentary session ended. Thanks to ongoing advocacy, the bill (Bill C-9) was re-introduced in next session of Parliament in February 2004 by the new Prime Minister. Intensive advocacy in February through April led the government and Standing Committee to approve major changes. CSOs welcomed some changes but publicly noted remaining concerns with provisions exceeding WTO requirements or failing to fully reflect flexibility already in WTO rules. The House of Commons passed the amended bill in May 2004.

5 Analysis

See www.aidslaw.ca for extensive analysis and documentation.