



WORLD HEALTH ORGANIZATION

FIFTY-NINTH WORLD HEALTH ASSEMBLY
Provisional agenda item 11.11

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18 May 2006

Intellectual property rights

Commission on Intellectual Property Rights, Innovation and Public Health: report

Report of the meeting of the committee of the Executive Board

1. The committee of the Executive Board to discuss the report of the Commission on Intellectual Property Rights, Innovation and Public Health met on 28 April 2006 under the chairmanship of Dr Suwit Wibulpolprasert (Thailand), with Ms Cath Patterson (Australia) as Vice-Chair. The meeting was also attended by Member States not represented on the committee, and invited observers. A list of participants is attached at Annex 2.
2. The Chairperson of the Commission, presenting the report,¹ explained the process by which Commission had undertaken its work, through consultation and the gathering of evidence and opinion, and its perspective on the subject. The Chairperson of the Commission noted that the report contained a “package” of over 50 recommendations, which countries could consider in the light of their own circumstances. She also noted that the WHO had an important role to play in promoting a plan of action to achieve the objectives that underlay the Commission’s formation.
3. Most members welcomed the report, and commended the Commission for its efforts. It was felt that the report could be a useful resource for policy-makers and public health professionals, and a sound basis for moving forward. However, for a long report with many recommendations an executive summary would have been very helpful. Several members noted that some recommendations need to be clearer, more action-oriented, and provide more precise guidance to developing countries. The Commission had not produced, as requested, concrete proposals for action, but had proposed that a plan of action should be developed by all interested parties.
4. Members also raised a number of issues that they thought needed to be dealt with more adequately in the report. These included the diversity of developing-country needs; the potential for developing country participation in research and clinical trials; the mobilization of private-sector finance; the transfer of technology to developing countries; attention to very neglected diseases; better use of existing research; the broader question of principles such as the need to place patients before patents; implications for research and development of high intellectual property standards; use of intellectual property rights as a commercial tool; the inclusion in trade agreements of additional commitments to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS-plus); the possible use of compulsory licences in the context of patents on research tools and platform technologies; the relationship between intellectual property rights and human rights; and the effect of

¹ Document A59/16.

the Doha Ministerial Declaration on the TRIPS Agreement and Public Health on lowering the price of medicines.

5. In response, the Chairperson of the Commission noted that the supposed absence of specific and action-oriented recommendations reflected the Commission's recognition that the circumstances of developing countries differed, for example, in respect of capacity in science and technology. It was hoped the "package" approach to recommendations would make it easier for countries to decide on the course of action best suited to their own circumstances, drawing on the analysis of the relevant issues in the text of the report. The Commission had also noted the possibility of more actions at regional level in a number of areas. It was clear that incentive mechanisms other than intellectual property rights were needed to address diseases affecting principally developing countries. Although intellectual property rights were an important factor in determining prices and access to products, securing access also required stronger public health programmes and other policy measures. The flexibilities in TRIPS were an important factor in seeking to reconcile the need for incentives for innovation with those of access. The issue of TRIPS-plus had been addressed, for example in the recommendations on data exclusivity.

6. Most members stressed the need for WHO urgently to develop a plan of action, as recommended by the Commission. A few, however, supported a more measured and strategic approach, including more analysis of the recommendations and setting of clear objectives before development of a plan of action could be considered. The role and mandate of WHO should also be taken into account in that process.

7. The subsequent deliberations of the committee are reflected in the draft resolution below, with text not agreed on shown in square brackets. The preambular paragraphs of the draft resolution were not discussed and are also submitted between square brackets. In addition, one member submitted a draft text for the operative section of the resolution which the Committee did not have time to discuss (at Annex 1).

ACTION BY THE HEALTH ASSEMBLY

8. The Health Assembly is invited to consider the following draft resolution (unedited), for which the proposed title is "Public health, innovation and intellectual property rights [:a global plan of action]"

The Fifty-ninth World Health Assembly,

[Recalling resolution WHA56.27, which requested the Director-General to establish terms of reference for an appropriate time-limited body to collect data and proposals from the different actors involved and produce an analysis of intellectual property rights, innovation and public health;

Having considered the report of the Commission on Intellectual Property Rights, Innovation and Public Health;

Conscious of the growing burden of diseases and conditions disproportionately affecting developing countries, particularly those affecting women and children, including an upsurge in noncommunicable diseases;

Conscious of the opportunities opened up by advances in biomedical science, and the need to harness them more effectively to develop new products, particularly in order to meet public health needs in developing countries;

Noting that intellectual property rights are an important incentive for the development of new health-care products;

Noting, however, that this incentive lacks efficacy for the development of new products to fight diseases where the potential paying market is small or uncertain;

Noting that the exclusive rights conferred by patents can affect the price and availability of medicines and other health-care products;

Noting further that the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and the Declaration on the TRIPS Agreement and Public Health do not prevent Members from taking measures to protect public health and, in particular, to promote access to medicines for all;

Aware of the considerable progress that has been made in recent years by governments, industry, charitable foundations, and nongovernmental organizations in funding initiatives to develop new products to fight diseases affecting developing countries, and to increase access to existing ones;

Recognizing, however, that much more needs to be done in relation to the scale of avoidable suffering and mortality;

Noting that the Report of the Commission requests that WHO should prepare a global plan of action to secure enhanced and sustainable funding for developing and making accessible products to address diseases that disproportionately affect developing countries,]

1. WELCOMES the report of the Commission on Intellectual Property Rights, Innovation and Public Health and expresses its appreciation to the Chair, Vice-Chair and Members of the Commission for their work;

2. URGES Member States [and, where applicable, regional economic integration organizations]

[1- to consider the recommendations of the report and to contribute actively to the development of a global strategy and plan of action] ;

Or

[1- to consider the recommendations of the report taking into account their national context and priorities]

for the implementation of the recommendations directed towards Member States [implementation respecting existing health, economic and finance systems and structures in the WHO Member States]

[2- to take advantage of the flexibilities contained in the WTO TRIPS Agreement and recognized by the Doha Ministerial Declaration on the TRIPS Agreement and Public Health in order to protect public health];

[3- to ensure that bilateral trade agreements do not seek to incorporate TRIPS-plus protection in ways that may reduce access to medicines in developing countries];

3. REQUESTS the Director-General:

(1) to establish an [open-ended] intergovernmental working group [representative of the six WHO regions] to develop a global strategy and plan of action[, within the competence of WHO] [and in consultation with all interested parties,] built on the recommendations of the Commission, in particular ways of addressing diseases that disproportionately affect developing countries;

(2) to report to the 60th WHA through the EB on progress in developing the global strategy and plan of action involving areas for immediate implementation and to submit the final strategy and plan of action to the [61st] WHA through the EB;

(3) to publish a periodic update of a public health based Research and Development report for pharmaceuticals;

(4) to monitor, from a public health perspective[, in close collaboration with intellectual property experts], the impact of intellectual property rights [as well as other issues addressed by the report] on the development of and access to health care products and report to the WHA;

ANNEX 1

Draft resolution, paragraph 2: additional text submitted by Brazil

2. URGES Member States ...

.....

(4) to bear in mind the recommendation of paragraph 4 of the Doha Ministerial Declaration on TRIPS Agreement and Public Health, according to which the Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, and therefore to interpret and implement the Agreement in a manner supportive of their right to protect public health and, in particular, to promote medicines for all;

(5) to take into account Article 7 of the Agreement that states that:

the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations;

(6) to initiate consultations on the possibility of elaborating a framework convention on research, development and innovation in public health in order to define priorities and determine financing options;

ANNEX 2

LIST OF PARTICIPANTS

COMMITTEE OF THE EXECUTIVE BOARD TO DISCUSS THE REPORT OF THE COMMISSION ON INTELLECTUAL PROPERTY RIGHTS, INNOVATION AND PUBLIC HEALTH

(two Executive Board members from each WHO region)

African Region

Kenya

Dr J. Nyikal

Mrs A.C. Mohamed (Adviser)

Dr O.A. Ogwel (Adviser)

Mrs L. Nyambu (Adviser)

Madagascar

Mr J.-M. Rasolonjatovo (**alternate to Dr R.R. Jean Louis**)

Mr A. Rambeloson

Region of the Americas

Brazil

Dr P.M. Buss

Mr C.A. da Rocha Paranhos

Mr S. Alcázar (Adviser)

Mr G. Patriota (Adviser)

Mr P.F. de Carvalho Neto

Mr P.M. de Castro Saldanha

Mr H. Choer Moraes (Adviser)

Canada

Mr M. Sanger (**alternate to Mr I. Shugart**)

Mr P. Oldham (Adviser)

Mrs S. Wilshaw (Adviser)

South-East Asia Region

Bhutan

Dr Jigmi Singay

Mr S. Rinchen (Adviser)
Mrs D. Tshering (Adviser)

Thailand

Dr Suwit Wibulpolprasert (**Chair**)

Ms Prangtip Kanchanahattakij (Adviser)

European Region

Iceland

Mr D.Á. Gunnarsson

Portugal

Professor J. Pereira Miguel

Mr J. Sousa Fialho (Adviser)

Eastern Mediterranean Region

Pakistan

Mr R.S. Sheikh (**alternate to Mr M.N. Khan**)

Sudan

Dr I.M. Abdulla (**alternate to Dr T. Botros Shokai**)

Mrs I. Elamin (Adviser)

Western Pacific Region

Australia

Ms C. Patterson (**alternate to Ms J. Halton**) (**Vice-Chair**)

Mr D. Trindade (Adviser)
Mr M. Sawers (Adviser)
Mrs T. Brink (Adviser)

Japan

Dr H. Shinozaki

Mr T. Yamashita (Adviser)
Mr Y. Nakaya (Adviser)
Ms M. Imai (Adviser)
Dr H. Endo (Adviser)
Mr S. Takahara (Adviser)
Ms T. Tsujisaka (Adviser)

MEMBER STATES NOT REPRESENTED ON THE COMMITTEE

Ms D. Soltani (Algeria)
Dr S. Neto de Miranda (Angola)
Mr S. Rosales (Argentina)
Dr H. Friza (Austria)
Mrs F. Gustin (Belgium)
Dr J. Laruelle (Belgium)
Mr M. Gerebtzoff (Belgium)
Mr M. Tamasko (Belize)
Ms A. Kundurovic (Bosnia and Herzegovina)
Mrs M. Matlho (Botswana)
Mr B. del Picó (Chile)
Mrs D. Bikouta (Congo)
Mr B. N'Guessan (Côte d'Ivoire)
Mr M.T. Korslund (Denmark)
Dr M. Bello de Kemper (Dominican Republic)
Ms G.J. Aquino (Dominican Republic)
Mr R. Recinos Trejo (El Salvador)
Mrs S. Sammalkivi (Finland)
Mrs J. Tor-de Tarlé (France)
Mr E. Sayettat (France)
Ms K. Göggel (Germany)
Ms M.A. Alomatu (Ghana)
Mrs A. Damigou (Greece)
Mr A.K. Kaba (Guinea)
Mr J.-B. Alexandre (Haiti)
Ms A. Aján (Hungary)
Mr S.M.K. Sajjadpour (Iran, Islamic Republic of)