



**COCIR comments  
on IGWG outcome document at 14:00 hours  
Saturday 3 May 2008  
Draft global strategy and plan of action on public health,  
innovation and intellectual property**

COCIR, in addition to its Position Paper of April 16 and comments of April 25, provides the following comments on the bracketed provisions of the IGWG document that is tabled for further discussions on week of May 19 in Geneva.

COCIR fully supports the objectives of the IGWG to combat the burden of disease in developing countries and believes that our industry can make a significant and valuable contribution towards achieving these goals. However, as reflected in our comments below, we urge removal from the IGWG document unsubstantiated claims that deficiencies in global healthcare are primarily attributable to intellectual property and, in that same vein, to refrain from proposals that would promote compulsory licensing or other measures to weaken IP rights.

To promote collaboration between industry, government, developmental agencies and NGOs in achieving the goals of the IGWG, COCIR encourages WHO to initiate an open dialogue on best practices to promote the development and dissemination of healthcare products and technologies in the developing world. COCIR is ready to lend its substantial expertise and experience to this dialogue.

**Comments on bracketed provisions of the IGWG document:**

**Paragraph 4:** This text suggests that R&D costs increase the prices of healthcare products used to treat diseases that disproportionately affect developing countries. Given that the IGWG document provides no empirical data to support this linkage, the term "addressing" should be changed to "examining" or "considering," and the term "costs" should be followed by "and benefits." Such changes would acknowledge that further research is needed to determine the relationship between R&D costs and the prices of healthcare products, and recognize that such research may demonstrate a positive or neutral correlation between R&D costs and healthcare prices.



Moreover, paragraph 4 uses the terms “healthcare products” and “diagnostic kits,” which presumably are synonymous with the terms “health products” and “diagnostics” referenced in footnote 1. To avoid any confusion as to the meaning and scope of these terms, paragraph 4 should similarly refer to “health products” and “diagnostics,” and the term “diagnostics” should be defined as follows:

*The term “diagnostics” refers to the chemical and pharmacological components of kits used to carry out tests on samples extracted from the human body in order to determine whether the human from which the samples are extracted is suffering from a specific disease or condition or is genetically predisposed to suffer from said disease or condition.*

**Paragraph 18:** We support the first alternative formulation, which advocates striking an appropriate balance between the objectives of public health and the interests of trade. The second alternative formulation erroneously suggests that commerce is inconsistent with public health goals and could be misconstrued by governments and anti-industry groups to justify compulsory licensing and other measures to weaken or expropriate intellectual property. Moreover, the second formulation ignores the strong commercial interests that make possible advances in public health, as well as the fact that industry has a critical role to play, in cooperation with governments, NGOs and development agencies, in providing affordable healthcare.

**Paragraph 34 (4.1(b)):** This language should be moved to section 6 (it has nothing to do with Sec. 4 - technology transfer). It is rather a question of capacity building that WHO provide guidance in the form of methodologies and databases to Member States so that they can develop their own procurement prioritization strategies. The phrase “including by providing guidance on appropriate technologies” is an attempt to revive WHO’s effort to develop a list of “essential” medical technologies. This effort has been considered and rejected as inappropriate and unnecessary by the WHA in WHA 60.29. Because there is no single “list” of technologies appropriate to all developing countries and disease burdens, we oppose the development of a list of technologies – “essential” or otherwise. WHO should instead explore developing principles each member state could use to determine the medical technologies appropriate for its needs. Specific reference to the governing WHO resolution (60.29) would clarify this provision.

**Paragraph 36 (5.1(a)):** We prefer the following formulation:

*encourage and support the application of intellectual property in a manner that maximizes health-related innovation . . .*

Given that portions of this paragraph remain in brackets, we support the deletion of “and management,” if possible, since this phrase could be misconstrued as suggesting that WHO has a role to play in directing the R&D agenda and determining how IP maximizes innovation.



**Paragraph 36 (5.2(b)):** We support deletion of subparagraph (b). The EC surely cannot join a consensus that directly attacks EC trade policy and agreements. Every sovereign nation has the right to negotiate any agreement that is consistent with WTO requirements, including TRIPs-plus measures. WHO has shown no evidence that there is a relationship between such provisions and access to health products or R&D for healthcare. Member states should not be discouraged from entering such agreements especially when such agreements may be in their best interests.

**Paragraph 36 (5.3):** Instead of trying to wordsmith this section, we support the narrowest formulation of paragraph 36. We oppose any proposal to assess patentability criteria or other features of IP protection, which is the proper domain of other expert bodies. Thus, we support deletion of subparagraph (d). We also oppose the implication in subparagraphs (c) and (e) that intellectual property rights are per se anti-competitive and require corrective competition policies. Accordingly, we support deletion of subparagraphs (c) and (e).