



WORLD HEALTH ORGANIZATION

EXECUTIVE BOARD
117th Session
Provisional agenda item 4.10

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Intellectual property rights, innovation and public health

Report by the Secretariat

INTRODUCTION

1. In response to resolution WHA56.27 in May 2003, the Director-General established the WHO Commission on Intellectual Property Rights, Innovation and Public Health in February 2004, to “collect data and proposals from the different actors involved and produce an analysis of intellectual property rights, innovation, and public health, including the question of appropriate funding and incentive mechanisms for the creation of new medicines and other products against diseases that disproportionately affect developing countries ...”. The Commission consists of 10 members, drawn equally from developing and developed countries, and is chaired by Ms Ruth Dreifuss, former President of Switzerland.¹ Its work has been supported by contributions from the Governments of Switzerland and the United Kingdom of Great Britain and Northern Ireland, and the Ford Foundation.
2. The Commission agreed that all its work would be as transparent and accessible as possible. To that end, its web site provides full information on its activities.²
3. The Commission tackled complex issues through a process of intensive exchanges with stakeholders, in particular a workshop and an open forum (Geneva, 31 May to 1 June 2005), through which it has gained insights into evidence and practice in relation to intellectual property rights, innovation and public health, and the different positions held. The Executive Board at its 116th session reviewed a progress report on the Commission’s activities.³

¹ Other members are: Professor Carlos Correa (Argentina), Professor Mahmoud Fathalla (Egypt), Dr Maria Freire (United States of America), Professor Trevor Jones (United Kingdom of Great Britain and Northern Ireland), Dr Raghunath Mashelkar (India) (Vice-Chair), Mr Tshediso Matona (South Africa), Professor Fabio Pammolli (Italy), Professor Pakdee Pothisiri (Thailand), Professor Hiroko Yamane (Japan).

² <http://www.who.int/intellectualproperty>.

³ See document EB116/2005/REC/1, summary record of the fourth meeting, section 3.

4. The Commission discussed a series of preliminary drafts of its report at four meetings in 2005. After careful consideration, the consensus was reached that it was desirable to hold one further meeting to review in detail the final full draft in order to narrow any differences of perspective, and to refine its recommendations. The final meeting of the Commission is to be held on 16 and 17 January 2006, just before the 117th session of the Executive Board. The Commission thus requested deferral of the submission of its report which was due at the forthcoming session of the Board. The full report in the six official languages will now be ready by April 2006. The Chair of the Commission will report to the Board on these developments.

PROGRESS OF THE COMMISSION'S WORK

5. The underlying objective of the Commission is to determine how a sustainable means of addressing the health needs of poor people in developing countries can be created, taking into account both the desirability of generating appropriate innovation in vaccines, diagnostics and treatments, and the importance of improving the access of poor people to the products of innovation. The interrelatedness of these issues is being examined from a public-health perspective. By innovation the Commission understands not only research and development but also the process by which the products of research and development come into use. This concept of innovation therefore encompasses access. Among other factors, a prerequisite for access is that appropriate treatments should be available for diseases and conditions that disproportionately affect developing countries. The report is organized around the need to examine the development of products from the beginning – in basic research – to the end – in delivery to the people who need them.

6. Innovation is seen as a cycle. The Commission found that in industrialized countries there is an innovation cycle in biomedical research and development that is, to a large extent, self-sustaining. The incentive for research and development in the private sector is the existence of a large market for health-care products sustained by both public and private resources, and underpinned by protection of intellectual property which allows companies to capture financial rewards from innovation. The market-driven research and development process in the private sector – in pharmaceutical and biotechnology companies – is supported by a substantial research effort, funded principally by the public sector, in universities and public-sector research organizations.

7. The innovation cycle, for the most part, is not self-sustaining in low-income countries, which tend to lack their own innovative capacity, although some are making rapid advances in this regard. Many do not have sufficient resources to invest in public-sector research, or a private sector with innovative capacity. They are therefore largely dependent on the products of innovation designed principally to meet the health-care needs of developed countries. In some cases these products meet their needs (for instance, in the case of vaccines against universal childhood illnesses, or antibiotics) but in others, either no treatments are available for prevalent diseases, or those that may be unsatisfactory or too costly for patients or governments. Thus, current government policies and action, including incentive and funding mechanisms, have not generated sufficient biomedical innovation relevant to the needs of developing countries. New, and even existing, treatments remain unavailable and unaffordable to those who need them.

8. Nevertheless, the Commission is heartened by the growing public awareness of the paucity of resources devoted to research and development in diseases prevalent in developing countries, and by the number of new initiatives aimed at addressing this problem and at improving access of poor people to existing medicines. It is similarly reassured by the international consensus reached in WTO on the appropriate relationship between the right of a Member State of WTO to protect its public health,

specifically by promoting access to medicines, and the interpretation and implementation of the standards embodied in the Agreement on Trade-Related Aspects of Intellectual Property Rights.

9. The Commission's report will consider both technical and policy issues and is likely to be structured as follows: Chapter 1 provides an overview and defines the problems being addressed; Chapter 2 outlines the issues at the discovery stage, Chapter 3, at the development stage, and Chapter 4, at the delivery stage; Chapter 5 considers how to foster innovation in developing countries; Chapter 6 suggests ways to promote a sustainable framework for encouraging innovation and improving access.

10. The Commission believes that there is a realistic prospect for a global international effort, including governments, the private sector, nongovernmental organizations and foundations, to accelerate the creation of new and affordable products that address the urgent public-health problems affecting poor people, particularly in developing countries.

ACTION BY THE EXECUTIVE BOARD

11. The Executive Board is invited to note the above report by the Secretariat.

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