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17 December 2002

The Right Honourable Jean Chrétien, P.C., M.P.
Prime Minister
Room 309-S, Centre Block
Langevin Building
80 Wellington Street
Ottawa, ON K1A 0A2

The Honourable Pierre Pettigrew
Minister of International Trade
House of Commons
Ottawa, ON K1A 0A6

Dear Prime Minister and Minister:

Re: Access to Affordable Medicines for Developing Countries and Canada at the World Trade Organization

As Canadian members of civil society, the undersigned join in expressing to you our very deep concern about the Canadian government's position at the World Trade Organization in current negotiations on the issue of access to affordable medicines in developing countries. We have a number of specific concerns outlined below.

As you know, November 14, 2002 was the first anniversary of the adoption of the Doha Declaration on the TRIPS Agreement and Public Health by the member countries of the World Trade Organization. In the Declaration, all WTO countries agreed that the TRIPS Agreement on pharmaceutical patents "can and should be interpreted and implemented in a manner

supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all."

Access to affordable medicines can offer considerable relief, dignity, and life itself for the tens of millions of people around the world who are living with HIV/AIDS and other illnesses. However, such access does not exist for most people in developing countries.

WTO member countries also recognized, in paragraph 6 of the Doha Declaration, that many developing countries are not in a position to make effective use of measures such as "compulsory licensing" to secure access for more affordable, generic drugs, because they lack the domestic capacity to manufacture pharmaceuticals and so must import them from elsewhere. The TRIPS Agreement imposes patent restrictions on using compulsory licensing for producing generic medicines for export, thereby limiting the possible sources of such medicines for developing countries in need.

Paragraph 6 of the Doha Declaration tasks the WTO's TRIPS Council with finding an "expeditious solution", by the end of this year, as to how countries can make effective use of the TRIPS "safeguard" of compulsory licensing.

However, while the death toll mounts, discussions at the WTO have stalled because some developed countries, including Canada, have been supporting unnecessary and unjustifiable restrictions on any "solution". These restrictions would render any solution practically unworkable and yield little benefit for sick people in developing countries.

Scope of diseases

The US, Switzerland and Japan are demanding that the Doha Declaration be redefined to apply only to a very limited number of infectious diseases, such as HIV/AIDS, tuberculosis, malaria and other "epidemics". Consequently, diseases such as cancer, asthma, diabetes, heart disease etc. will be excluded. This would be a huge setback from what was achieved in Doha, particularly as paragraph 4 of the Doha Declaration specifically notes that the TRIPS agreement can and should be interpreted and implemented in a manner supportive of WTO Members' rights to protect public health and in particular, to promote access to medicines for all. If any agreement at the WTO applies only to HIV/AIDS, TB and malaria, we will have accepted a very limited definition of public health problems.

We also note that paragraph 1 of the Doha Declaration itself does not limit any solution to just these three diseases or to "epidemics"; rather, it refers to them merely as particularly pressing examples of the grave public health problems affecting many developing countries. Furthermore, paragraph 5 of the Doha Declaration reaffirms that, under the TRIPS Agreement, each country "has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted."

Our latest information indicates that Canada has supported this sort of restriction on any solution. Not only should Canada refrain from supporting such proposals, it should be strongly opposing them. Canada should insist that any solution not be limited to specific, named diseases. Such a restriction is contrary to letter and spirit of the Doha Declaration and the original TRIPS Agreement itself, and is not one that developed countries who can effectively make use of compulsory licensing are bound by. Imposing such restrictions on developing countries is blatantly hypocritical and carries deadly consequences.

Scope of health technologies covered

We are concerned about what technologies will be included in the final resolution, particularly as Japan has proposed to exclude vaccines, an astonishingly disingenuous and damaging position from a public health perspective. Any agreement should not exclude vaccines and other important medical devices (such as testing kits or other diagnostics]. We understand that Canada supports the inclusion of vaccines and diagnostics, in addition to medicines, in any solution. We welcome this position.

We encourage you to forcefully advocate at the WTO for the full inclusion of all health technologies and to oppose proposals that restrict a solution in ways that will endanger public health.

Eligibility of countries to use the solution for import and to export

In order to equip developing countries to make effective use of compulsory licensing, any solution must allow them to import generic medicines and other medical technologies from anywhere in the world to ensure maximum cost savings and adequate supplies. Unfortunately, it appears that some countries, such as the United States and Switzerland, are attempting to limit the sources from which these medicines can be provided. We are concerned that Canada is supporting such a restriction, which cannot be justified on either public health or economic grounds.

Furthermore, Canada has joined a few other developed countries in asserting that only the "least-developed" of developing countries should be able to benefit from the solution to access less expensive medicines. Most recently, the WTO General Council Chairman, former Canadian trade minister Mr. Sergio Marchi, has actively participated in this damaging revisionism of what was agreed in Doha, to the detriment of developing countries. Mr. Marchi has unilaterally declared that "the mandate conferred by Doha was to find solutions for the poorest of the poor in the most remote areas". This is wholly inaccurate: paragraph 1 of the Doha Declaration recognizes "the gravity of public health problems afflicting many developing and least-developed countries." The Declaration itself is contrary to any efforts to limit a solution to benefiting only least-developed countries.

This is another unnecessary and unjustifiable restriction. Wealthy, industrialized countries do not face restrictions, other than those in the TRIPS Agreement, in using compulsory licensing to balance patent rights against other important public interests. The spirit of the Doha Declaration is that any WTO member country should be able to make effective use of this safeguard with respect to more affordable medicines. Many developing countries, and not just those which are considered "least-developed", need this solution and should be able to benefit from it. We urge Canada to support a solution that is accessible to all developing countries.

Furthermore, Canada could play an additional role in addressing the extensive health needs of developing countries if it were to amend its Patent Act to legally permit the production, under compulsory license, of a generic drug for export to a developing country if that country has issued a compulsory license for that product, or where a patent on that product is not in force in that country and there is a request from the competent health authorities of that country. Such a move would increase the potential sources of supply for developing countries in need of more affordable medicines and taking advantage of the flexibility of compulsory licensing which

both the TRIPS Agreement and the Doha Declaration promise they retain. This approach has recently been affirmed by the European Parliament, in its recent adoption of Amendment 196 as it relates to the EU code (Directive 2001/83/EC) relating to medicinal products for human use. Canada has a well-developed capacity to produce generic drugs; that capacity should be made available to help respond to the needs of the developing world.

Conclusion

In conclusion, we can think of no other more timely and relevant way to honour Canada's stated commitment to a partnership with Africa than to support a permanent solution to this issue and one which is strongly supported by developing countries. Conduct such as that in these WTO negotiations is contributing to the rapid loss of Canada's reputation as a country concerned for human rights and the welfare of people in the developing world.

We strongly urge you to intervene to ensure that Canada will honour both the letter and the spirit of the Doha Declaration, and to ensure that our trade policy is based on a commitment to human rights and public health rather than the pursuit of private profits for the pharmaceutical industry.

We thank you for your continued attention to this most urgent matter of life and death for millions.

Sincerely,



Michael O'Connor, Executive Director
Interagency Coalition on AIDS & Development



Kenneth V. Georgetti, President
Canadian Labour Congress

On behalf of the following:

Canadian HIV/AIDS Legal Network (Richard Elliott, Director Policy & Research)
CARE Canada (A. John Watson, President and CEO)
Canadian Council for International Co-operation (Gerry Barr, President-CEO)
Council of Canadians (Anil Naidoo, Coordinator, Health Care Campaign)
CPAR-Canadian Physicians for Aid and Relief (Kevin O'Brien, Executive Director)
Médecins sans frontières/Doctors Without Borders Canada,(David Morley, Executive Director)
The North South Institute-L'Institut Nord-Sud (Roy Culpeper, President and CEO)
AIDS Bow Valley, Banff, Alberta (Wendy Morrison, Executive Director)
Alberta Community Council on HIV (Jennifer Vanderschaeghe, Administrative Coordinator)
Canadian Aboriginal AIDS Network (Art Zoccole, Executive Director)
Canadian Hemophilia Society/Société canadienne de l'hémophilie (Tom Alloway, PhD.President)
Canadian Treatment Action Council (Louise Binder, President)
Christian Reformed World Relief Committee (Wayne deJong Executive Director)
Global Network of People living with HIV/AIDS -North America (Ted Gaudet, Canadian Co-Chair)
HIV & AIDS Legal Clinic (Ontario) (Matthew Perry, Acting Director of Administration)

HIV Network of Edmonton Society (Sherry McKibben Director)
Living Positive Edmonton (Jim Kane, Board Chair)
Women's Health in Women's Hands (Executive Director, Eunadie Johnson)
Peterborough AIDS Resource Network (Bob Leahy, Chair, Board of Directors)
Polish Gay and Lesbian Association(Toronto) (Kazik Jedrzejczak President)
Prisoners' HIV/AIDS Support Action Network (Anne Marie DiCenso)
Rainbow Refugee Committee (Rob Hughes, Steering Committee)
The AIDS Committee of North Bay and Area (Jennifer Furtney, Executive Director)
Toronto People With AIDS Foundation (Laurie Edmiston, Executive Director)
University of Ottawa Health Services and the Canada-Africa Community Health Alliance. (Dr Don Kilby Chairperson Alliance)
USC Canada (Ann Thomson, Executive Director)

Copies to:

Hon. Bill Graham
Minister of Foreign Affairs

Hon. Allan Rock
Minister of Industry

Hon. Anne McLellan
Minister of Health

Hon. Susan Whelan
Minister for International Co-operation

Ambassador H.E. Sergio Marchi
Chairman, WTO General Council

Ambassador Dr. Eduardo Perez Motta
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