

Minister of Industry,
Science and Technology and
Minister for International Trade



Ministre de l'Industrie, des
Sciences et de la Technologie et
ministre du Commerce extérieur

Statement

Déclaration

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AS DELIVERED

AN ADDRESS BY
THE HONOURABLE MICHAEL WILSON,
MINISTER OF INDUSTRY, SCIENCE AND TECHNOLOGY
AND MINISTER FOR INTERNATIONAL TRADE,
TO THE HOUSE OF COMMONS
ON THIRD READING OF
BILL C-91,
AMENDMENTS TO THE PATENT ACT

OTTAWA, Ontario
December 10, 1992

Mr. Speaker, I am pleased to rise in my place today to speak to the Third Reading of the Amendments to the Patent Act. I appreciate this opportunity to set the record straight and bring this debate back to reality.

In my long association with this House, Mr. Speaker, I have rarely seen such a display of misrepresentation and erroneous statements made by opponents as we have witnessed in the past couple of weeks.

The government announced its intention to update the Patent Act a year ago. The honourable members opposite have had plenty of time to get their facts straight.

But instead, Mr. Speaker, we hear the same phoney charges, the same hysteria, the same unfounded allegations as we heard over Bill C-22 in 1987.

Opponents of C-91 and, I regret to say, at least one prominent Canadian newspaper have said recently that the innovative companies failed to keep their 1987 promises to increase research and development (R&D) spending.

The truth is, Mr. Speaker, that these companies doubled their R&D percentage from 4.9 per cent in 1987 to 9.6 per cent in 1991, essentially achieving their 10 per cent target five years ahead of schedule and investing \$1.1 billion in the process. At the same time, they increased basic research from 17 per cent to 26.5 per cent of total R&D.

Opponents said that the industry would never create the expected 3,000 jobs. They were wrong, Mr. Speaker. Two thousand, four hundred jobs were created in the first four years alone. The industry is on track for 3,000 new jobs by 1996. What is more, Canada has bucked an international trend: these increases have come at a time when the industry worldwide is downsizing.

Opponents said that C-22 would destroy Canada's thriving generic drug industry. What has happened since then? Sales by the generic companies in Canada have grown by 180 per cent.

Critics of Bill C-22 also claimed that prices of patented medicines would skyrocket. Again they were wrong. In fact, the Patented Medicines Prices Review Board has been successful in keeping drug price increases to 2.9 per cent -- well below the rate of inflation. What other sector can claim that, Mr. Speaker?

Bill C-22 was successful. It delivered on its promise to improve the climate for R&D and job creation while still ensuring reasonable drug prices and a competitive generic drug industry. But the world is changing. The global environment in which the international pharmaceutical industry operates is evolving

quickly, and we must keep pace if we want to continue to be leaders in this field.

Opponents say that we are doing this for the sake of multinationals. They are wrong. Mr. Speaker, we are moving quickly for the sake of Canada and Canadians. For the sake of those who will benefit from new medicines. For the sake of Canadian scientists and researchers and the growing number of innovative Canadian biotechnology companies -- and I repeat, Mr. Speaker, Canadian biotechnology companies -- that are developing the next generation of medicines. For the sake of Canadian jobs in a dynamic, high-tech industry. For Canadians, young and old, who stand to live longer, more comfortable lives as a result of pharmaceutical innovation.

On the basis of our announcement last January and the tabling of this bill last June, the innovative drug companies have come forward with millions of dollars in new investments that will benefit all regions of the country. As you may recall, I spoke to you a few weeks ago about \$500 million in new investments. Since that time, it has grown to \$635 million. This is a commitment to new investments in R&D and manufacturing over five years -- in Canada, where Canadians benefit.

Astra is evaluating sites in Canada to locate a world research mandate -- a \$150 million investment. Nordic Merrill Dow and Smith Klein Beecham have each announced investments of \$40 million for increased R&D. Just three days ago, Eli Lilly announced an investment of \$170 million for R&D expansion and state-of-the-art manufacturing.

There are many more. Overall, this industry will invest more than \$2.5 billion in Canada by 1996. This is a good news story -- and the economy needs good news.

I began my remarks by saying that there is a lot of misrepresentation and misinformation out there regarding this legislation. Let us stop the scaremongering and look at the facts.

First, opponents say that drug prices will soar as a result of Bill C-91. They will not. They have not in the past and they will not in the future. The Board has been given new powers over both new and existing patented drugs. These powers include the ability to roll back prices, recover excessive revenues, impose fines and imprison offenders. This bill has teeth -- sharp teeth. These powers will also ensure that Canada's patented medicines continue to be reasonably priced, as they have been since 1987.

Seniors have been especially concerned. But, again, we must look at reality. Seniors are covered by drug plans in all provinces.

Under current provincial plans, at least 71 per cent will not pay one penny more as a result of Bill C-91. Of the remaining 29 per cent, three-quarters or more of their drug costs are covered by provincial drug plans.

I believe what has caused some of the confusion, Mr. Speaker, is that some drug prices are rising faster than the rate of inflation. However, these are not the patented drugs, and this has nothing to do with Bill C-91. Eighty per cent of all drugs are not patented and therefore are not subject to any form of price control. The price increases of the remaining 20 per cent, the patented drugs, are under control and have remained well below the inflation rate, as I mentioned earlier.

The second misconception relates to the cost impact of Bill C-91. The government has been consistent in its projections of what Bill C-91 will cost: \$129 million, in 1990 constant dollars, over the five-year period to 1996. I want to repeat that, Mr. Speaker: \$129 million. I repeat it because we have heard a great many projections. The opponents of this bill have offered cost projections that have been all over the map.

But Dr. Heinz Redwood, an internationally recognized industry expert, has reviewed our figures. He concludes that they are -- and I will quote him -- "based on acceptable methodology and reasonable assumptions."

Mr. Speaker, Dr. Redwood goes on to say that "the cost to Canada may well turn out to be lower than forecast, thus adding a safety margin for possible but currently unforeseeable additional costs."

So what should we think when Dr. Schondelmeyer, a U.S. economist, appears before the Parliamentary Committee and projects that this Bill will cost Canadians \$7 billion over 17 years? This projection may be sensational. But it is a gross overestimate.

Dr. Schondelmeyer is not an independent or impartial analyst; he was hired by the generic industry some months ago and commissioned by them to perform the analysis of the impact of Bill C-91. He seems to have been extremely limited for time since, I understand, he told the Committee that he did most of the work quickly over the American thanksgiving weekend.

His report included some products that will not even be affected by Bill C-91. His projections do not take into account competition from other patented products, product obsolescence or relevant patent dates. He projected forward 17 years! As experts agree, no one can predict with accuracy beyond five years -- not with the dynamic nature of the medical field. Clearly his approach does not stand up to scrutiny.

On the other hand, government analysts have spent two years assessing the impact on a product-by-product basis to determine, in the most accurate manner possible, the costs over the next five years. We are confident of our figures. We stand by them. The legislation will cost the drug purchasers of Canada \$129 million over five years -- that is, one dollar per Canadian per year.

Opponents maintain that provincial health care systems will be devastated. How could this be? Patented drugs account for only 3 per cent of the total health care costs in Canada.

The cost of drug plans has been rising rapidly, and this is a serious concern to us all. There are those who would like to blame this on the prices of patented medicines and who claim Bill C-91 will have devastating effects. This is a gross exaggeration. As I have said, patented drugs are a minor component of drug plan costs. Drug costs are driven far more by drug usage -- the type of drug, the size and number of prescriptions. Indeed, if each Canadian were to use just one less prescription per year, we would save almost 20 times the additional cost of Bill C-91 to the drug purchasing system.

The third misconception I want to address is the mistaken notion that Bill C-91 will double the patent period for pharmaceuticals from 10 to 20 years.

Let me be clear: the patent term remains exactly the same under Bill C-91 as it was under Bill C-22: 20 years from start to finish. What has changed under Bill C-91 is the length of time that the innovator has to market the product in the absence of generic competition. This will increase from 7 to 10 years. The first 10 years of the 20-year patent term are normally used up in product development and in meeting regulatory requirements. This leaves just 10 years, on average, of patent protection for the innovator once the product is on the market. Under Bill C-22, generic firms have been able to obtain a compulsory licence to market a copy of the brand name product an average of three years before the patent expires -- in other words, around year 17 of the 20-year term. Under Bill C-91, they will have to wait the full term of the patent, on average another three years.

Once the patent expires, the generic drug companies in Canada will be able to compete openly with the company that invented the medicine, as is the case with any other sector of technology and as is the case for generic companies operating in the markets of our major trading partners.

Opponents have come up with much longer estimates of the extension of market exclusivity. How do they do this? Sometimes they draw conclusions from a few extreme cases. Sometimes they include in their analysis products that will be unaffected by

Bill C-91 because their patents have already expired or compulsory licences have been issued. They also use inaccurate patent expiry dates. So how would you expect them to come up with a valid answer? They cannot. They have carefully chosen samples of data that support the case they are trying to make.

Fourth, opponents like to say that this Bill will mean the end to the generic industry in Canada. This is not the case. As I mentioned, they have grown over 180 per cent since 1987. Our projections indicate that, in the new environment, there is no reason why they should not be able to grow at rates equal to those of the overall pharmaceutical industry.

Close to 60 per cent of generic business is now generated from drugs that are already off patent. Furthermore, there are nearly 2,000 off-patent products that are available to the generics, but have not yet been copied by them in Canada.

The U.S. generic industry operates in an environment without compulsory licences, yet it is growing and thriving -- so much so that Canadian generic companies have bought U.S. generic companies with their Canadian profits. Clearly there is no reason why this sector should not prosper in Canada.

Yesterday morning Ralph Nader said on Canada AM, on the subject of Bill C-91: "If it ain't broke, why fix it?" Mr. Speaker, such opponents ignore the changing realities of the global market place. Ralph Nader talks a great line about all of Canada's inventions. What he is really saying is that he would like to see us keep on inventing. But he would not provide the encouragement and protection to the inventors. Then he would have us hand over our inventions to countries where there is this protection so that they can commercialize these inventions for world markets and, in doing so, reap the benefits. I do not agree with him. We want to keep the jobs and benefits here in Canada. That is what this Bill is all about.

We must keep up with the times. We must make Canada a high-tech, R&D-intensive country if we want to improve our international competitiveness. An international consensus has emerged in the General Agreement on Tariffs and Trade (GATT) on world standards for intellectual property. It is critical to Canada's future prosperity that we participate in this consensus.

The North American Free Trade Agreement (NAFTA) carries the very same commitments as the GATT Dunkel text. And no, Mexico does not get an eight-year delay in having to comply with drug patent requirements under NAFTA, as critics have claimed. This is completely erroneous. In fact, all parties have to comply on the same basis. The eight-year transition period applies to Mexican government procurement of drugs, not to intellectual property

protection. This is just one more example of distortion of the facts by the critics.

Critics claim that Canada can never hope to do the research to discover new medicines. They think that all research is undertaken where the parent company is headquartered and that it has nothing to do with patent protection. These comments are out of touch with the realities of modern economies, Mr. Speaker. No longer does this industry operate on a branch plant structure.

These days the pharmaceutical industry can locate its discovery research anywhere in the world. This is both an opportunity and a threat for Canada. Will we be able to hold our own? Are the companies in Canada modern enough, flexible enough and forward-thinking enough to make it in the global marketplace?

We have competitive advantages, Mr. Speaker. We have world-class biomedical scientists. We have excellent medical institutions and a reputation for high standards in the area of medicines. We have an international reputation as the best health care system in the world.

All these are important. But the single most important factor considered by pharmaceutical companies when determining where to locate a new investment is intellectual property protection. The importance of patent protection to this sector is made evident in the following quotation from the Simard study released by Health and Welfare Canada a few months ago: "No pharmaceutical multinational will risk the current high cost of overseas R&D unless it knows absolutely that its intellectual property will be protected by vigorous patent law in the country where it expects to discover new drugs."

Mr. Speaker, Bill C-91 is a cornerstone of Canada's ability to become a major player in the international drug industry. I am confident that we are on the threshold of a new era of investment and high-tech jobs.

It is time for the opponents of Bill C-91 to stop distorting the facts. It is time for Canada to join the rest of the industrialized world in protecting creativity and innovation. It is time for this House to pass this legislation so that Canadians can get on with building a modern, innovative, knowledge-driven economy.

Thank you.