

WHO to Step Up Work on Access to Medicines

Member governments of the World Health Organisation have called for the institution to provide support to developing countries intending to make use of WTO rules that allow the suspension of patent rights in response to grave public health problems.

After intense negotiations at the WHO's annual summit in May, member states adopted a last-minute resolution based on a Brazilian proposal calling for the global health body to take an expanded role in encouraging health research and access to essential medicines.

The resolution on Public Health, Innovation and Intellectual Property largely refers to the role of the WHO Secretariat in supporting the work of an intergovernmental working group charged with developing a framework for supporting sustainable, needs-driven and essential medical research and development (R&D) relevant to diseases that disproportionately affect developing countries. The working group was set up last year to negotiate a global strategy on essential health research based on the recommendations of the WHO Commission on Intellectual Property, Innovation and Public Health, which completed its work in April 2006.

The resolution requests the WHO Secretariat "to provide as appropriate, upon request, in collaboration with other competent international organisations, technical and policy support to countries that intend to make use of the flexibilities contained in the [WTO] Agreement on Trade-related Aspects of Intellectual Property Rights and other international agreements in order to promote access to pharmaceutical products, and to implement the Doha Ministerial Declaration on the TRIPS Agreement and Public Health and other WTO instrument."

In theory, this could see the WHO taking a greater role in the interpretation of TRIPS flexibilities, such as compulsory licenses to temporarily override drug patents. The organisation's Director-General, Margaret Chan, came under heavy criticism when she suggested in February that governments should negotiate with patent-holders before issuing compulsory licenses. She later clarified that prior negotiations were not an obligation and that the WHO 'unequivocally' supported developing countries' use of the flexibilities under the TRIPS Agreement (Bridges Year 11 No.1, page 17).

The World Health Assembly resolution also calls on the WHO Director-General to encourage the development of proposals for health-needs driven research and development, including "a range of incentive mechanisms [...] addressing the linkage of the cost of R&D and the price of medicines, vaccines, diagnostic kits and other health-care products and a method for tailoring the optimal mix of incentives to a particular condition or product, with the objective of addressing diseases that disproportionately affect developing countries." Brazil, supported by Canada, Chile, Norway and others, had originally put forward language referring to the explicit separation of R&D costs from drug prices.

In addition, the resolution asks for further WHO support for consultative meetings in order to set regional priorities. At a technical briefing on the intergovernmental working group at the Assembly, concerns were raised about the level of participation of African and Latin American countries in these consultations, which the group's chair, Peter Oldham of Canada, described as 'absolutely critical'.

The US formally disassociated itself from the resolution.

Director-General Chan noted that she had been struck by the complexities involved in the working group, but added that she was increasingly aware of the importance of intellectual property rights to member states. Assistant Director-General Howard Zucker clarified that the working group's mandate could be extended beyond its current timeframe, which calls for the group to prepare a strategy and plan of action in time for the next World Health Assembly in May 2008 following a final meeting this November.

Resolutions on Malaria, Avian Flu and Children's Medicines

The World Health Assembly also dealt with the relationship between intellectual property and public health in resolutions negotiated on avian flu, malaria and medicines for children. A last-minute resolution was agreed on the 'Sharing of Influenza viruses and access to vaccines and other benefits', proposed by Indonesia for a "transparent, fair and equitable sharing of benefits" from vaccines developed from virus samples. The country's Health Minister, Siti Fadillah Supari, explained that his government had suspended sample-sharing of the H5N1 bird flu virus with the WHO last December due to concerns that the WHO had passed some samples on without consent, which could have in turn resulted in intellectual property rights that denied developing countries 'equitable access' to future vaccines.

A draft resolution on malaria was agreed after small group consultations mainly between Kenya and the US. Each had submitted a proposal in January, differing primarily in terms of their references to TRIPS flexibilities. Kenya and other developing countries wanted to urge WHO members to provide for full use of flexibilities in their legislation "to increase access to anti-malarial medicines, diagnostics and preventive technologies." In contrast, the US, along with Switzerland and Japan among others, did not want TRIPS flexibilities to be mentioned in this connection. The final compromise inserted a definition of 'pharmaceutical products' into an explanatory footnote stating that a 'pharmaceutical product' was "any patented product, or products manufactured through a patented process, of the pharmaceutical sector" needed to address public health problems in developing countries.¹

ENDNOTE

¹ Paragraph 1 of the WTO General Council Decision on the Implementation of Paragraph 6 on the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540 and Corr.1). 30 August 2003