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The IP Negotiations Monitor summarizes the latest developments in multilateral and regional fora where intellectual property negotiations are taking place, and informs on upcoming meetings and events.

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WORLD TRADE ORGANIZATION (WTO)

(COUNCIL ON TRIPS) – REGULAR SESSION

The regular session of the TRIPS Council was held on **5-6 March, 2013**. The new Chairperson of the TRIPS Council is Amb. Alfredo Suescum of Panama.

Below is a summary of the main issues discussed in the first regular session of the TRIPS Council of 2013.

TRIPS AND LDCS: REQUEST FOR AN EXTENSION OF THE TRANSITIONAL PERIOD UNDER ARTICLE 66.1 OF THE TRIPS AGREEMENT

The TRIPS Council discussed the duly motivated request (Document IP/C/W/583)[1] submitted by Haiti on behalf of the LDC Group during the last session of the TRIPS Council (October, 2012) to extend the transition period for TRIPS implementation. The current transition period ends on 1 July, 2013.

During the discussion, Members in principle agreed to consider an extension to the transition period, however there was no consensus regarding the exact terms of the extension. In particular, there was no agreement as to whether another deadline should be set or if the transition period should apply until the country graduates from LDC status as tabled in the LDC Group's request.

Nepal on behalf of the LDCs, presented details of the request which seeks that the LDCs shall not be required to apply the provisions of the Agreement, other than Articles 3, 4 and 5, until they cease to be an LDC. In its statement[2], Nepal emphasised that LDCs needed the continuation of flexibility as their situation had not changed significantly over the years in particular in the development of their productive capacities. It also highlighted that the LDC request was motivated by the need to maintain policy space and to ensure access to various technologies, educational resources, medicines and tools necessary for development. It added that what the LDCs were seeking did not go to the extent of reform of IPRs but "simply the continuation of flexibility already agreed in 1995 – with reasons."

Brazil[3] also delivered a statement in favour of the LDC Group's request. It stated that special and differential treatment provisions including those found in the TRIPS Agreement were an important systemic component to ensure that the international trading system was an effective instrument of social and economic development. It also referred to the "daunting challenge" of incorporating LDC into the "knowledge economy".

India[4] also supported the LDC Group's request and highlighted that there was no relation between the transition period which was meant to assist the LDCs in developing a viable technological base and Article 67 of TRIPS which is an obligation on the developed countries to provide technical assistance to the LDCs and developing countries to help them implement the TRIPS Agreement.

The EU in its intervention[5] said it recognised that LDCs remained confronted with critical challenges in their economic development and also the importance of flexibility and policy space for LDCs' needs. In this context, the EU was willing to consider an extension beyond the current deadline of July 2013. However, it added that the most important concern the EU had with the LDC Group's proposal was that it lacked "both a clear and predictable perspective and it remains silent on how IP and the TRIPS Agreement could specifically help LDCs in building a viable technological base." Thus, it considered that the most appropriate step forward was to examine an extension for LDCs as a group and to take into account "the situation on the ground".

No decision was reached in the TRIPS Council and informal consultations are on-going.

PROPOSED MEASURE BY NEW ZEALAND TO INTRODUCE PLAIN PACKAGING OF TOBACCO PRODUCTS

The TRIPS Council also discussed a proposed measure by New Zealand to introduce a national plain packaging regime for all tobacco products, similar to the law introduced in Australia last year.[6] New Zealand said that it would abide by its international obligations, including if necessary, waiting for the outcome of WTO Dispute Settlement cases in this area. Currently, there are three dispute settlement cases brought against Australia regarding its tobacco plain packaging measure (Ukraine – DS434, Honduras – DS435, and from the Dominican Republic – DS441).

[1] http://www.wto.org/english/tratop_e/trips_e/ta_docs_e/7_1_ipcw583_e.pdf
[2] Nepal's full statement can be found here: http://keionline.org/node/1674
[3] Brazil's full statement can be found here: http://keionline.org/node/1678
[4] India's full statement can be found here: http://keionline.org/node/1669
[5] The EU's full statement can be found here: http://keionline.org/node/1675
[6] http://www.wto.org/english/news_e/news13_e/trip_05mar13_e.htm

In a room document circulated to Members[7], New Zealand stated that the decision to work towards the introduction of a plain packaging regime was taken to advance its public health objectives and follows a comprehensive public consultation process. Some of the stated objectives of the regime included the reduction of "the appeal of tobacco products and smoking, particularly for young people" and the wider objective of "discouraging people from taking up smoking, or using tobacco products". New Zealand added that there would be opportunities for interested parties to express their views on the design of the measure and the policy development process would continue for some time yet.

The Dominican Republic had requested for this topic to be put on the agenda. It said that the measures proposed by New Zealand would violate Articles 20 (on other requirements on trademarks), 22.2(b) (on the protection of geographical indications), and 24.3 (on exceptions) of the TRIPS Agreement, and Article 10*bis* (on unfair competition) of the Paris Convention. It accepted that smoking brought health concerns but argued that alternative methods would be more effective. Supporting the Dominican Republic were Cuba, Nicaragua, Honduras, Ukraine, Zambia, Zimbabwe and Mexico.

A similar discussion took place at the October 2011 TRIPS Council meeting when Australia introduced its plain packaging legislation.

INTELLECTUAL PROPERTY AND INNOVATION: SMALL AND MEDIUM SIZED ENTERPRISES

Members discussed the role of intellectual property and innovation with respect to small and medium sized enterprises (SMEs). This agenda item was added at the request of the US, Chile, Rep Korea and Chinese Taipei. This was the second time the topic of innovation was discussed in the TRIPS Council. During the 6-7 November, 2012 session of the Council, Members had discussed the role of intellectual property in innovation and development in general.

Chile and some other developing countries described how they had introduced programmes to move their economies away from dependence on natural resources to activities based on knowledge. Some less developed countries agreed that smaller companies were important for their economies but added that they were still far from being able to innovate and make money from their ideas. Therefore the importance of intellectual property to these companies differed in countries at different levels of development.[8]

RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CONVENTION ON BIOLOGICAL DIVERSITY

Positions remained unchanged regarding this regular agenda item with disagreement on whether the TRIPS Agreement should be amended to require disclosure of the origin of genetic resources as required by the Convention on Biological Diversity (CBD). Developing countries generally were in favour of such disclosure while most developed countries view it as possibly hindering innovation.[9]

NON-VIOLATION AND SITUATION COMPLAINTS

Positions regarding "non-violation and situation" complaints remained unchanged with the latest extension to the moratorium being until the Bali Ministerial Conference in December, 2013. Some countries would like a further extension, whereas others want "non-violation" disputes allowed in intellectual property. The issue of "Non-violation" disputes is based on whether countries should be allowed to bring disputes against each other if it is felt that another government's action or a specific situation has deprived it of an expected benefit, even if no agreement has been violated. This is currently allowed in trade in goods and services but not within the context of the TRIPS Agreement.

ADMISSION OF NEW OBSERVERS

The TRIPS Council considered pending requests for observer status from international intergovernmental organisations. During its November, 2012 meeting the Council had agreed to grant *ad hoc* observer status on a meeting-by-meeting basis to the Cooperation Council of the Arab States of the Gulf (GCC) and the European Free Trade Association (EFTA).There are currently 13 requests for observer status submitted by IGOs, including the South Centre, pending at the TRIPS Council. The Chair reported that although consultations had continued on the issue, he could not report any new developments.

The representative of Nigeria, speaking on behalf of the African Group, expressed support for the request from the South Centre. He outlined the work of the Innovation and Access to Knowledge Programme stating that the programme contributed to the development, coordinated use

[7] http://www.ip-watch.org/weblog/wp-content/uploads/2013/03/TRIPS-NZ-Plan-packaging-March-2013.pdf

[8] http://www.wto.org/english/news_e/news13_e/trip_05mar13_e.htm

[9] http://www.ip-watch.org/2013/03/07/wto-hears-health-economic-considerations-of-plain-packaging-for-tobacco/

and improvement of the capacity building of developing countries and their institutions. He added that the South Centre had been at the forefront in assisting developing countries especially in the area of IP and the negotiation of the TRIPS and public health waiver. In view of this, he was seeking observer status for the South Centre, at least on an *ad hoc* basis while the Council was reflecting on a comprehensive solution. The statement made by Nigeria was supported by Egypt, Tanzania, Rwanda, Saudi Arabia, Bangladesh, India, Brazil, China, Cuba, Nepal, Mali and Sri Lanka.

Consultations led by the Chair on this issue will continue. The Chair also encouraged delegations to discuss the matter amongst them to find a solution.

DISPUTE SETTLEMENT: TRIPS DISPUTES

Three meetings of the Dispute Settlement Body have been held so far this year on **28 January**, **27 February** and **26 March** respectively.

UNITED STATES – MEASURES AFFECTING THE CROSS-BORDER SUPPLY OF GAMBLING AND BETTING SERVICES

The WTO Dispute Settlement Body (DSB) during its session on **28 January, 2013** agreed to grant, authorisation to suspend the application to the US of concessions or other obligations consistent with the Arbitrator's decision, pursuant to the request by Antigua and Barbuda under Article 22.7 of the DSU (WT/DS285/25).

This is in the context of the long running Dispute Settlement Case between Antigua and Barbuda and the US (DS2859) regarding measures applied by central, regional and local authorities in the US which affect the cross-border supply of gambling and betting services.[10] The Arbitrator in 2007 determined that Antigua and Barbuda could request authorization from the DSB to suspend obligations under Section 1, 2, 4, 5 and 7 of Part II of the TRIPS Agreement at a level not exceeding US$21 million annually.

During the DSB meeting on **26 March, 2013**, Dominica made a statement on behalf of Antigua and Barbuda under "Other Business", regarding the US-Gambling dispute.[11] It said that Antigua and Barbuda had not seen any substantial progress on the part of the US to comply with the DSB's recommendations and rulings nor to reach a settlement with Antigua and Barbuda. Before moving forward with cross-retaliation, Antigua and Barbuda wanted to appeal to the US to make one last effort at resolving the matter and avoiding unpredictable consequences.

UNITED STATES – SECTION 211 OMNIBUS APPROPRIATIONS ACT OF 1998

The US during the **26 March, 2013** DSB meeting, again informed of its intention to implement the recommendations and rulings on the case of *United States - Section 211 Omnibus Appropriations Act of 1998 (*WT/DS176) which relates to the Havana Club trademark. During the meeting, some members (Venezuela, Cuba, and Zimbabwe) expressed their disappointment for the continued failure by the US to change its legislation to comply with the WTO ruling.[12]

In 2002, the WTO Appellate Body ruled that the US violated the TRIPS Agreement by denying trademark owners' access to US Courts. In particular, it ruled that the US had failed to protect the Havana Club trademark for Cuban rum, giving it instead to a US company, Bacardi.

WHO, WIPO, WTO STUDY: PROMOTING ACCESS TO MEDICAL TECHNOLOGIES AND INNOVATION

On **5 February, 2013** the WHO, WIPO and WTO launched a study "Promoting Access to Medical Technologies and Innovation: Intersections between Public Health, Intellectual Property and Trade.[13]

The study shows progress on the part of the WTO and WIPO in the sense that they are willing to engage on IP and public health. However, the report does not give a complete picture of the extent to which WHO has led this issue over the past decade. Seventeen resolutions by the World Health Assembly adopted between 1996 and 2012 are cited in the report in a table on page 44 concerning intellectual property and health. These resolutions are of highly prescriptive character, for the secretariat and for countries on how to protect public health from the possible negative impact of new international trade rules. Despite numerous resolutions and publications in the last 15 years by the WHO on this issue, many of which are not mentioned in the report, the disclaimer of the document says that "(…) the published material is being distributed without warranty of any kind, either expressed or implied. The responsibility for the interpretation and use of the material lies with the reader. In no event shall the WHO, WIPO and

[10]http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds285_e.htm
[11]http://www.wto.org/english/news_e/news13_e/dsb_26mar13_e.htm
[12] http://www.ip-watch.org/2013/03/26/united-states-chided-as-trips-scofflaw-at-wto/
[13]http://www.wto.org/english/news_e/news13_e/trip_05feb13_e.htm

the WTO be liable for any consequences whatsoever arising from its use".

This could give the wrong impression to the reader of this report that the WHO has no opinion on whether a compulsory license may, in special circumstances, facilitate access to drugs, or if an international exhaustion regime, that allows parallel imports from any country can reduce the cost of drugs and therefore contribute to access. The 17 WHA resolutions give a mandate to the WHO to engage, promote and defend mechanisms and policies in favour of access. Thus, it is important to ensure that the Trilateral Cooperation with WTO and WIPO does not lead the WHO to share a "neutral" vision, totally disengaged from its mandate of protection of health and putting business before health at the WHO.

FUTURE WTO MEETINGS

Council for Trade-Related Aspects of Intellectual Property

The next meeting (regular) of the Council for Trade-Related Aspects of Intellectual Property will be held on **11-12 June, 2013.**

WTO Dispute Settlement Body

The next meeting of the DSB will be held on **24 April**, **2013.**

WTO General Council

The next WTO General Council will be held on **3-4 June, 2013.**

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE (IGC)

The 23rd session of the IGC was held from **4-8 February, 2013.** It was chaired by Amb. Wayne McCook of Jamaica.

The IGC has been mandated "to continue intensive negotiations and engagement in good faith, with appropriate representation, towards concluding the text(s) of an international legal instrument(s) which will ensure effective protection of Genetic Resources (GR), Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs).

This session of the IGC focused on further developing a consolidated text on genetic resources based on WIPO/GRTKF/IC/23/4. [14]The format of the textual negotiations during the session included a twin approach which included the formal plenary and the expert working group negotiating informally. The text was revised twice by the facilitators as to "clean up" the discussion by focusing on key concepts.

An Ingenious Peoples Panel was held on the first day with Professor James Anaya, UN Rapporteur on the Rights of Indigenous Peoples presenting the keynote speech in which he explained the paradigm shifts in the understanding of sovereignty and property rights as applied to indigenous people.

The key issue of debate during the IGC was whether the mandatory disclosure requirement of genetic resources should be included in the negotiating text. Developing countries such as Nigeria, India, China and Brazil all supported the inclusion of a mandatory disclosure requirement in the text noting the need to align with the Convention of Biological Diversity (CBD) and promote Access and Benefit-Sharing (ABS) compliance in international laws. An alternative option proposed by Canada, Japan, Norway, Republic of Korea and US is for a defensive protection approach which includes a database. Proponents of mandatory disclosure requirements did not completely disagree with the option of databases but noted that this could be complementary but not a substitute for the measures.

There was also significant debate regarding the scope of the instrument including whether it would only cover patents or all IP and whether it would extend to derivatives of generic resources. Developing countries want to see the scope of the instrument extended as far as possible. Another issue of divergence was the linkage of the current instrument with other international regimes such as CBD and Nagoya Protocol as some countries (including the US) are not party to them.

It was decided that Technical Assistance and Capacity Building with regard to the instrument would be discussed once the remaining articles are finalized.

New proposals submitted during the session included the Joint Recommendation on Genetic Resources and Associated Traditional Knowledge submitted by Canada, Japan, Norway, Republic of Korea and US (WIPO/GRTKF/IC/23/5) calling for a non-binding instrument without a disclosure requirement. The US said that ABS should be separate from the patent applications but noted that patent offices should have comprehensive

[14]http://www.wipo.int/edocs/mdocs/tk/en/wipo_grtkf_ic_23/wipo_grtkf_ic_23_4.pdf

information to determine prior art and thus prevent the erroneous grant of patents. National databases were indicated as a solution and this was including in their proposal as an alternative to the mandatory disclosure requirement. The African Group questioned the relationship of this proposal with the on-going text based negotiations, noting that there was clear mandate to concentrate work on the consolidated text. Developing countries noted that this proposal could lead to duplication of resources and distract from the work already being pursued.

A Proposal for the Terms of Reference for the Study by the WIPO Secretariat on Measures Related to the Avoidance of the Erroneous Grant of Patents and Compliance with Existing Access and Benefit Sharing Systems (WIPO/GRTKF/IC/23/6)was submitted by Canada, Japan, the Republic of Korea and the US. Japan in introducing the proposal said that the lack of fact based analysis had led to divergence of views with regard to mandatory disclosure which according to it was a relatively new concept and there was a need to gather evidence to support the new norm. Informal consultations are to be held on this issue.

A Joint Recommendation on the Use of Databases for the Defensive Protection of Genetic Resources and Traditional Knowledge Associated with Genetic Resources(WIPO/GRTKF/IC/23/7) submitted by Canada, Japan, the Republic of Korea and the US. The African Group and other developing countries again emphasized that the issue of databases was already being discussed in the consolidated text and there should be a focus on negotiating legal issues.

It was decided that the text on Genetic Resources as at the close of the session on Feb 8, 2013 would be transmitted to the WIPO General Assembly in September 2013 in accordance with the committee's mandate.

The next session of the IGC will be held **22-26 April 2013** and will focus on drafting a text for the protection of Traditional Knowledge.

SPECIAL SESSION OF THE STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS (SCCR)

A special session of the SCCR was held **18-22 February** to finalise outstanding textual negotiations on a treaty on Limitations and Exceptions for Visually Impaired Persons/Persons with Print Disabilities.

A preparatory committee meeting to consider outstanding issues related to the diplomatic conference to conclude this treaty was also held simultaneously on 22 February. The diplomatic conference will be held **17-23 June 2013** in Marrakesh, Morocco.

STANDING COMMITTEE OF THE LAW OF PATENTS (SCP)

The 19th session of the SCP was held from **25-28 February, 2013.** It was chaired by It was chaired by Vittorio Ragonesi, legal adviser for the Italian Ministry of Foreign Affairs. The Session had initially been scheduled for November, 2012.

WIPO Director General Francis Gurry in opening the Session highlighted that the SCP was the only multilateral platform for discussing matters affecting the patent system. He underlined the need for increased consensus and action with regard to the future work of the Committee, as this had proven to be particularly difficult in the past. During the last session of the SCP, delegates had been unable to reach an agreement on the future work of the Committee.

In their opening remarks, Regional Groups lamented the lack of progress that was achieved with regard to future work and underlined the need to progress on the substantive issues. The African Group highlighted importance of issues discussed in the SCP as they were directly related to social development, innovation and rules effecting the dissemination of knowledge. Group B underlined the need for a "balanced approach". The Development Agenda Group (DAG) said it was pleased that the Development Agenda (DA) was beginning to be part of the discussion, adding that harmonization of substantive patent law should not be addressed in the Committee.

Exceptions and Limitations to Patent Rights (SCP/14/7, SCP 18/3 and SCP/19/6)

Brazil tabled a new proposal (SCP19/6) which would initiate the second element of the three-phase work program proposed by Brazil – to assess what exceptions and limitations were effective to address development concerns and what were the conditions for their implementation. The Brazilian proposal stated that (i) WIPO should analyse the exceptions and limitations, based on responses received from a questionnaire circulated to members (ii) present this analysis at a seminar in the next session of the SCP. Chile, Argentina, African Group, India and some other members expressed support for the proposal.

It was decided with regard to Future Work in this area that (i) the WIPO secretariat would prepare a document, based on input received from member states, on how five exceptions and limitations were being implemented, without evaluating their

effectiveness[15] (ii) A half-day seminar as proposed by Brazil would be organized during the next session of the SCP on the five exceptions and limitations.

Quality of Patents, Including Opposition Systems (SCP/17/7, 8, 10, SCP/18/INF/2, SCP/18/INF/2 Add., SCP/18/9, SCP/19/4 and 5 and SCP/18/4)

Two new proposals were tabled under this topic: (i) proposal by Spain for the Improvement of Understanding of the Requirement of Inventive Step (SCP/19/5) which includes WIPO carrying out studies on the definition of a person skilled in the art; the methods employed to evaluate inventive step; differences in terms of the level of inventive step required (ii) proposal by US Regarding Efficiencies of the Patent System (SCP/19/4) which called for WIPO carrying out an inventory of work sharing programs between IP offices currently taking place and exploring ways and tools to further increase the usefulness of these programs, such as by determining best practices and conducting workshops.

The African Group reaffirmed its concern regarding the issue of quality of patents due to the absence of a precise definition "quality of patents" and the lack of a common understanding as to its meaning. It added that the Group was against any idea of harmonization of substantive patent law. India said that the requirement of sufficiency of disclosure was most relevant for improving the quality of patents. Group B highlighted the importance of the issue of quality of patents and expressed support for both of the proposals, adding that it was ready to establish a work program in this area.

It was decided that with regard to Future Work in this area that the secretariat would compile, based on information received from member states, of work sharing programs among patent offices and use of external information for search and examination.

Patents and Health (SCP SCP/16/7, SCP/16/7 Corr., SCP/17/11, SCP/18/5, SCP/18/INF/3 and SCP/18/INF/3 Add.)

The African Group urged future work in this area noting that its joint proposal with DAG (SCP/16/7 and 7 Corr.) had been on the table for three years and all three components of the proposal were yet to be implemented. The elements of the African Group/DAG proposed work plan on patents and public health include: (i) Elaboration of studies to be commissioned by the WIPO Secretariat to independent experts selected in consultation with SCP members; (ii) Information exchange among Member States and from leading experts in the field and (iii) Provision of technical assistance to Member States, and particularly developing countries and least developed countries (LDCs), in relevant areas, and building upon work undertaken in the first two elements of the work program.

Group B said that any future work in this area should take into account the following elements: (i) respect for the core mandate of SCP and WIPO (ii) avoidance of duplication of work currently being done in other fora and (iii) taking into account the most recent developments in the area of public health (such as the recently published Trilateral Study by the Secretariats of WTO, WHO and WIPO titled Promoting Access to Medical Technologies and Innovation: Intersection between Public Health, Intellectual Property and Trade). The EU also reiterated the need to adequately analyse existing projects before moving to identification of concrete patent related issues in this area. US said that it did not agree with the premise of the DAG/African Group proposal on Patents and Public Health that by removing patents and making full use of flexibilities, access to medicines will be improved. It added that patents did not prevent countries from taking measures with regard to public health. US has submitted its own proposal in this area (SCP/17/11) and in this context urged for a comprehensive study on the positive benefits of patents.

With regard to Future Work in this area it was decided a sharing session will be organized on countries' use of health–related patent flexibilities. The secretariat would prepare a summary document of the event during the session.

WHO, WIPO, WTO Study: Promoting Access to Medical Technologies and Innovation

The WTO, WIPO and WHO secretariats made a common presentation on the recently released trilateral study during the second day of the SCP. During the Q&A session after the presentation, the Asian Group queried what future projects could be expected on the basis of the Study. The African Group said that the mandate of the Study did not come out as being very clear and although there was reference to the WHO The Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, there was no mention of the WHO-ICTSD-UNCTAD Working Paper on Guidelines for the examination of pharmaceutical patents: Developing a public health perspective. Additionally, the Study did not look into structural and technical constraints faced by developing countries to use the flexibilities e.g. compulsory licenses. The African Group said that

[15] The five exceptions and limitations include private and/or non-commercial use; experimental use and/or scientific research; preparation of medicines; prior use: use of articles on foreign vessels, aircrafts and land vehicles.

it did not want the Trilateral Study to be an official document of the SCP and that it should remain as a reference document. It reiterated that the DAG/African Group proposal was not duplicative as the Trilateral Study did not address the legal and structural impediments faced by developing countries whilst making use of patent flexibilities or issues such as "ever greening".

DAG also noted that there was a need for the SCP to further explore alternative financing mechanisms for public health. Senegal said that the study could have been more "forward looking" with regard to constraints currently being faced by developing countries.

Confidentiality of Communications between Clients and Their Patent Advisors: Cross-Border Issues (SCP/18/6)

DAG said different approaches to this issue had emerged and the best approach would be for countries to define their own standards on this issue. The African Group also highlighted that it was not in favour of exercising any voluntary standards and this issue went beyond the scope of the SCP and into the realm of civil procedure and evidence.

Group B was strongly in favour of further work on this topic based on a soft law approach with non-binding minimum standards

With regard to Future Work in this area it was decided that the secretariat would prepare for the next session of the SCP, a document compiling laws, practices and experiences relating to the issue of confidentiality of communications between clients and their patent advisors based on information received from member states. The secretariat would also make a presentation during the next session on this issue.

Transfer of technology: patent-related impediments (SCP/18/7 and 8)

The African Group referred to a document prepared by the Secretariat on "Patents and transfer of technology: examples and experiences" (SCP/18/8) noting that the study did not explore how patents could be obstacles to the transfer of technology. It added that the current discussion did not overlap with that in the CDIP. DAG also reiterated that the mere existence of patent system did not imply automatic transfer of technology.

Group B noted that technology transfer was affected by a number of elements but there was a need to focus on the mandate of the SCP and further work could only be determined once the five projects on technology transfer in CDIP had been completed.

With regard to Future Work in this area it was decided that the secretariat would revise document SCP 18/8 "Patents and Transfer of Technology: Examples and Experiences" by adding further practical examples and experiences on patent –related incentives and impediments to the transfer of technology on the basis of inputs received from members, taking into account the dimension of absorptive capacity in technology transfer.

Intensive informal consultations were held during the last two days of the SCP on the future work of the Committee. The core of the discussion focused on the issues of Quality of Patents and Patents and Health which were areas of divergent views. The final Chair's summary shows that future work although limited had been determined in all areas on the agenda. The summary also mentioned that "Without prejudice to the mandate of the SCP, the Committee agreed that its work for the next session would be confined to fact-finding and not lead to harmonization at this stage" This is key as developing countries hold the position that any future work in the SCP should not lead to the harmonisation of national patent systems.

The exact date for the 20th session of the SCP will be determined at a later stage but is expected to be held either during the week of October 28, November 25, or December 9, of this year.

FUTURE WIPO MEETINGS

Inter - sessional Meeting on the Protection of Broadcasting Organizations will be held from **10-12 April 2013.**

The Committee on WIPO Standards (CWS) will meet from **15-19 April 2013.**

An Informal Session and Special Session of the Standing Committee on Copyright and Related Rights will be held from **18-20 April 2013.**

The Preparatory Committee of the Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities will meet on **April 20, 2013.**

The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore will meet from **22-26 April 2013.**

The Committee on Development and Intellectual Property (CDIP) will be held from **13-17 May 2013.**

The Patent Cooperation Treaty (PCT) Working Group will meet from **21-24 May 2013.**

The Seventh Global Congress on Combating Counterfeiting and Piracy was held from **24-26 April 2013** in Istanbul, Turkey.

The Second WIPO Inter-Regional Meeting on South-South Cooperation on Patents, Trademarks, Geographical Indications, Industrial Designs and Enforcement was held on **6-8 May 2013** in Cairo, Egypt.

INTERNATIONAL UNION FOR THE PROTECTION OF PLANT VARIETIES (UPOV)

UPOV COUNCIL[16]

The Thirtieth Extraordinary Session of the UPOV Council which is the highest body within the UPOV system took place on **22 March 2013.**[17]

During the meeting, the Council welcomed the adoption of the Plant Breeders' Rights Act for Mainland Tanzania on November 5, 2012. The Council decided that the Plant Breeders' Rights Bill for Zanzibar, subject to certain modifications, was in conformity with the provisions of the 1991 Act of the UPOV Convention. The Council noted that, once the Draft Law for Zanzibar was adopted, breeders' rights would cover the whole territory and the United Republic of Tanzania could become a UPOV member.

The Council adopted the revision of documents UPOV/INF/4 "Financial Regulations and Rules of UPOV" and UPOV/INF/15 "Guidance for Members of UPOV on Ongoing Obligations and Related Notifications and on the Provision of Information to Facilitate Cooperation".

The Council endorsed the organization of a public Seminar on Essentially Derived Varieties (EDVs), to be held in Geneva on October 22, 2013, to consider technical and legal views on EDVs and the possible impact on breeding and agriculture, existing experience in relation to EDVs, and the possible role of future UPOV guidance on EDVs in cases before the courts.

The next Council meeting will take place on **24 October, 2013**.

ADMINISTRATIVE AND LEGAL COMMITTEE

The sixty-seventh session of the Administrative and Legal Committee was held on **21 March 2013**.[18]

The agenda of the committee included the development of information materials concerning the 1991 Act of the UPOV Convention (documents CAJ/67/2 and CAJ-AG/12/7/6) which included Explanatory Notes on the Definition of Breeder, Acts in Respect of Harvested Material and Essentially Derived Varieties.

The next Administrative and Legal Committee meeting will take place on **21 and 22 October, 2013**.

CONSULTATIVE COMMITTEE

The 85th session of the Consultative Committee took place on **March 22, 2013**. The meeting was open only to UPOV members and not to observers.

The next Consultative Committee meeting will take place on **23 October, 2013.**

WORLD HEALTH ORGANIZATION (WHO)

WHO EXECUTIVE BOARD MEETING[19]

The WHO Executive Board's 132nd session took place in Geneva from **21 to 29 January 2013**.[20]

The Executive Board is composed of 34 technically qualified members elected for three-year terms to agree upon the agenda for the World Health Assembly and the resolutions to be considered by the Health Assembly.

Substandard/spurious/falsely labelled/ falsified/ counterfeit medical products: report of the Working Group of Member States.

The EB discussed the report of the first meeting held in Buenos Aires 19 to 21 November 2012 on the member state mechanism for the prevention and control of substandard/spurious/falsely labelled/falsified/counterfeit (SSFFC) medical products.[21]

The mechanism was constituted by the 65th World Health Assembly (WHA), and is mandated with the fight against SSFFC medical products as a means to protecting public health and promoting access to affordable, safe, and efficacious and quality medical products.

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16 http://www.upov.int/meetings/en/details.jsp?meeting_id=28344

17 http://www.upov.int/export/sites/upov/news/en/pressroom/pdf/pr94.pdf

18 http://www.upov.int/edocs/mdocs/upov/en/caj_67/caj_67_1_rev_with_links.pdf

19 http://www.who.int/mediacentre/events/2013/eb132/en/index.html

20 The Executive Board is composed of 34 members technically qualified in the field of health. Members are elected for three-year terms.

21 http://apps.who.int/gb/ebwha/pdf_files/EB132/B132_20-en.pdf

It was decided that the first meeting of the steering committee will take place before the WHA in May, and comments made by member states at the Executive Board will be taken into account at this meeting. The committee will be chaired by Brazil.

Follow-up of the report of the Consultative Expert Working Group on Research and Development: Financing and Coordination Document (CEWG)

The EB discussed the report of the CEWG which met in Geneva from 26 to 28 November 2012, including a draft resolution, agreed by consensus.[22] A number of developing countries are seeking to strengthen the language in the November action plan, which urges members to take actions but does not commit them to it. But this was seen by developed countries as an attempt to reopen the consensus document from November, and that document states that it cannot be reopened. It was decided after heated debate to send it on to the May Assembly to be decided there whether to open it. [23]

A second shorter meeting of the Executive Board will be held in May, immediately after the Health Assembly in order to give effect to the decisions of the Health Assembly.

FUTURE WHO MEETINGS

The Sixty-sixth World Health Assembly will take place in Geneva from **20 to 28 May 2013.**

The WHO Regional Committees will meet in 2013 to set policy and approve budgets and programmes of work for each of the six WHO regions between **2 September and 30 October 2013.**

FOOD AND AGRICULTURE ORGANIZATION (FAO)

INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE (ITPGRFA)

The resumed meeting of the Seventh Ad Hoc Advisory Committee on the Funding Strategy took place **26-27 March** in Geneva**.** The Ad Hoc Advisory Committee has been mandated by the Governing Body of the International Treaty to advise on resource mobilization efforts; the Benefit-sharing Fund; the monitoring of the implementation of the overall Funding Strategy and search for ways to make the operations of the Committee as cost-effective as possible.[24]

FUTURE ITPGRFA MEETINGS

The Third High-level Roundtable on the International Treaty will be held on **2 July, 2013** in Bandung, Indonesia.

The High-level Policy Dialogue on the International Treaty will be held on **1 July, 2013** in Bandung.

The First Meeting of the Compliance Committee will be held **20-22 April, 2013** (Venue TBC).

The Resumed meeting of the Third Ad Hoc Technical Advisory Committee on the Standard Material Transfer Agreement and the Multilateral System will be held on **12 April, 2013** in Rome.

CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

The First Regional Workshop for African Least Developed Countries on the preparation of the Fifth National Report and Global Biodiversity Outlook and regional policy scenarios was held **28 January - 1 February 2013 in** Nairobi, Kenya.

FUTURE CBD MEETINGS

The Expert Meeting to Develop a Draft Strategic Framework for Capacity-building and Development in Support of the Effective Implementation of the Nagoya Protocol on Access and Benefit-sharing will be held **3 - 5 June 2013** in Montreal.

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)

FUTURE UNFCCC MEETINGS

The second session of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP 2) will be held from **29 April - 3 May 2013** in Bonn, Germany.[25]

The Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) is a subsidiary body that was established by the Conference of Parties to develop a protocol, another legal instrument or an agreed outcome with legal force under the Convention applicable to all Parties. The ADP is to complete its work as

[22] http://apps.who.int/gb/ebwha/pdf_files/EB132/B132_21-en.pdf
[23] http://www.ip-watch.org/2013/01/28/debate-erupts-at-who-over-consensus-on-financing-rd-for-the-poor/
[24] http://www.planttreaty.org/content/seventh-ad-hoc-advisory-committee-funding-strategy
[25] http://unfccc.int/meetings/bonn_apr_2013/session/7387.php

early as possible but no later than 2015 in order for legal text to be adopted at the twenty-first session of the Conference of the Parties and for it to come into effect and be implemented from 2020.

INTERNATIONAL TELECOMMUNICATION UNION (ITU)

The Fifth World Telecommunication/ICT Policy Forum will be held in from **14 to 16 May 2013** in Geneva.[26] The Forum is a high-level international event where ITU Members from government, industry and the global regulatory community exchange views on the key policy issues arising from today's fast changing information and communication technology (ICT) environment.

Some of the themes of discussion in the working groups include: Promoting Internet Exchange Points (IXPs) as a long term solution to advance connectivity; Supporting Multi-stakeholderism in Internet Governance and fostering an enabling environment for the greater growth and development of broadband connectivity.

In accordance with past practice, a Strategic Dialogue Session will be held on the day before the opening of the WTPF 2013 on **13 May, 2013**. The Strategic Dialogue builds on the positive vision of the importance of broadband as a basic platform for progress and explores issues of the benefits of broadband, the rationale for regulation and our network future.

WORLD CUSTOMS ORGANIZATION

WCO AND WHO STRENGTHEN COOPERATION TO FIGHT ILLICIT TOBACCO TRADE

WCO and WHO signed a Protocol at WHO Headquarters on **10 January 2013**, where 12 Contracting Parties to the WHO FCTC – China, France, Gabon, Libya, Union of Myanmar, Nicaragua, Panama, Republic of Korea, South Africa, Syrian Arab Republic, Turkey and Uruguay – signed the instrument in the presence of various guests, including representatives from the WCO and the United Nations Office on Drugs and Crime (UNODC), the WHO FCTC Secretariat's two international partners.[27]

The Protocol is aimed at combating illegal trade in tobacco products through control of the supply chain and enhanced international cooperation, thereby protecting people around the world from the health risks of tobacco, ensuring that all Customs, excise and other tax revenues due are collected and accounted for, and reducing the burden on national health systems.

The Protocol will come into force 90 days after the 40th WHO FCTC Contracting Party has ratified it.

Conference on the Illicit Trafficking of Fraudulent Medicines was held at the Vienna International Centre on **14 February 2013**.

The Third Arab Forum on Anti-Commercial Fraud, Counterfeiting and Intellectual Property Rights Protection was held **3 to 6 March, 2013** in Riyadh, Saudi Arabia.

FUTURE WCO MEETINGS

The 7th Global Congress on Combating Counterfeiting and Piracy will be held from **24 to 26 April, 2013** in Istanbul.[28] The event is organised by the World Customs Organization (WCO), the World Intellectual Property Organization (WIPO) and INTERPOL, in partnership with the International Trademark Association (INTA) and the International Chamber of Commerce / Business Action to Stop Counterfeiting and Piracy (ICC/BAS).

TRANS-PACIFIC PARTNERSHIP AGREEMENT (TPP)

The 16th round of Trans-Pacific Partnership Agreement talks was held in Singapore from **4 to 13 March, 2013.** The Trans-Pacific Partnership (TPP) is a proposed regional free trade agreement (FTA) being negotiated among the United States, Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam. On March 15, 2013, Japanese Prime Minister Shinzo Abe announced that Japan would seek to participate in the TPP negotiations.

One day of formal stakeholder engagement took place on 6 March 2013 with over 300 stakeholders attending.

Twenty-nine chapters in the Agreement are under discussion including a chapter on Intellectual Property protection. The IP discussions during the 16th round focused on enforcement issues, including civil and administrative procedures, criminal penalties, border measures and provisional measures. With six of the eleven negotiating parties being countries that negotiated the Anti-Counterfeiting Trade Agreement (ACTA), there appeared to be support for using ACTA as a

[26] Agenda of the Forum: http://www.itu.int/en/wtpf-13/Pages/programme.aspx:

[27] http://www.wcoomd.org/en/media/newsroom/2013/january/wco-and-who-strengthen-cooperation.aspx

[28] http://www.wcoomd.org/en/events/upcoming-events/global-congress.aspx

compromise for the enforcement sections. Australia, Canada, Mexico, New Zealand, Singapore and the United States all participated in the negotiations for ACTA.[29]

Although patents and pharmaceutical texts were not part of the negotiations during this round, the IP negotiators reportedly exchanged views on pharmaceuticals during one morning session. This exchange of views reportedly took place because Canada and Mexico are new entrants (their first round participating in negotiations took place in December 2012 in Auckland, New Zealand) and have not yet discussed patents or pharmaceuticals. Negotiating parties explained how pharmaceuticals are treated in their countries' systems, with some reporting a focus on Canada and Mexico presenting on their domestic systems.

The current goal is to reach an agreement in time for the October 2013 APEC Leaders' summit in Indonesia.

FUTURE TPP DATES

The 17th round of negotiations will be held in Lima, Peru from 15 to 24 May, 2013.

FREE TRADE AGREEMENTS

EU-US FTA (TRANSATLANTIC PARTNERSHIP)

In a letter dated **March 20, 2013** the USTR notified the US Congress of its intention to enter into negotiations with the European Union (EU) on the Transatlantic Trade and Investment Partnership (TTIP), "a comprehensive trade and investment agreement". If concluded, this would be the world's biggest FTA. According to the European Commission, the EU and US economies account together for around half the entire world GDP and for nearly a third of world trade flows. Total US investment in the EU is three times higher than in all of Asia. EU investment in the US is around eight times the amount of EU investment in India and China together.

The objectives of the USTR with regard to Intellectual Property are as follows:

"Seek to obtain, consistent with U.S. priorities and objectives, appropriate commitments that reflect the shared U.S.-EU objective of high-level IPR protection and enforcement, and to sustain and enhance joint leadership on IPR issues."

"Seek new opportunities to advance and defend the interests of U.S. creators, innovators, businesses, farmers, and workers with respect to strong protection and effective enforcement of intellectual property rights, including their ability to compete in foreign markets."

Civil society groups have issued a declaration[30] which calls for "the European Union and United States (to) release, in timely and on-going fashion, any and all negotiating or pre-negotiation texts." The declaration also calls for "the proposed TAFTA (or TTIP) (to) exclude any provisions related to patents, copyright, trademarks, data protection, geographical indications, or other forms of so-called "intellectual property". It adds that "Such provisions could impede our rights to health, culture, and free expression and otherwise affect our daily lives."

INDIA – EUROPEAN UNION FREE TRADE AGREEMENT

Outstanding issues still remain in the EU-India FTA with EU demanding among others a stricter intellectual property regime.[31]

With regard to the negotiations on IP protection, a recently leaked text shows stringent conditions for IP protection which would seem to go beyond the protection required under the TRIPS Agreement. According to Knowledge Ecology International (KEI), one issue is that the provision on damages in the draft negotiating text eliminates the flexibility in TRIPS (Article 44.2) and ACTA (8.2) to eliminate injunctions in certain cases, including where a liability rule is preferred.[32] This is quite important because it is the best legal basis in TRIPS to create liability rules for intellectual property rights. The EU is also pushing for explicit language on the "precautionary seizure of the movable and immovable property of the alleged infringer, including the blocking of his/her bank accounts and other assets. To that end, the competent authorities may order the communication of bank, financial or commercial documents, or appropriate access to the relevant information."

Another issue raised from the leaked text includes border measures. According to KEI, while the TRIPS Agreement only requires border measures to apply to imported infringing goods, in Article 30(1) of the negotiating text, the EU has proposed its application to exportation, as well. The EU would also expand the availability of border measures from counterfeit trademarked or pirated copyright goods to also include "goods infringing designs or geographical indications." India, in Article 30(2) seeks to explicitly exclude in-transit

[29] http://keionline.org/node/1684

[30] http://www.citizen.org/IP-out-of-TAFTA

[31] http://www.thehindubusinessline.com/economy/india-eu-free-trade-pact-still-far-from-finish-line/article4595455.ece?homepage=true&ref=wl_home

[32] http://keionline.org/node/1681

goods from application of border measures. The EU has proposed in Article 30(3) a broad "cooperation" provision with regard to exchange of information between customs officials. Any requirement of application of border measures to in-transit or exported goods is a clear TRIPS-plus measure (notably, the US has proposed border measures to apply to imports, exports, and in-transit goods). Article 30 also leaves out TRIPS safeguards, such as requiring the right holder to provide "adequate evidence" that a prima facie case of infringement exists. One positive aspect of the current negotiating text, however, is the absence of a demand that customs officials can act ex-officio, a proposal that has been made by the US in the TPPA.[33]

Another round of negotiations is expected from April 15, 2013 onwards. India and EU have been negotiating the bilateral free trade agreement since mid-2007.

EU-THAI FREE TRADE AGREEMENT

The first round of negotiations between Brussels and Bangkok will begin in **late May, 2013** and are expected to last for 18 months.[34] The EU is Thailand's second-largest trading partner after ASEAN. Bilateral trade between the two partners accounted for US$35 billion in 2010.Thailand is slated to graduate from the Generalised System of Preferences in 2015.

Intellectual Property may be seen as a contentious issue in the negotiations and Thai citizens have already protested that the EU could violate the WTO Doha Declaration by imposing TRIPs plus provisions in FTA negotiations, affecting access to essential medicines at affordable prices by extending patents.EU office sources said the EU was hoping to rectify some discrepancies in Thai government procurement systems for pharmaceuticals including pricing systems and fake products.

NATIONAL DEVELOPMENTS

LANDMARK DECISION FROM INDIA'S SUPREME COURT ON NOVARTIS PATENT CASE

On **1 April, 2013** the Indian Supreme Court dismissed the Swiss drug maker Novartis AG's appeal for a patent for its cancer drug marketed by Novartis as Gleevec in the United States, and Glivec elsewhere.

[33] http://keionline.org/node/1693
[34] http://www.bangkokpost.com/business/news/344446/signs-of-progress-as-fta-talks-loom

STATEMENT BY THE SOUTH CENTRE

The ruling by the Supreme Court of India dismissing the petition from Novartis AG is a historic decision with positive global implications. Novartis had challenged the interpretation given by the Indian Patent Office to Section 3 (d) of the Patents Act that seeks to prevent the grant of patents on non-inventive new forms of known medicines. The Novartis AG application had claimed a patent for a new salt form (imatinib mesylate), a medicine for the treatment of chronic myeloid leukemia. Novartis sells this medicine in several countries under the brand name Glivec (Gleevec). The Indian patent office had rejected the patent application on the ground that the claimed new form was anticipated in a US patent of 1996 for the compound imatinib and that the new form did not enhance the therapeutic efficacy of the drug. The decision was upheld by the Indian Patents Appellate Board (IPAB).[35]

The legal challenge from Novartis had alarmed patients groups, governments of developing countries and some international organizations in view of the possible negative implications for access to affordable medicines for patients in those countries if the petition of Novartis were to be allowed by the Supreme Court. Most developing countries strongly rely on Indian generic pharmaceutical companies for the supply of affordable medicines. Any weakening of section 3 (d) would have enabled multinational pharmaceutical companies to extend their patent monopolies based on frivolous incremental improvements which –as in the case of imatinib- could delay the generic supply of essential medicines for the treatment of HIV/AIDS and other diseases.

In this context, the decision by the Indian Supreme Court is very significant. In interpreting section 3 (d), the judgment took into account the legislative history of Section 3(d). The Supreme Court observed that this section was introduced in the Patents Act by the 2005 Amendment to ensure that while India allowed product patents on medicines in accordance with its TRIPS obligations, it did not compromise public health through 'evergreening' of pharmaceutical patents.

The Court, hence, took into account the concerns about the impact of TRIPS on public health and on the development of an indigenous pharmaceutical industry. Moreover, it considered the implications of the Novartis case for the availability of essential medicines at affordable

[35] Martin Khor, Statement By South Centre On Supreme Court Judgment On Novartis Patent Case http://www.southcentre.org/index.php?option=com_content&view=article&id=1950%3Asouth-centre-hails-indian-drug-patent-decision-3-april-2013&catid=149%3Asouthnews&Itemid=355&lang=en

prices globally. The Supreme Court decision fully reproduced two letters from Dr. Jim Yong Kim, the former Director of the Department of HIV/AIDS at WHO (current President of the World Bank) and from UNAIDS to the Indian Minister of Health and Family Welfare expressing the concerns relating to the continuous availability of affordable drugs supplied by Indian firms in other developing countries.

Thus, the decision by the Supreme Court of India has significant positive global implications. It has effectively protected the leading role of India in supplying affordable medicines to other developing countries. The reaffirmation of the primacy of health and access to medicines as a right of citizens is particularly important for the international community when these rights are under significant threat under bilateral trade and investment agreements. This decision is a triumph for all developing countries which will be able to continue importing affordable essential generic medicines from India. Developing countries can benefit further by emulating the Indian approach towards balancing patents and public health by discouraging evergreening. Finally, this decision also shows the importance of public health sensitivity in the judiciary in determining disputes on pharmaceutical patents.

INDIA: BAYER COMPULSORY LICENCE

On **4 March, 2013** India's Intellectual Property Appellate Board (IPAB) upheld the country's first compulsory licence on a pharmaceutical product. In March 2012, a compulsory licence was issued to Hyderabad-based Natco Pharma Ltd, an Indian generic drug manufacturer, which sells a much cheaper version of German pharmaceutical company Bayer AG's kidney and liver cancer drug Nexavar in the market. Bayer appealed in September 2012 and, following hearings in January this year, the IPAB rejected the German company's efforts but increased the 6 per cent royalty rate by 1 per cent.[36]

Bayer said in a statement that the company strongly disagreed with the ruling, confirming that it will appeal to the High Court in Mumbai by filing a writ petition.

The Indian Controller of Patents had issued the compulsory licence in 2012 under section 92 of the Indian Patents Act, saying Bayer had not made Nexavar publically available at a reasonably affordable price or manufactured the drug sufficiently in India.

[36] http://www.worldipreview.com/news/india-rejects-bayer-plea-over-compulsory-licence