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INTELLECTUAL PROPERTY RIGHTS OVER PATENTED MEDICINES

Inquiry–Debate Continued

Speech by:

The Honourable Vivienne Poy

Tuesday, October 23, 2001

THE SENATE

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INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Finestone, P.C., calling the attention of the Senate to three diseases which are sweeping the developing world and which draw many to ask whether intellectual property rights over patented medicines haven't taken precedence over the protection of human life.—*(Honourable Senator Poy).*

Hon. Vivienne Poy: Honourable senators, I wish to speak to the inquiry introduced by the Honourable Senator Finestone. Senator Finestone provided us with some background information about the three diseases that are sweeping developing countries.

As the honourable senator noted, taken together, HIV/AIDS, tuberculosis and malaria kill 4.1 million individuals per year. Aside from these diseases, there are many others that are endemic to developing nations. Why is this happening and what can we as Canadians do to prevent this tragedy?

Drugs to combat many of these diseases are simply not available. One of the reasons for the lack of availability is ignorance, as my learned colleague Senator Finestone emphasized. A new report by Médecins Sans Frontières entitled "Fatal Imbalance: The Crisis in Research and Development for Drugs for Neglected Diseases" argues that the health revolution of the past 30 years that has improved the life expectancies of many in the Western world has left much of the developing world behind. This is because most research and development focuses on Western diseases while neglecting tropical diseases that take an enormous toll on those living in absolute poverty.

According to the report, only 10 per cent of global health research is devoted to conditions that account for 90 per cent of the global disease burden. This research vacuum exists despite the fact that the World Bank has found that eliminating communicable diseases would almost completely level the mortality gap between the richest 20 per cent of the world's population and the poorest 20 per cent.

It is clear that research and development is not at the service of public health but, instead, is harnessed to profit. Governments, therefore, must play a role. Public policy must develop strategies to address neglected diseases specifically. One option is public-private partnerships involving universities, governments, NGOs and private companies. Another is a policy whereby a specific percentage of pharmaceutical profits from newly patented drugs would be channelled into research on neglected diseases.

However, there are drugs that already exist to fight some diseases, such as tuberculosis. TB was a major problem in Canada less than 50 years ago. In 1953, there were 19,000 beds in hospitals in Canada allotted to TB patients. As a result of a systematic treatment program, tuberculosis was virtually eliminated. I say "virtually" because TB is still killing people in Canada, and it remains one of the biggest killers in other parts of the world, with numbers of deaths rising. It is clear that if we are to eliminate TB in our borderless world where immigration is commonplace, we must apply the same principles of access to medication to developing nations as we have in Canada.

Medicines are also available to treat AIDS. Some 20 years after the first case was identified, AIDS is no longer a death sentence as it once was. Since the mid-1990s, it has been treatable with a cocktail of drugs called the highly active anti-retroviral therapy, or HAART. HAART dramatically reduces suffering and increases life expectancy, allowing patients to live comfortably with a chronic disease. However, since 95 per cent of the 36 million HIV-infected individuals in the world live in low-income countries, only a small fraction of these people have access to HAART. In Africa, access is limited to only about 10,000 out of 25 million HIV-positive individuals.

AIDS has already taken 22 million lives worldwide and created more than 13 million orphans. An estimated 4 million new infections occur every year. In the end, no country will escape this disaster. The disease promises to fundamentally destabilize the social, political and economic fabric of the world.

Currently, development is being eroded in many of the world's poorest countries. For example, Botswana, which has long been considered an African success story, has already had its life expectancy dropped by 25 years to 44 years, and this may decline to as low as 29 years if the spread of the virus is not slowed or reversed. President Festus Mogae warns that the country, in which one-third of the adult population is infected, faces the prospect of extinction.

Last spring, I attended a speech given by Mr. Stephen Lewis, who is the special envoy named by the United Nations to deal with the HIV/AIDS epidemic in Africa. Mr. Lewis told the audience about the accelerated access agreement reached by UNAIDS with a number of the world's major pharmaceutical companies to furnish anti-retroviral drugs to poor countries at a reduced cost. Negotiations led to agreements on price reductions in four countries — the Ivory Coast, Rwanda, Senegal and Uganda.

The rules were that countries would receive discounts of up to 90 per cent in exchange for pledging to respect patent rights and not allowing lower priced drugs to enter the black market. This would appear to be a good example of a public-private partnership that could potentially lower the cost of drugs for AIDS.

What happened? By early this year, the accelerated access initiative had not produced the expected results. Prices were still being maintained significantly above production costs. Meanwhile, generic drug companies, particularly in India, were offering to supply products to South Africa at a lower price than the accelerated access price. In what Stephen Lewis called a "double and duplicitous game," the major drug companies were fighting to keep the cheaper generic drugs out of South Africa by taking the South African government to court to stop it from engaging in parallel imports, a practice that is specifically authorized under the Trade Related Aspects of Intellectual Property Rights agreement, or TRIPS, in the case of public health emergencies. The reason drug companies cited for the court challenge was the need to maintain profits to fuel research and development, despite the fact that Africa represents a little more than 1 per cent of the total worldwide drug market. In April of this year, the pharmaceutical companies backed down.

Faced with bad PR internationally, the pharmaceutical companies are heralding a new study published on October 17, 2001, co-authored by Amir Attaran of the Harvard Center for International Development and Lee Gillespie-White of the International Intellectual Property Institute, which claimed that patents were not the issue in the battle against AIDS. Médecins Sans Frontières and other NGOs argued that the study was misleading and that it was an attempt to sabotage the initiative of the developing world to break down the barriers to access to medicines.

Stephen Lewis and NGOs such as Oxfam, Médecins Sans Frontières and many African countries are unanimous in supporting a "public health" interpretation of TRIPS.

In September 2001, at a TRIPS council session on access to medicines, 60 developing nations jointly issued a statement arguing that "nothing in the TRIPS agreements shall prevent members from taking measures to protect public health." Developing nations are being supported by the European Union. However, their joint declaration, which will be considered at the next WTO ministerial conference, has been opposed by the United States, Switzerland, Japan and Canada. If nothing changes, beginning in 2006, all WTO members will be obligated to grant 20-year minimum patents for medicines.

Perhaps Canada's position needs to be reassessed in the light of the potential of our own public health emergency. Bioterrorism poses an imminent threat. In light of the current situation, a broad interpretation of the term "public health emergency" in TRIPS may be necessary in order to ensure that patents do not override global health concerns, whether in Canada or in other parts of the world.

Developing countries suffering under the burden of diseases need to have access to the cheapest drug available, regardless of whether it is produced by a generic drug company or a brand-name company. Both India and Brazil already have developed the capacity to manufacture a wide variety of generic drugs that could be exported to other developing countries. In Brazil, the introduction of generic anti-AIDS drugs has led to a 79 per cent reduction in the price of drugs. As a result, mortality rates from AIDS have dropped by 50 per cent. HAART has also been made available in Thailand, Costa Rica and in a pilot study in Haiti.

Other countries have been less lucky. There are gross price discrepancies from one country to the next. Let me give you one example of how radically prices can differ from country to country. Last year, Médecins Sans Frontières reported that a drug called fluconazole, which treats a form of meningitis common in HIV-positive individuals, was priced at U.S. $1.20 per daily dose in Thailand for a generic version, compared to U.S. $17.84 per daily dose in South Africa for the patented drug. The discrepancy has since been corrected by the manufacturer, after a public outcry.

Three factors are necessary if widespread treatments are to be made available in developing countries. They are as follows: research and development, affordable drugs, and international aid, designated specifically for this effort by donor countries. If change is to happen, it will depend on the political will of the international community.

The protection of intellectual property rights cannot take precedence over the protection of human life. Countries such as the United States are currently attacking parallel importation, which allows for the importation of medicines from foreign countries at lower cost, and compulsory licensing, which allows for production of medicines by other than the patent holder. Both these trade practices were specifically included in TRIPS to be used in instances of public health emergencies or in the case of unfair pricing practices. Canada must defend these provisions at the WTO so that generic drugs are made available to developing countries where health crises exist.

It is also important to note that in many cases developing countries cannot even afford to pay the lowest prices available for drugs. Often, the yearly cost of a drug, even if it is priced at the cost of production, may be more than the annual per capita income of many families. A global tiered pricing strategy, as suggested by Médecins Sans Frontières, would allow for lower priced drugs in the developing world with research and development being funded by standard prices in the developed world.

CIDA's resources are currently stretched to the limit. For example, last year, Canada spent 0.25 per cent of its gross national product on official development assistance, the lowest portion in the 35 years since major foreign aid programs were established. More money is needed if CIDA is to have any effect on stemming the tide of disease sweeping across the developing world.

The world is a global village; we cannot afford to neglect the needy, who now make up the majority of its citizens. The decision to act to provide affordable and accessible medicine is a pragmatic decision because the future of developing nations is ultimately our future. Otherwise, the results of this death toll will be weakened economies and fragile political and social structures. For too long we have ignored developing nations, their poverty, their diseases and their conflicts, assuming we lived in a protected world. Since September 11, we know the world is a much smaller place. Nevertheless, if we are to act to fight against the ravages of disease, the decision must be based not on self-interest but on our common humanity. In this international effort, Canada needs to take a leadership role.

Honourable senators, we cannot allow more people to die when we have the means to save them.