

## **UNICEF Executive Board**

### **Second regular session 2003 15-19 September 2003**

#### **Item 10 of the provisional agenda: UNICEF involvement in trade-related aspects of intellectual property rights (TRIPS): oral report**

##### **Background information**

##### **1. Problem statement**

- The World Trade Organization (WTO) Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) came into effect in 1995 making it obligatory for member states to grant patents for a minimum of 20 years for pharmaceuticals "invented" after 1 January 1995. This mostly affects HIV medicines, as well as new medicines that come on to the market in the future. Effectively, it can be seen to cut off the world's poorest populations from access to new medicines until patents expire because of their high cost and lack of competition. Developing countries, including major pharmaceutical producers such as India, have until 2005 to comply with TRIPS, although LDCs have been granted an extension until 2016.
- The 2001 Doha Ministerial Declaration on the WTO/TRIPS Agreement clearly stated that "the Agreement should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all". Countries in the face of a public health crisis, such as HIV/AIDS, can opt to allow local manufacturers to produce specific medicines without the 'voluntary' authorization of the patent holder (compulsory licensing). This is not possible in countries without local pharmaceutical production and there is currently no resolution as to how these countries might obtain life-saving patented medicines they require other than from the patent holder.
- At the same time, bi-lateral trade agreements, plus a push by the World Intellectual Property Organization (WIPO) to harmonize patent law treaties globally, through a "Substantive Patent Law Treaty", run the risk of creating more stringent conditions for patent protection and can cause a further significant threat to developing countries' ability to access medicines at affordable prices.

##### **2. UNICEF position:**

- UNICEF fully supports the Doha Declaration on the primacy of public health in country decisions to make life-saving medicines available to their populations. UNICEF is deeply concerned by bilateral trade agreements and global harmonization measures that worsen the potential access of developing countries to affordable medicines.
- Accelerated access to essential medicines is required to meet the MDG of reduction of under-5 mortality, particularly to fight diarrhea, pneumonia, malaria and HIV/AIDS.

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**3. UNICEF intervention:**

- UNICEF will maintain close collaboration with WHO, both directly and through the Inter-agency Pharmaceutical Co-ordination Group (WHO, UNICEF, UNAIDS, UNFPA, World Bank), in the monitoring of patent laws and initiatives that affect developing country access to essential medicines. WHO takes a lead in this domain through its Essential Medicines Group, and the 56<sup>th</sup> World Health Assembly (2003) issued a specific Resolution on Intellectual Property Rights, Innovation and Public Health with which UNICEF agrees.
- UNICEF will join with other development partners to support developing countries through the PRSP and SWAP mechanisms to ensure priority is put on public health and access to medicines, and that national legislation is supportive of this.
- Wherever possible, UNICEF will engage the pharmaceutical industry in dialogue, advocating for the granting of voluntary licenses to local manufacturers, as a means to increase the availability and affordability of patented medicines, and to better ensure their effective use.
- UNICEF will continue to take a lead within the UN system in procurement of anti-retroviral medicines (ARVs) for HIV prevention and treatment, and medicines for resistant malaria, on behalf of developing countries, UN agencies and other development partners.
- UNICEF will continue a close dialogue with NGOs on issues related to access to medicines.

**4. Other substantive points:**

- Concerns around patent protection have highlighted significant challenges in the accessibility and affordability of essential medicines in developing countries. However, diarrhoea and pneumonia, for which non-patented inexpensive medicines are used for treatment, comprise 43 per cent of under-5 deaths, while malaria and HIV/AIDS, where expensive patented medicines are largely indicated, comprise 12 per cent of under-5 deaths. These figures, and thus the importance of different medicines, do however vary by region.
- Even with constraints due to patent protection, the major barriers to access to quality medicines include poverty, poorly-functioning health systems, national regulatory requirements (that exclude competition in supply), tariffs and sales taxes, high price of some medicines such as ARVs, and an overall lack of financing, both national and international.
- In this context, UNICEF continues to put greater emphasis on strengthening health systems and monitoring and supporting essential medicine supply, including national procurement and distribution systems.
- At the same time, UNICEF will increase its advocacy for greater efficiency in the use of existing national budgets for essential medicines, including ways to resolve operational bottlenecks, and for significant increases in financing for medicines, both nationally and internationally.

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