



Alianza LAC UE

por el Acceso a los
Medicamentos

Open Letter to the Members of the Executive Board of the World Health Organization

15 January, 2010

Dear Executive Board Members,

Health Action International (HAI) is a non-governmental organisation with an extensive history in medicines policy issues. We have been very active at the WHO on themes related to the Rational Use of Medicines, and in recent years we have increased efforts at a global level on Access to Essential Medicines, particularly on the impact of intellectual property (IP) rights on Public Health. As part of an alliance with civil society partner organisations in Latin America (the Latin America & Caribbean - European Alliance for Access to Medicines), we are closely monitoring developments in IP and Public Health in the region. This includes negotiations on free trade agreements, to ensure that they do not incorporate measures that would limit access to medicines in developing countries.

World Health Assembly (WHA) Resolution 61.21 and the Global Strategy and Plan of Action on public health, innovation and intellectual property (GSPA) marked the end of stage one in an important process, which attempted to clarify the impact of IP on Public Health and Access to Essential Medicines. This process, supported by WHA Resolution 56.27, established the Commission for Intellectual Property, Innovation and Public Health, whose report and recommendations resulted in Resolution WHA 59.24, establishing the Intergovernmental Working Group (IGWG).

The GSPA is an extensive document that features developing country perspectives with regard to pharmaceutical innovation. The current system, based on financial incentives derived from monopolies granted by various forms of IP protection, does not meet the needs of developing countries. It does not meet those needs because neglected diseases do not represent a lucrative market and therefore, do not attract investment for medical innovations. Moreover, the present system does not support the provision of adequate supplies of innovative medicines to developing countries, for which there is already a market in developed countries, because prices remain unaffordable for many families and health systems worldwide.

This reality has led to the development of various initiatives such as, the exploration of alternative incentive mechanisms for innovation other than market exclusivity through IP protection; the proposal for an international treaty for the financing and coordination of innovation; the close monitoring of trade agreements to prevent the inclusion of IP measures that go beyond multilateral agreements; and the encouragement of the use of public health flexibilities and safeguards contained in international agreements.

These aspects of the GSPA have not been viewed favourably by commercial interest groups and the pharmaceutical industry, which rely on IP to maintain product monopolies. At the 2009 World Health Assembly, successful commercial pressure contributed to the removal of the WHO as a designated stakeholder in discussions and potential negotiations toward an

Essential Health and Biomedical Research & Development treaty. HAI and other interested stakeholders worked hard to maintain WHO's participation in the process and supported the establishment of the Essential Health and Biomedical R&D treaty.

In addition to this situation, we now add the disappointing handling of the EWG process by the WHO. Our concerns are directed not only at the draft document, which will be put forward for your approval in the forthcoming week, but also toward the process by which this output has been produced.

We have serious concerns about the transparency of the process. Not only because the final document was leaked in advance to the pharmaceutical industry, whose enthusiastic responses may have relied on their persuasion of commission and committee members in this process. But, also because we understand that the majority of committee members were not consulted on their own agenda, the work they were charged with, or the process that led to the draft report.

As intellectual property is one of the central themes of the GSPA and the priority of the IGWG process, it is surprising that the draft report neglects any discussion of this important issue. The only mention of it legitimises the current IP system and forestalls debate about the validity and appropriateness of IP in Public Health. In fact, the compatibility of the proposals with the existing IP system seems to be a main concern throughout the report. This is all in stark contrast with IGWG's fundamental conclusions, outlined above.

Debate about the role of intellectual property is not the only omission; the draft Executive Summary emphasises the need for global coordination to improve efficiency in resources for innovation without any mention of the GSPA proposal for a Biomedical R&D treaty.

We are therefore confronted with a process that raises many doubts about transparency, and a draft document that overlooks substantive issues. For these reasons, we ask that you withhold your approval for the draft Executive Summary, and ask the EWG to complete its task and correct the errors that have led to doubts about the credibility of the process.

Yours sincerely,

The Latin America & Caribbean - European Alliance for Access to Medicines and Health Action International, Global

Endorsed by:

Health Action International, Africa
Health Action International, Asia Pacific
Health Action International, Europe
Health Action International, Latin America & Caribbean

