

ExCo Lucerne 2003

Report Q94 GATT/WTO

by Martin J. LUTZ (Switzerland)

The basis of the Committee's work during the last 12 months was the Declaration on the TRIPS Agreement and Public Health of November 14, 2001 (the "Doha Health Declaration") (WT/MIN(01)/DEC/W/2 - (01-5770)).

Paragraph 6 of the Doha Health Declaration provides for the introduction of a cross border compulsory license.

In the fall of 2002 the Special Committee Q94 submitted a Questionnaire listing the disputed issues of the proposed cross border compulsory licensing to the National and Regional Groups of AIPPI.

31 Groups replied. A summary and analysis of the replies received were submitted to WTO on November 22, 2002.

Based on the views expressed by the Groups of AIPPI the Committee drafted a Resolution which was finalised in close cooperation with the Bureau of AIPPI and which was submitted to WTO on July 25, 2003 in the form annexed hereto (**Annex**) after approval by the Bureau of AIPPI.

On August 30, 2003 WTO published the decision taken by the General Council for the implementation of paragraph 6 of the Doha Health Declaration by WTO (see: www.wto.org/english/tratop_e/trips_e/implem_para6_e.htm).

Unfortunately the WTO Ministerial Conference convened at Cancun in September 2003 has failed and no other decisions relating to intellectual property protection or TRIPS were taken.

The other items on the present agenda of TRIPS Council (geographical indications, review of article 27.3 b TRIPS, agreement and technology transfer) have not been specifically addressed by the Committee during the last 12 months.

It is foreseen that Mr Ivan Hjertman of IP Interface AB, Sweden, will succeed Dr Martin J Lutz as Chairman of Special Committee Q94 as of the EXCO Meeting 2003 in Lucerne.

Annex:

Resolution

Question Q94 GATT/WTO

AIPPI (The International Association for the Protection of Intellectual Property), established in 1897 as the leading non-profit organization aiming to develop and improve Intellectual Property and whose members are enterprises and specialists in the IP field, incorporating 8000 members belonging to more than 100 countries, 2

Considering that:

1. That questions of public health are of great concern to AIPPI.
2. That in the view of AIPPI, poorer countries need urgent support, not only as regards to help them solve their urgent health problems, but to permit them to develop in other areas like nutrition, education, economic development etc. in order to reduce the distance that exists with the developed world.
3. That the serious problems that poorer countries suffer in the field of health are not only due to the existence of patents covering pharmaceutical products. There are many medicines that are not protected by patents (generics), while in other cases, even if there are patents, they do not cover these poorer countries. In addition, most diseases require the support of suitable medical personnel alongside the administration of drugs.
4. That the patent system serves to promote innovation and any attempt to erode Patent protection or to deprive inventors of patent protection will probably deviate research away from diseases that affect poorer countries to other diseases that mainly affect developed countries.

Resolves:

1. That the grant of compulsory licences is already foreseen under Articles 30 and 31 of the TRIPS Agreements when exceptional circumstances apply.
2. That serious health problems in poorer countries are unlikely to be solved by compulsory licences on patents, since the distribution and administration of these medicines requires the support of the appropriate professionals (like doctors, nurses, etc.)
3. That, in cases of serious health crises in poorer countries, WTO should explore the possibility of establishing specific programs, under the control of international organisations like WHO, not only including the supply of medicines, but also the

availability of qualified personnel to administer those medicines and to follow up the progress of patients.

4. That, if the provision of privileged compulsory licences is introduced in TRIPS, it should be limited to diseases and emergencies covered by article 5C of the Doha Health Declaration, namely public health crises such as HIV/AIDS, tuberculosis, malaria and other epidemics which represent national emergencies or circumstances of extreme urgency. In such cases, the compulsory licences should extend to all relevant patentable products, which means drugs, diagnostic and medical instructions, diagnostic kits and vaccines.
5. That the introduction of a privileged compulsory licence system should be applied on a case by case basis.
6. That the introduction of a privileged compulsory licence in TRIPS, if decided, should not be carried out by amendment of the TRIPS Agreement.