

Draft Resolution
Public health, innovation and intellectual property rights [: a plan of action]

The Fifty-ninth World Health Assembly,

Draft text	EC position	Fallback
1. [Recalling resolution WHA56.27, which requested the Director-General to establish terms of reference for an appropriate time-limited body to collect data and proposals from the different actors involved and produce an analysis of intellectual property rights, innovation and public health;	Acceptable.	
2. Having considered the report of the Commission on Intellectual Property Rights, Innovation and Public Health;	Acceptable.	
3. Conscious of the growing burden of diseases and conditions disproportionately affecting developing countries, particularly those affecting women and children, including an upsurge in noncommunicable diseases;	Acceptable, if somewhat misplaced; the point about the burden of disease is not that it's growing nor that its "disproportionate" (should only rich people get sick?), but that resources are not proportionately available to respond.	
4. Conscious of the opportunities opened up by advances in biomedical science, and the need to harness them more effectively to develop new products, particularly in order to meet public health needs in developing countries;	Acceptable, though again drafting could be improved.	
[New recital]	Add "Aware of the systematic work that WHO has done in identifying pharmaceutical gaps and needs from a public health perspective" – NL proposal.	
5. Noting that intellectual property rights are an important incentive for the development of new health-care products;	Acceptable. ("..an <u>essential</u> incentive.." would be better, but is unlikely to be acceptable.)	

<p>6. Noting, however, that this incentive lacks efficacy for the development of new products to fight diseases where the potential paying market is small or uncertain;</p>	<p>Amend to say “this incentive <u>alone</u> lacks”. Could also suggest adding “..small or uncertain <u>relative to the cost of development</u>”.</p>	<p>Key point is not to blame IPR for lack of development of new products – IPR is essential for the development of new products.</p>
<p>7. Noting that the exclusive rights conferred by patents can affect the price and availability of medicines and other health-care products;</p>	<p>Amend to delete “exclusive”. (These rights can in practice be opened up, as is indeed part of the point of the TRIPS agreement.)</p>	<p>Can accept if necessary.</p>
<p>8. Noting further that the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) and the Declaration on the TRIPS Agreement and Public Health do not prevent Members from taking measures to protect public health and, in particular, to promote access to medicines for all;</p>	<p>Acceptable and important.</p>	
<p>9. Aware of the considerable progress that has been made in recent years by governments, industry, charitable foundations, and nongovernmental organizations in funding initiatives to develop new products to fight diseases affecting developing countries, and to increase access to existing ones;</p>	<p>Acceptable and important.</p>	<p>If some delegations feel that this overstates the case, could propose deleting “considerable”.</p>
<p>10. Recognizing, however, that much more needs to be done in relation to the scale of avoidable suffering and mortality;</p>	<p>Acceptable. (Though it would be better to clarify what more needs to be done – following the previous recital, it implies that funding is the answer, which is not necessarily the case.)</p>	
<p>11. Noting that the Report of the Commission requests that WHO should prepare a global plan of action to secure enhanced and sustainable funding for developing and making accessible products to</p>	<p>Acceptable and important.</p>	

address diseases that disproportionately affect developing countries,]		
1. WELCOMES the report of the Commission on Intellectual Property Rights, Innovation and Public Health and expresses its appreciation to the Chair, Vice-Chair and Members of the Commission for their work;	Acceptable and important.	
2. URGES Member States [and, where applicable, regional economic integration organizations]	Acceptable and important. Important to include a reference to REIOs.	Could accept instead a more neutral reference addressing other organisations without naming them, perhaps such as “and other bodies responsible for these issues”.
[1- to consider the recommendations of the report and to contribute actively to the development of a global strategy and plan of action] ;	Acceptable and preferable drafting.	
Or		
[1- to consider the recommendations of the report taking into account their national context and priorities]	Prefer previous version – of course all responsible actors will consider recommendations within their context, but this emphasis sends an unhelpfully negative message before even beginning.	Acceptable if necessary
for the implementation of the recommendations directed towards Member States [implementation respecting existing health, economic and finance systems and structures in the WHO Member States]	Delete “directed towards Member States”, as others are also responsible and the target is referred to above. Prefer first version.	First version acceptable as stands. If second version used, delete “existing”, which implies no possibility of change (which we should leave open).
[2- to take advantage of the flexibilities contained in the WTO TRIPS Agreement and recognized by the Doha Ministerial Declaration on the	Amend to include “..take advantage <u>where appropriate</u> of ..”;	Any wording which avoids implying that all countries need these flexibilities

TRIPS Agreement and Public Health in order to protect public health];		(they don't).
[3- To ensure that bilateral trade agreements do not seek to incorporate TRIPS-plus protection in ways that may reduce access to medicines in developing countries];	Delete “bilateral” and replace ‘incorporate’ with ‘impose’.	
3. REQUESTS the Director-General:	Acceptable.	
(1) to establish an [open-ended] intergovernmental working group [representative of the six WHO regions] to develop a global strategy and plan of action[, within the competence of the WHO] [and in consultation with all interested parties,] built on the recommendations of the Commission, in particular ways of addressing diseases that disproportionately affect developing countries;	Amend as follows: 1. Delete “[open-ended]” – this should be a focused exercise limited in time. 2. Delete “intergovernmental” – this should also involve the Commission and other competent bodies, eg: WIPO. 3. ‘representation of regions’ is acceptable and useful, but not essential. 4. “within the competence of the WHO” is important. 5. “in consultation with all interested parties” is useful – “involving” would be better. 6. ‘built on the recommendations of the Commission’ is essential; this should be the basis of any future work.	Whatever group is set up, the Commission should be able to take part (which should be automatically the case, as it is by definition a subsidiary body of the WHA).
(2) to report to the 60th WHA through the EB on progress in developing the global strategy and plan of action involving areas for immediate implementation and to submit the final strategy and plan of action to the [61st] WHA through the EB;	Acceptable and important. If anything, we should press for the full report to be to the 60 th WHA, but the most essential point is that there be a clear deadline and end-point for this work.	
(3) to publish a periodic update of a public health based Research and Development report for pharmaceuticals;	Delete – we should not prejudge the recommendations of the working group.	Acceptable, though it would be better to have a clearer statement of what this report would (and would not)

		address.
(4) to monitor, from a public health perspective[, in close collaboration with intellectual property experts], the impact of intellectual property rights [as well as other issues addressed by the report] on the development of and access to health care products and report to the WHA;	Amend: 1. to a more general wording not specifically focusing on IPR, but simply ‘the issues addressed by the report’ 2. “in close collaboration with <u>the relevant international organisations</u> ” 3. Add “..report to the WHA <u>as necessary</u> ”.	