

Report of the Inter-Regional Workshop on Intellectual Property Rights in the Context of Traditional Medicine

Bangkok, Thailand, 6–8 December 2000



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Acknowledgements

Over recent years, there has been an increasing interest worldwide in both the health care and economic development aspects of traditional medicine. As traditional knowledge, particularly the knowledge of traditional medicine and medicinal plants, could have an economic and trade value, the need to protect it and to secure fair and equitable sharing of any benefits derived from it, have become of concern to more and more WHO Member States. However, intellectual property rights in the context of traditional medicine is a very complex issue. WHO has been requested to co-operate with the World Intellectual Property Organization (WIPO) and other international organizations to support countries in improving their awareness and capacity to tackle these problems.

The WHO Traditional Medicine team has therefore taken the initiative in proposing this Inter-Regional Workshop on Intellectual Property Rights in the Context of Traditional Medicine. The initial suggestion met with an immediate enthusiastic response from the WHO Regional Office for South-East Asia (SEARO), who were not only willing to organize the meeting but also to provide financial support. Positive responses and active support were also received from the WHO Regional Office for Africa (AFRO), the Regional Office for the Eastern Mediterranean (EMRO), and the Regional Office for the Western Pacific (WPRO).

Our sincere thanks should go, firstly, to the World Intellectual Property Organization (WIPO) and United Nations Conference on Trade and Development (UNCTAD) for their cooperation and support and for providing two speakers: Ms. Maria Perez-Esteve, Economic Affairs Office, Trade, Environment and Development Section, UNCTAD, and Mr. Shakeel Bhatti, of the Global Intellectual Property Issues Division, WIPO, as well to all the other speakers for their valuable contributions to the Workshop.

Secondly, our sincere appreciation should go to the WHO Regional Office for South-East Asia, particularly to the Regional Director, Dr Uton Muchtar Rafei and the Director, Health Technology and Pharmaceuticals, Dr Palitha Abeykoon, as well as to the former Regional Adviser for Traditional Medicine, Dr Kin Shein, for all their assistance in the organization of the Workshop, and in the drafting of this report with Regional Office financial support.

Appreciation should also be expressed to the WHO Regional Office for the Western Pacific, the WHO Regional Office for the Eastern Mediterranean and the WHO Regional Office for Africa, particularly to the Regional Advisers for Traditional Medicine, Dr Chen Ken (WPRO), Dr Peter Graaff (EMRO), Dr Ossy Kasilo (AFRO) and the DAP Team Coordinator, Dr Germán Velásquez, for their help in organizing the Workshop and also for financial support from their Regional Offices and the DAP Team.

We must also express our sincere thanks to the Ministry of Public Health, Thailand, for their hospitality and courtesy in ensuring the smooth running of the Workshop. Thanks are especially due to Dr Pennapa Subcharoen, Director, National Institute of Thai Traditional Medicine, Department of Medical Services, and Mrs Iamtip Boonchalermkit, Foreign Relation Officer, Department of Medical Services, without

their, and their colleagues', efforts, the Workshop could not have been be arranged, particularly within the very short frame allowed.

Thanks are also due to Professor, Mr Tan Kiok K'ng, WHO Short Term Consultant, for drafting the report and to my colleague, Mr Peter Thorpe, for his editing work.

Limitations of space, unfortunately, preclude the naming of all those who have helped in the Workshop.

This Workshop is only a beginning. Follow-up activities, based on the Workshop recommendations and suggestions from Member States, will continue to be carried out by the Traditional Medicine team in cooperation with WIPO, UNCTAD and the WHO Regional Offices.

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1. Introduction

1.1. Opening Session of the Workshop

The Inter-Regional Workshop on Intellectual Property Rights in the Context of Traditional Medicine was held in Bangkok from 6 to 8 December 2000. This meeting was part of the following-up to the implementation of WHO's revised drug strategy concerned with the monitoring and analysis of the effects of globalization on access to drugs. As the WTO Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) is currently revising Article 27.3 (b) of the TRIPS Agreement, which deals with the patentability of traditional knowledge, it is expected that the conclusions and recommendations of the meeting will contribute to this review. Forty-eight participants from 23 countries attended the meeting. In his message to the workshop, read by the WR of Thailand, Dr E.B. Doberstyn, the Regional Director, WHO SEAR, Dr Uton Muchtar Rafei said that traditional medicine is an important part of human health care. The practice of traditional medicine is based on the theory, belief and experiences indigenous to different cultures. Recently, traditional medicine has increasingly gained in importance. At the meeting of ministers of health held in September 1998 in New Delhi, the ministers strongly emphasized that these resources should be used more efficiently in the delivery of primary health care. WHO also encourages and promotes the appropriate use of traditional medicines in member states' national health care systems.

Currently there is an increasing awareness of the value of traditional knowledge and biodiversity resources as economic and tradable commodities. This, coupled with the impact of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) on pharmaceuticals, including traditional medicine, necessitates this meeting of minds to address the complex issue of intellectual property rights so as to achieve better understanding and wider consensus on these issues.

At the Earth Summit for the adaptation of the Convention on Biological Diversity held in Rio de Janeiro in 1992, members accepted the principles that bio-resources are the sole property of sovereign states and that they have the freedom to use them as tradable commodities. However, most developing countries have not so far enacted legislation to implement the resolutions passed at the Convention. The need to protect traditional knowledge and to secure fair and equitable sharing of the benefits derived from the use of biodiversity and associated traditional medicine knowledge has been fully recognized. The Director concluded by expressing the hope that the deliberations of the Inter-Regional Workshop on Intellectual Property Rights in the Context of Traditional Medicine would improve the knowledge and capability to tackle problems of intellectual property rights relating to traditional medicine. The full text of the address is at Annex I.

Dr Mongkol Na Songkhla, Permanent Secretary of the Ministry of Public Health, Thailand, in his welcome address read by Dr Winai Sawasdivivoon, Deputy Director General, Department of Medical Services, Thailand, said that it was timely for the workshop to address the important issue of intellectual property rights in the context of traditional medicine. The rich resources of traditional medicine

knowledge and biodiversity in developing countries need to be protected and we need to ensure that there is an equitable sharing of the benefits resulting from their exploitation. He thanked WHO for providing technical and financial supports for the workshop. The text of his address is at Annex II.

Ms Maria Perez-Esteve, Economic Affairs Office, Trade, Environment and Development Section, delivered UNCTAD's opening statement to the workshop. She said that traditional medicine plays an important role in health care in both developed and developing countries in the 21st century. Up to 80% of the world's population depends on traditional medicine for its primary health care needs. Furthermore, traditional medicine is indispensable for those in the poorest segments of societies, including women, indigenous peoples and rural inhabitants in developing countries. In describing work of special relevance to this group, she said that UNCTAD's Member States had decided to address the protection of traditional knowledge as part of their activities in the area of trade and environment. The Plan of Action adopted by UNCTAD's tenth Conference stated that: "UNCTAD should also, in full cooperation with other relevant organizations, in particular and where appropriate the World Intellectual Property Organization and the World Health Organization, promote analysis and consensus building with a view to identifying issues that could yield potential benefits to developing countries". It specifies that this work should *inter alia* focus on: "Taking into account the objectives and provisions of the Convention on Biological Diversity and the TRIPS Agreement, studying ways to protect traditional knowledge, innovation and practices of local and indigenous communities and enhance cooperation on research and development on technologies associated with the sustainable use of biological resources" (paragraph 147 of the Plan of Action, third bullet).

In accordance with its mandate, UNCTAD held an Expert Meeting on Systems and National Experiences for Protecting Traditional Knowledge, Innovations and Practices, in close cooperation with the secretariats of other intergovernmental organizations, in particular the Convention on Biological Diversity and the World Intellectual Property Organization. The Expert Meeting was held in Geneva from 30 October to 1 November 2000.

The Expert Meeting was the first in UNCTAD's history to involve indigenous groups in the organization's intergovernmental work on such a large scale. Over 250 delegates from nearly 80 countries, representing Governments, non-governmental organizations, UN specialized agencies, academia and the private sector, attended the meeting.

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