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IP, Trade And Public Health Leaders Turn A Page In History Together

By William New, Intellectual Property Watch on 24/11/2011 @ 10:19 am

The importance of multilateralism, continuing global public health gains with sufficient funding, and finding a balance between the worlds of trade, intellectual property and public health were among the top issues raised during the a daylong high-level meeting at the World Trade Organization.

The 23 November meeting entitled "Ten Years After The Doha Declaration: the future agenda at the interface of public health, innovation and trade" was organised by the Graduate Institute. It featured the heads of the top public health related organisations in Geneva, which are among the most important in the world.

The focus of the event was the 2001 WTO Doha Declaration on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement and Public Health. The declaration consists of seven paragraphs that, among other things, reaffirmed developing countries' right to use flexibilities to applying TRIPS.

Speakers included WTO Director General Pascal Lamy, World Health Organization Director General Margaret Chan, World Intellectual Property Organization Director General Francis Gurry, UNAIDS Executive Director Michel Sidibé, Global Fund to Fight AIDS, Tuberculosis and Malaria Executive Director Michel Kazatchkine, GAVI Alliance Chief Executive Officer Seth Berkley, UNITAID Executive Director Denis Broun, and the former chair of the WHO Commission on Intellectual Property Rights, Innovation and Public Health and former Swiss President Ruth Dreifuss.

The core issue cutting across the areas of trade, IP and health is that market forces do not provide sufficient incentive for private-sector research for some diseases predominately affecting poor populations, and for the others IP rights provide incentives but drive up prices.

The WIPO, WHO and WTO heads, based on a point first made by Gurry, agreed it is easier to make progress and take action in non-treaty areas at the multilateral level, as they are easier to agree on. WIPO's new Re:Search project was mentioned, as was WHO's work on pandemics and on substandard and counterfeit medicines.

But some observers took this as a warning sign after last week's call by a key WHO working group on financing for research and development for governments to negotiate a binding convention on R&D.

But the international organisation heads emphasised the importance of work at the multilateral level. Chan (who, it was announced this week, will run for re-election next year unopposed), called the work being done in Geneva "extremely important" as it is touching the lives of many people around the world.

Most speakers appeared to approve of the TRIPS and Public Health Declaration, but differed on its effectiveness and what needs to be done in the future.

There were variations in views of the issues of the health, trade and IP officials that echo differences typical across national governments. Chan was more outspoken about putting health matters ahead of commercial interests, using especially strong language against the tobacco industry, which is lobbying intensively in trade arenas like the WTO to stop national governments from taking actions against tobacco packaging aimed at discouraging smoking. Chan also said that an "elephant in the room" is policy incoherence within governments, where different agencies are working in different directions, and then they expect the international organisations to solve their internal issues.

The three agencies announced a first-time joint study they are conducting on "Promoting Access

and Medical Innovation: Intersections between Public Health, Intellectual Property and Trade." An outline and overview of the study was presented by Antony Taubman, director of the WTO Intellectual Property Division. The final study is due out in 2012. The study will review access, innovation, detail major players in international policy debates, provide models for using the paragraph 6 mechanism. The study shows that access to medicines is still a "huge problem" after 10 years, Lamy said.

Lamy cited several "low-hanging fruit" that governments can take to improve medicines access, including elimination of tariffs and non-tariff barriers on medicines, government procurement, and competition policy.

Sidibé said that a number of countries have provided for some form of compulsory licences, but few have used it, including only Zimbabwe in Africa. There were several calls, led by Sidibé, for an African regional regulatory agency.

Kenyan Ambassador Tom Mboya Okeyo gave a realistic assessment of the status of public health in developing countries. He described the experience in Kenya and the region, and said that "innovation in the pharmaceutical industry is facing a serious crisis." He highlighted a proposal for a currency transaction development levy, a financial transaction tax, small enough not to affect markets but big enough to help the poor.

Eduardo Pisani, director general of the International Federation of Pharmaceutical Manufacturers and Associations, said innovation is taking longer, costing more and resulting in less. He called for an enabling environment for innovation to thrive, and said IP rights remain a vital incentive. He pointed to partnerships to accomplish goals where market drivers are lacking. He said that with no IP rights prices would be lower but there would be less innovation.

Albert Tramposch, director of international and governmental affairs at the US Patent and Trademark Office, said the WIPO Standing Committee on the Law of Patents (SCP) will take up the issue of patents and health at its meeting in early December. Tramposch, who will chair the meeting, said an aim will be to discuss the way forward without getting "bogged down in the polarisation of the past."

Several speakers mentioned the impact of the Medicines Patent Pool, launched by UNITAID, as one of the new tools for reducing prices.

A number of speakers stressed that IP is only one among numerous factors contributing to the lack of access to critical treatment by many poor populations. But several of those working on the ground to deliver medicines detailed ways in which IP rights keep medicine prices high and out of reach of the poor. For instance, Sidibé, Kazatchkine and Tido von Schoen-Angerer, executive director of the Médecins Sans Frontières Campaign for Essential Medicines, all mentioned that second-line treatments for AIDS patients are far out of reach although many poor patients are soon to need them.

Kazatchkine was fresh off the plane from Accra, Ghana, where it was announced that several funders who a year ago made substantive pledges to the Global Fund have backed out. He said last year's promises in New York were $11.7 billion, but that that had now dropped to $9.6 billion. There are reports that the United States is looking to make changes in the management of the Global Fund.

Chan, Prof. Fred Abbott, a law professor at Florida State University, and Sudip Chaudhuri, an economics professor at the Indian Institute of Management, mentioned the need to find the level of "reasonable" profit for needed pharmaceuticals. As monopolies, patent-holding companies can set their price and claim it is based on their R&D costs. But Abbott said the data on their real R&D costs must exist and is being kept confidential by companies. It is a matter of "reasonable profit or greed," Chan said.

Abbott presented an extensive new study entitled, Intellectual Property and Public Health: Meeting the Challenge of Sustainability." In it, he suggests improved ways to give incentive to R&D, and development of a sustainable system that might involve a change to the TRIPS agreement. He also said that a new global health council for coordinating medicines strategy might be helpful.

Gurry said it is necessary to develop mechanisms to work with industry as a partner while keeping the required distance as public policy organisations. He said WIPO is working to do this in new areas such as public health and agriculture/food security.

During the day, there were various calls to change the TRIPS Agreement but it was not a consensus. But there was not much debate over the sometimes controversial solution to paragraph 6 of the Doha Declaration, which created a waiver to TRIPS rules so that drugs produced under compulsory licence can be predominately for export to countries lacking manufacturing capabilities. It is often said that the waiver has not been successful because it has

only been used once, but Lamy and others indicated that it has also been a deterrent as governments are using flexibilities.

There were also many references to the negative side of bilateral and regional trade agreements in which developing countries sign up to provisions that go beyond the TRIPS agreement, so-called TRIPS-plus provisions. But Lamy said TRIPS was created as a "floor" rather than a "ceiling" (as in agreements on tariffs and subsidies), thereby allowing members to negotiate upward.

Looking ahead, Chan said the biggest challenge for her is "when there are billions of people who still do not have access to medicines."

And as Dreifuss concluded, there is not a need to replace the IP system, "but to complete it."

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- WTO, WHO, WIPO To Discuss TRIPS And Health Declaration [1]
- Chan: WHO Embarking On "Most Extensive" Reforms In Its History [2]
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[1] WTO, WHO, WIPO To Discuss TRIPS And Health Declaration: **http://www.ip-watch.org/weblog/2011/11/17/wto-who-wipo-to-discuss-trips-and-health-declaration/**

[2] Chan: WHO Embarking On "Most Extensive" Reforms In Its History: **http://www.ip-watch.org/weblog/2011/05/16/chan-who-embarking-on-%e2%80%9cmost-extensive%e2%80%9d-reforms-in-its-history/**

[3] Pharma Industry Seeks To Bring A Fresh Face To Public Health Policy: **http://www.ip-watch.org/weblog/2011/03/23/pharma-industry-seeks-to-bring-a-fresh-face-to-public-health-policy/**