



International Chamber of Commerce

The world business organization

Comments on WHO draft Global Strategy on Public Health, Innovation and Intellectual Property

Submission to the World Health Assembly, 19 – 24 May 2008

ICC, the world business organization, has members in over 130 countries - including developing countries - representing several thousands of companies and business organizations of all sizes in different sectors.

ICC contributed to the work of the Commission on Intellectual Property, Innovation and Health, as well as to the first and second web-based hearings organized by the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property (IGWG). It is pleased to be able to continue to contribute to this process by submitting the following brief comments to the World Health Assembly for its consideration during its discussions on the draft Global Strategy on Public Health, Innovation and Intellectual Property.

ICC shares the concern expressed by the WHO about the need to improve public health in developing countries. As ICC has said in earlier papers, public health problems in developing countries are complex and varied, and must be tackled with different means properly adapted to the particular context of each situation. In ICC's view, the root cause of public health problems is not the intellectual property system; these problems will therefore not be resolved by eroding the strength of intellectual property rights. The WHA should therefore avoid portraying intellectual property protection as the key problem in this debate, but rather focus on measures outside the intellectual property area.

ICC firmly believes that the protection of intellectual property stimulates international trade, creates a favourable environment for foreign direct investment, and encourages innovation, transfer of technology, and the development of local industry, all of which are essential for sustainable economic growth, and its concomitant benefits for public health in both developed and developing countries. Intellectual property protection should be seen as a tool to help find solutions to tackle health problems in the developing world, rather than as an obstacle.

ICC urges WHO members to take the above approach to intellectual property during their upcoming deliberations. ICC also urges WHO members to ensure that a rigorous fact-based approach is taken in their discussion at the implementation stage of the global strategy.

Moreover, ICC urges WHA members to respect the division of competence between different multilateral organizations and to recognize WIPO's expertise in matters relating to intellectual property.

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Comments on some of the issues open for discussion are also set out below:

- Legal certainty in the patent process is essential to provide companies and institutions with the guarantees necessary to make the huge investments normally required to develop a new health product. Introducing elements relating to public health during the patent search and examination process, in addition to the long established criteria for patentability, would lead to unacceptable uncertainty. At the time of a patent application, it is not possible to predict if a particular compound will be successfully developed into a pharmaceutical product, let alone the nature of any therapeutic effect - it is therefore difficult to see how a patent examiner could take a decision on a patent's effect on public health when examining a patent application.

- When considering competition policy measures, WHO members should bear in mind that the interface between intellectual property and competition has been extensively studied in the OECD and UNCTAD as well as in the US and the EU, the most experienced competition jurisdictions.

ICC is of the firm view that the mere possession of an intellectual property right should not give rise to a presumption of the existence of market power. Indeed, a report issued jointly in 2007 by the US Federal Trade Commission and Department of Justice's Antitrust Division, took the view that intellectual property rights only rarely create monopolies in the antitrust sense.

- Piracy and counterfeiting are increasingly linked to organized crime and other international criminal networks, and are responsible for a widespread loss of lawful employment opportunities and a massive deterioration of tax revenues for governments, which could be used to invest in healthcare. It is therefore in the interest of governments generally to take measures to tackle this problem, and even more so when it prejudices the health and safety of their citizens, as in the case of counterfeit drugs.

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