



Independent observer
of the Global Fund

A BREAKTHROUGH PROPOSAL?

Something quite remarkable happened a few days ago. On Thursday 25 September, a simple and obvious proposal was made by Stephen Lewis, the passionate Canadian who serves as the UN Secretary-General's Special Envoy for HIV/AIDS in Africa. Speaking at a conference on AIDS in Nairobi, he said that Canada should issue a compulsory license to lift the patent protection that covers most anti-retroviral drugs (ARVs). This would enable generic pharmaceutical companies to produce the drugs and export them for \$250-\$300 per person per year to poor countries that do not have domestic production capacity.

Later that very day, Canadian government ministers with relevant responsibilities told reporters that they agreed with the idea, and that they hoped to get all-party support quickly.

Lewis explained that he made his proposal because of the confluence of two significant recent developments. First, in late August the World Trade Organization (WTO) agreed to let poor countries import cheap generic copies of patent-protected drugs as long as they could not make them domestically, were not importing them for commercial purposes, and could find a supplier willing to issue a compulsory license to lift the patent protection. "There is absolutely nothing standing in the way of such an initiative except a paralysis of political will and the influence of the big pharmaceutical companies," said Lewis. Second, last week J.W. Lee, the new head of the World Health Organization (WHO), announced that his top priority will be to achieve the "3 by 5" goal of three million people receiving HIV treatment by 2005. He also declared that the current HIV/AIDS situation represents a global health emergency, which countries might find useful when justifying the issuing of a compulsory license.

Advocates believe that despite the new WTO concessions, the WTO imposes conditions that could be onerous to some importing countries. In particular, any third country (possibly acting at the behest of major pharmaceutical companies) could challenge the issuing of a compulsory license by issuing a formal

complaint within the WTO. Lewis acknowledged this point, but said that such hurdles would be significantly reduced if a major economic power such as Canada were to initiate the compulsory license.

The drug companies were not long in making clear their unhappiness with Lewis's proposal. On Friday Harvey Bale, head of the International Federation of Pharmaceutical Manufacturers Associations, objected that the proposal will erode patent protection and scare off future research spending by biotech investors, adding that "Lewis is leading us all down the primrose path to a dead end." (However, Bale might have had a point when he added, "This is going to delay the debate over ... how much money should the Canadian government send to the Global Fund.")

Canadian press reports on Saturday said that senior government officials are determined to craft a fine-tuned change to the act – a change that would allow generic drug-makers to manufacture for export certain medicines still under patent, but would have no other impact on patent rules. The officials commented, however, that this might not be possible until next year.

The action proposed by Lewis need not be restricted to Canada. There are strong generic drug-manufacturing capabilities in China, India, Thailand and Brazil, among others. Some of these countries probably have the capability to manufacture all the necessary drugs, possibly to the required scale, and possibly at lower cost than companies in Canada. Thus far, these countries have been understandably cautious about taking actions that might be strongly opposed by the US. But the proposed action by Canada might change all that, as might the way in which China and other developing countries found it necessary to work together in the recently-collapsed WTO talks.

Moreover, there are further actions that could lead to cost savings by poor countries. For instance, the Global Fund could help recipients of its grants to club together and achieve economies of scale by purchasing their ARV needs jointly. If fifty countries were each going to spend \$10 million of Global Fund money on drug purchases, and if those countries jointly commissioned some third party to purchase \$500 million-worth of drugs on their behalf, the economic savings could be considerable.

And where might all this lead to? Once they see which way the wind is blowing, manufacturers of ARVs, both generic and patent-protected, could agree that their products will be sold for a penny over the marginal cost of production to all except the world's thirty or so richest countries. Financially, they would lose little or nothing, because they currently make very few ARV sales in these countries; and politically, their image could be transformed. Their profits would continue to be earned and their research costs covered through the already lucrative sales of these drugs in rich countries.

No doubt these ideas are all riddled with complexities that will make them hard to implement. But so what? So have been many other great developments in history, not least Kofi Annan's original suggestion that there should be a Global Fund.

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