



**WIPO CONFERENCE ON INTELLECTUAL
PROPERTY
AND PUBLIC POLICY ISSUES**

**“STRENGTHENING MULTILATERAL COOPERATION ON IP
AND PUBLIC HEALTH”**

Geneva, 14 July 2009

**Pascal Lamy
Director-General**

Ladies and Gentlemen,

Let me first applaud the timely initiative taken by the World Intellectual Property Organisation (WIPO) to set public health together with the issues of climate change, biodiversity and food security at the heart of its ambitious new program on intellectual property (IP) and global challenges.

This initiative reaffirms that the international IP system cannot operate in isolation from broader public policy questions such as how to meet basic human needs for health, food and a clean environment.

The conference, and the work program that it carries forward, show that IP has moved to the centre of cross-cutting debates that defy traditional boundaries between separate policy domains, and between distinct areas of technical expertise. Coherence, cooperation and practical dialogue within the international system is indispensable, if we are to address these fundamental policy questions in a sustainable manner. At once open minded and thoughtful, it is an initiative that bears the trademark of Director General Francis Gurry.

I'm honoured, also, to share the podium with our colleague Dr Margaret Chan, Director General of WHO. From our past dialogue, I know that Margaret, Francis and I share a strong personal commitment to intensifying the cooperation between our three organizations. Such partnership and goodwill will be crucial for an effective international response to the ever evolving challenges posed for public health, and to ensure the IP system is balance, fair and effective.

However — and this news may come as a surprise to some of you — there are limits to what Directors-General can achieve in what are member-driven organisations, even when they join forces in partnership. Margaret's gifts as a vocal performer have been known to rescue a difficult meeting, but there is no truth in the rumour that the Three Directors-General will seek to emulate the Three Tenors. But whatever harmony we are able to produce — however imperfect to the purist's ear — will be vastly preferable to silence — or even discord and dissonance — between our three organizations.

Effective partnership also means we have to recognize that we have complementary roles, different areas of expertise, and distinct mandates — we will make most progress if we each play to our strengths and recognise the strengths of our partners.

As Margaret Chan just said, we see our work on IP and public health as a way to ensure that each agency contributes its core expertise to a collective effort, and respects the competences of others. We accept that health policy, the IP system, and the framework for legitimate trade relations are inevitably intertwined and must be managed harmoniously.

Infectious diseases certainly do not respect borders, and prey upon our common physiology, blind to political boundaries. Health represents the most compelling case for international cooperation. Interdependence is not a mere policy option; it is quite literally a matter of life and death.

Consider the international dimension of confronting the HIV-AIDS pandemic, the continuing devastation wrought by neglected diseases, suffered mostly by the world's poorest communities, the resurgence of resistant strains of TB, and the current H1N1 flu pandemic. Climate change will likely have a severe impact on disease patterns and on agriculture: so health, food security and adaptation to climate change are fundamentally interlinked. To retreat behind borders — whether they are national borders, or formal boundaries between our institutions — is not an option.

For the WTO, this realization came into sharp focus in 2001, when ministers issued the Doha Declaration on the TRIPS Agreement and Public Health. While fundamentally important for the WTO and for the application of the TRIPS Agreement, the Doha Declaration has also helped to shape the framework for multilateral cooperation on IP and public health through the course of this decade.

It has helped governments make use of TRIPS flexibilities and contributed to lower prices for certain medicines, especially first-line ARVs. It has strengthened public understanding of TRIPS as supporting a balanced and flexible framework for IP protection and enforcement that is responsive to the broader policy agenda. And the Declaration stressed the need for TRIPS to be viewed as part of the wider national and international action to address public health-related problems. For health activists, who had been among the WTO's severest critics, it has served as both a landmark and a benchmark.

The Declaration has often been referred to in many Resolutions of the World Health Assembly, including the WHO's Global Strategy and Plan of Action, and in WIPO's Development Agenda. Just last week, ECOSOC Ministers reaffirmed the Doha Declaration's provisions on flexibilities for protecting public health and promoting access to medicines. The Declaration finds resonance in the human rights and bioethics domains. Taken together, these

various instruments form a powerful tool for cooperation, which we are actively pursuing at a practical level with WIPO and WHO, along with other key players such as UNAIDS, UNCTAD, UNDP and UNITAID. We need to draw on the entire spectrum of expertise and join forces to support our Members to meet their public health needs in a coherent and effective way.

Between 2001 to 2005 the WTO negotiated the first, and still the only, amendment to the package of trade agreements concluded by the Uruguay Round in 1994: the so-called “Paragraph 6 System” to enhance the supply of medicines to countries with limited capacity to manufacture their own medicines. This process was driven by a deep concern that these countries could not use TRIPS flexibilities effectively; that a specific legal obstacle had to be removed.

Now that action has been taken, a debate has continued over whether the solution really works, or whether it continues to throw up obstacles. WTO Members who negotiated this instrument have continued to look closely at its effective functioning in the annual reviews we, in the WTO, have undertaken every year since 2005. Last week’s ECOSOC Ministerial Declaration significantly called for “a broad and timely acceptance” of the amendment to TRIPS that would embed this mechanism securely within international law, an important call which we warmly welcome and indeed redouble.

So far, the system has been put into practice once. In part this flows from the limited patent coverage of needed medicines in key exporting countries. This pattern may change in the future as procurement efforts turn towards a new generation of medicines. In any case, the very availability of this mechanism, together with the changing climate among the health community and drug companies, may help drug procurement programs to bargain down prices — just as the prospect of compulsory licensing can be used in general to exert leverage in negotiations on voluntary access to technologies. Voluntary licensing often emerges as an operationally more effective tool in many cases.

The objective was never to issue lots of compulsory licenses as an end in itself. The objective was and remains cheaper medicines for the poor. The system, therefore, has to be judged in terms of prices and access. A simple headcount of notifications under the paragraph 6 system is a poor indicator of public health outcomes.

The paragraph 6 system is one additional flexibility within TRIPS, alongside a number of other health policy safeguards; and TRIPS itself in turn forms just one element of wider national and international action to ensure enhanced access to medicines.

That said, we should not have a blind faith in the system's success. That is why it is subject to an annual review by WTO members. But it may be important, also, to consider how procurement programs can make more effective use of the system as it stands. It creates a legal avenue for access, but that does not itself generate a commercially viable level of demand.

Indeed, the system explicitly recognizes the need to create economies of scale for procurement initiatives in regions with a significant proportion of least-developed countries (LDCs). The system is open more generally to the coordination of import needs and source countries so as to ensure the necessary economies of scale. We also need to assess the operation of this system against a stronger empirical base — put simply, where are relevant patents in force, and where are they not?

These deceptively simple questions can be hard to answer with confidence. WIPO has made great strides to improve access to and intelligent use of patent information, and to facilitate international cooperation to establish the patent status of key medicines in developing countries. Here again, multilateral cooperation is essential to ensure that this mechanism operates effectively, along with the full range of policy tools, within and beyond the field of IP, to step up the flow of essential medicines to the most needy.

The WTO aims to serve as an active and constructive partner on public health within the multilateral system, and not merely concerning the TRIPS Agreement, given the other areas of interaction between trade and health where the WTO can offer unique expertise.

Since the Doha Declaration was adopted in 2001, we have established much closer cooperation between international organizations with primary competences bearing on IP and public health. Actively promoting and sustaining the carefully negotiated and crucial balance between the development of new medicines and their accessibility has been a shared goal of all partners.

The WTO offers technical input and advice as requested by its international partners, but also runs an active and collaborative program of capacity building with WHO and WIPO as partners, contributing to each other parallel activities.

Our capacity building activities do not advocate policy positions or push for any particular choices. The goal is help policy makers and senior government officials explore the full range of options they have available, so that they can choose for themselves how to exercise those options in practice.

The effective use of the IP system and of TRIPS flexibilities is important, but does not stand alone: IP law and policy must be harnessed with drug procurement policies, pro-competition safeguards, and regulation of drugs for safety and quality. Again, no one international agency has a monopoly on these diverse areas of expertise, and the challenge of ensuring practical access to medicines requires a comprehensive, multidisciplinary effort.

There will always be scope to improve how we work with our international partners. Partnership is hollow if we do not try to learn from each other; cooperation is wasteful of resources if we fail to coordinate on practical program delivery and the sharing of vital information; and coherence — which is probably the backbone of how we work with each other — is impossible if we do not respect and build on each other’s distinct competences and policy settings. Above all, we must heed and respond to the concerns and practical needs of our Members and the communities they serve.

Multilateral cooperation can be an empty gesture if it does not deliver actual, tangible results at the national level — in short, if it does not advance public health in what a WTO Appellate Body decision termed “the real world where people live and work and die.”

I thank you for your attention.