

F. Related measures taken to reflect the Public Health Declaration

The reaction to the Public Health Declaration and the subsequent TRIPS decisions has been multifarious. National governments have taken steps to alter their domestic policies and legislation, countries interacting with one another have reflected the policies of the Public Health Declaration either expressly or tacitly and international bodies have recognised the contents in one way or the other. A brief sampling of the measures taken is dealt with below.

I. International and multilateral policies and measures

International bodies such as the WHO Assembly and the UN Commission on Human Rights have been vocal on propagating the use of the TRIPS flexibilities.¹⁰⁶² In the May of 2004 the WHO Assembly, whilst taking into account the Public Health Declaration and the Decision, urged countries as ‘a matter of high priority’:

‘to consider, whenever necessary, adapting national legislation in order to use to the full the flexibilities contained in the Agreement on Trade-Related Aspects of Intellectual Property Rights;

...

to encourage that bilateral trade agreements take into account the flexibilities contained in the WTO TRIPS Agreement and recognized by the Doha Ministerial Declaration on the TRIPS Agreement and Public Health’.¹⁰⁶³

International bodies have also taken the view that the Public Health Declaration has clarified the use of compulsory licenses and that Member States can take compulsory license measures without fear of threats or reprisals from industry or foreign governments.¹⁰⁶⁴

II. Bilateral policies and measures

The move towards more comprehensive bilateral trade relationships has resulted in the negotiating parties often including obligations on intellectual property rights. This has especially been evident in bilateral free trade agreements involving the

1062 WHO World Health Assembly Resolution ‘Global Health-sector Strategy for HIV/AIDS’ (28.05.2003) WHA56.30 at 2, UNCHR Res 2004/26 ‘Access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria’ (16.04.2004) UN Doc E/CN.4/2004/L.11/Add.3 p. 58.

1063 WHO World Health Assembly ‘Scaling up treatment and care within a coordinated and comprehensive response to HIV/AIDS’ (22.04.2004) WHA57.14 p. 3-4.

1064 WHO/WTO, WTO Agreements and Public Health: A Joint Study by the WHO and the WTO Secretariat (WTO Secretariat Geneva 2002) p. 16.