

Munk Centre Global Health Program



INTRODUCTION

The Doha Declaration (WTO 2001) and the “Decision on the Implementation of Paragraph 6 of the Doha Declaration on TRIPS and Public Health” (WTO 2003) represented a significant shift in global trade and IP policy in the public health context with respect to the developing world. Canada responded by passing Bill C-9 into legislation on May 4, 2004 (the “C-9 Act”). The C-9 Act deals specifically with the export of patent-protected drugs from Canada to countries that do not have relevant domestic pharmaceutical manufacturing capacity. These countries are thus unable to issue a voluntary license or the invocation of a compulsory license to allow for the domestic production of a drug deemed necessary by that government. The ethos of the C-9 Act is humanitarian, and is designed to accord Canadian national legislation with agreed changes to international agreements governing trade and intellectual property as these can on access to essential life saving medicines.

OUR CIHR GRANT

Our multidisciplinary team was awarded a grant by the Canadian Institutes of Health Research (CIHR) to undertake research examine whether Bill C-9, as a humanitarian legislative initiative, represents a promising innovative policy measure to facilitate access to essential medicines to the developing world where a relevant and viable pharmaceutical manufacturing capacity does not exist, or a policy measure that is not likely to contribute to this goal.

We will investigate whether political and economic interests impact humanitarian efforts to improve access to medicines. The goals of our research are to (1) assess if C-9 will likely enhance access to medicines; (2) inform policymakers about the strengths and weaknesses of the C-9 Act; (3) Make practical, concrete policy recommendations for amendments or changes to the C-9 Act that will further the goal of ensuring that those who need medicines in the developing world are able to access them. Given the novelty of the policy shift that the C-9 Act represents, there is a need for rigorous academic research to examine its actual or potential impact.

We have assembled a multidisciplinary team with relevant networks and a wealth of experience that could develop a project of significant importance in terms of advancing knowledge about barriers and opportunities for improving global access to medicines. Involved in the study are Jillian Clare Cohen, Noah Novogrodsky and Joel Lexchin, who all bring a wealth of expertise to this study. Also involved are James Orbinski and Rachel Kiddell-Monroe, who are globally known activists who have hands-on experience in dealing with access issues related to intellectual property rights and pharmaceuticals.

CONCEPTUAL FRAMEWORK

We will adopt a political economy framework that highlights the interrelationships between institutions, actors, interests and processes. Our research will seek to demonstrate and critically examine how political and economic processes initiated by humanitarian and medical factors have been mediated, or changed by traditional configurations of political and economic cooperation.

RESEARCH MOTIVATION AND CONTRIBUTION TO THE LITERATURE

The motivation for this research is to examine and demonstrate whether Canada’s humanitarian legislative initiative is symbolic or practical. While the intent of the C-9 Act is praiseworthy, rigorous analysis needs to be undertaken to determine its usefulness in concrete terms. We will use two case studies. First, the study will examine the process underway between Canada and Ghana as Ghana attempts to make use of the C-9 Act. Second, the study will critically examine the process now underway between MSF International, Apotex Canada and the Canadian government in their effort to bring a FDC ARV to the developing world through the provisions of the C-9 Act. These two case studies, each at two different starting points - one focused on a developing country seeking to identify a priority need and a relevant Canadian partner, and the other on an NGO working with an established need internationally and an established partner in Canada – will allow for a critical analysis of the as-yet untested technical and procedural requirements of the Act, as they intersect with political, trade and economic, public health, and humanitarian issues germane to access to life saving medicines in the developing world.

This research will contribute to the literature on intellectual property rights and pharmaceutical access by providing timely and new knowledge about a very recent development in global policy. We envision that we will have enough preliminary information from our study to provide useful policy recommendations to Canadian and international policy makers.

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