

IP NEGOTIATIONS MONITOR

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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)

TRIPS Council

Meeting of 28 – 29 October 2014

The TRIPS Council met on **28-29 October 2014** in Geneva, Switzerland. Ambassador Mr Mothusi Palai from Botswana was elected as Chairperson.

The meeting addressed several issues including biodiversity and traditional knowledge, plain packaging for tobacco and non-violation complaints. Below is a summary of the key issues and outcomes of this meeting of the TRIPS Council:

Biodiversity and Traditional Knowledge

The Council continued its discussions on IP and biodiversity, addressing three topics in conjunction: (1) the relationship between TRIPS and the Convention on Biological Diversity (CBD) (2) the review of Article 27.3(b) of the TRIPS Agreement on the patentability of life forms and (3) the protection of traditional knowledge and folklore.

Members' views remained unchanged. The main divisive element is whether the TRIPS Agreement needs to be amended to require the disclosure of origin of genetic resources and the associated traditional knowledge. Differences also remain the same on whether the CBD Secretariat should be allowed as observer the Council, or to brief the Council on an ad hoc basis on the outcome of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the CBD.

Annual review of the "Paragraph 6 System"

The annual review of the "Paragraph 6 System" also took place during the meeting. The Paragraph 6 System aims to provide a solution for countries that are unable to manufacture pharmaceuticals themselves, by allowing such countries import of generics under compulsory licensing and for third countries that can manufacture, to export under compulsory licensing for this purpose. Some developing countries indicated that the conditions to make use of the system are complex, as was demonstrated by the system only being used once (i.e. Canada-Rwanda). Others also reiterated the need of organising a workshop to discuss this subject matter.

The current Paragraph 6 system is in the form of a waiver. It will become a TRIPS Agreement when 2/3 of the membership deposit their instruments of acceptance.

Intellectual Property and Innovation

Members shared their views on IP and innovation, in particular on how universities, other institutions, inventors and companies can work together to produce socially and environmentally useful goods and services. Some countries stated the importance that collaboration has as a means to transfer technology.

Ecuador, Panama, Japan, Chile, Canada, Hong Kong China, Chinese Taipei, El Salvador and Australia shared their experiences. Additionally, India and Brazil mentioned that the use of patents also creates profits and monopoly rights.

In parallel to the Council, an innovation fair organised by Switzerland, the EU, the US and Mexico took place at the WTO.

Plain Packaging for Tobacco

The countries involved in legal disputes with Australia over plain packaging for tobacco products, i.e. Ukraine, Honduras, Dominican Republic, Cuba and Indonesia, urged other Member States planning similar measures to wait until the dispute ruling is published before introducing their own laws (conclusions of the panels would not be published until second half of 2016). Supported by Zimbabwe and Nicaragua, they repeated the argument that plain packaging fails to reduce smoking.

Ukraine referred to the bill that is currently in New Zealand's parliament and mentioned plans for similar rules in Ireland, the UK, France and Finland. On the other hand, Australia mentioned that countries do not need to wait for the cases' resolution in order to establish their legislations.

Furthermore, Australia, New Zealand, Norway, Canada, Uruguay, and the EU, together with the World Health Organization (WHO), supported the importance of plain packaging as a tool to reduce smoking.

Annual Review under Paragraph 2 of the Decision on the Implementation of Article 66.2

The TRIPS Agreement in Article 66.2 requires developed countries to provide incentives to their firms and institutions to transfer technology to least developed countries (LDCs). Accordingly, developed countries must submit annual reports on actions taken in fulfilling these commitments. They must provide detailed reports every third year and, in the intervening years, provide updates to their most recent reports.

The reports submitted have been criticized by LDCs and other developing countries for failing to provide detailed information or information that is

not directly relevant to the content of Article 66.2, but rather to technical assistance for TRIPS implementation or development aid. The lateness or incomplete submissions have also caused concern. For the recent annual review, the European Union only submitted a progress report as a meeting document, whereas the reports are due for submission months ahead to allow adequate discussion and questions.

The LDC group has proposed improvements to the format for reporting, though no new changes have been adopted.

Non-violation Complaints

Non-Violation complaints occur in the WTO when a Member State challenges the legality of the measures taken by another country that has not explicitly violated an agreement or broken a commitment. In these complaints the challenging party asserts that it has been deprived of its expected benefits.

A moratorium on non-violation complaints – prohibiting their use – with respect to intellectual property has been in existence since the TRIPS agreement came into force. Member States have continued to disagree about whether these types of complaints should be allowed in intellectual property. The moratorium has been extended at every WTO Ministerial Conference. In December 2013, as per a recommendation by the TRIPS council, the Bali Ministerial Conference extended the moratorium on non-violation and situation complaints until 31 December 2015.

Members' expressed their known positions on this subject. The US and Switzerland argued that non-violation disputes should be allowed and that a consensus is only needed to extend the moratorium. Conversely, Venezuela, Brazil, India, Cuba, Ecuador, Colombia, China, Argentina, Chile, Bolivia, Rep. Korea, Chinese Taipei, Canada, New Zealand, Bangladesh, Egypt, Nigeria on behalf of the African Group, Hong Kong China, and Nepal, repeated that these cases have no place in intellectual property because the TRIPS Agreement is not about market access.

Working Group on Trade and Transfer of Technology (WGTTT)

The 47th session of the Working Group on Trade and Transfer of Technology was held on **4 November 2014** in Geneva, Switzerland. The meeting was chaired by Mr. Ismael Ortiz Fernández of Mexico due to the absence of the current Chairman Ambassador Abdolazeez S. Al-Otaibi (Saudi Arabia).

The Working Group, established by the Doha Ministerial Declaration (WT/MIN(01)/DEC/1), has the mandate to examine the relationship between trade and transfer of technology, and provide any possible recommendations on steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. To date, the Working Group has not agreed to any recommendations.

Analysis of the relationship between trade and transfer of technology

The Chairman invited Members to engage in further discussions with regard to the results of the Workshop on Trade and Transfer of Technology that took place in June 2014. However, no Members took the floor under this item.

To recall, the workshop was based on a proposal by Colombia, Costa Rica, Mexico and Peru (WT/WGTTT/W/19/Rev.2) aimed at enhancing Members' understanding of issues related to the nexus between trade and technology transfer. During the debates that resulted from the workshop, some Members mentioned the relevance of a proposal on the contribution of intellectual property to facilitating the transfer of environmentally rational technology that was presented by Ecuador (IP/C/W/585/Rev.1) in the TRIPS Council in 2013. There was also mention to the proposal by India, Pakistan and the Philippines in 2007 (a revised version of their earlier submission WT/WGTTT/W/10).

Future work

The WGTTT will continue to examine the relationship between trade and transfer of technology and its relevance to the development dimension of the Doha Development Agenda.¹

Future WTO Meetings

The meetings of the TRIPS Council for **2015** are expected to take place on **24–25 February, 9–10 June** and **15–16 October 2015**, in Geneva Switzerland.

The Tenth Ministerial Conference of the WTO will be held from **15-18 December 2015** in Nairobi, Kenya.

¹ WT/WGTTT/16.

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Standing Committee on the Law of Patents (SCP): Twenty-First Session

The Standing Committee on the Law of the Patents (SCP) held its 21st session from **3-7 November 2014** in Geneva, Switzerland. The meeting was chaired by Mr Mokhtar Warida from Egypt. In addition, Mrs Bucura Ionescu (Romania) and Mr Victor Portelli (Australia) were elected as ad hoc Vice-Chairs of SCP21.

The discussions were focused on exceptions and limitations to patent rights, patents and health, quality of patents, confidentiality of advice from patent advisors, and patents and transfer of technology. The objective of discussions in the SCP is to develop a work program for the SCP on patent law related issues.

The session included a seminar on exceptions and limitations to patent rights, during which the Secretariat presented information received from member states², on how exceptions are being implemented as they relate to:

- i. Acts for obtaining Regulatory Approval from Authorities
- ii. Compulsory Licenses and/or Government Use
- iii. Farmers' and/or Breeders' Use of Patented Inventions
- iv. Exhaustion of Patent Rights

Member States also shared their national experiences. Brazil, Ecuador, Tanzania and Japan made comments on this matter.

With regards to quality of patents, including opposition systems, there was a sharing session regarding Member States' experiences on international work-sharing and collaboration. Australia, United Kingdom, Japan and United States made presentations, while other Member States also shared their experiences.

Developing countries such as Brazil, India, Egypt, Argentina, Chile and Iran, among others highlighted the importance of exceptions and limitations in patent law. They suggested that the Secretariat prepares more detailed studies on this issue.

Under the agenda item on Patents and Health, Member States presented their views with regards to the following studies prepared by the Secretariat: (i) Study on the Role of Patent Systems in Promoting Innovative Medicines, and

in Fostering the Technology Transfer necessary to Make Generic and Patented Medicines available in Developing Countries and Least Developed Countries³, and (ii) Feasibility Study on the Disclosure of International Non-proprietary Names (INN) in Patent Applications and/or Patents⁴. Japan, on behalf of Group B, as well as the EU highlighted the role of patent protection in pharmaceutical innovation. Kenya, on behalf of the African Group, noted that innovation is not an end itself but something that serves the public interest. Additionally, a representative of the WHO highlighted that the patent system does not provide incentives for innovation for diseases in poor countries.

Furthermore, extensive discussions took place with regards to the disclosure of INN in patent applications. An INN is a generic name that identifies a pharmaceutical substance or an active pharmaceutical ingredient. While developed countries emphasised that disclosing INN should not be a requirement, developing countries seek that the SCP agree to recommend that INN information to be included in patent applications to facilitate the prior art search process.

Moreover, a Seminar on the Confidentiality of Advice from Patent Advisors also took place during the SCP21.

As regards the agenda item on transfer of technology, discussions were based on the study on Patents and Transfer of Technology: Further Practical Examples and Experiences prepared by the Secretariat⁵. Whereas developing countries focused their interventions on the need to analyse patent-related impediments to technology transfer, developed countries preferred to mandate the Secretariat to compile information on the role of voluntary licenses. There was no consensus on the issues to be pursued by the Committee in the future.

Future Work

After days of informal consultations, Member States could not agree on the committee's future work. Developed countries were interested in deepening the SCP's agenda on substantive law patent issues related to work-sharing and collaboration as well as quality of patents. On the other hand, developing countries called more work to be done on patents and health, technology transfer and exceptions and limitations to patent rights. It should be noted that quality of patents is a topic of interest of both groups of countries but with a different approach. On the

² See documents SCP/21/3 – 7, prepared by the Secretariat: http://www.wipo.int/meetings/en/details.jsp?meeting_id=32102.

³ SCP/21/8

⁴ SCP/21/9

⁵ SCP/21/10

last day the Chair presented a draft summary of the discussions.⁶

From an extensive list of almost thirty topics, countries shortened the list but no consensus was reached on its content in order to make a final decision. As a result, only the two studies that have been previously agreed in SCP20 will be conducted for their presentation in SCP22, namely: (a) a study on inventive step that contains the following elements: the definition of the person skilled in the art, methodologies employed for evaluating an inventive step and the level of the inventive step; and (b) a study on sufficiency of disclosure that contains the following elements: the enabling disclosure requirement, support requirement and written description requirement.⁷ As agreed by Member States, the studies will be based on the information provided by Member States, and will be a collection of factual information without analysis or recommendation.

Last but not least, the delegation of Paraguay speaking on behalf of the Group of countries of Latin America and Caribbean (GRULAC) suggested that the Secretariat prepare draft modalities and terms of reference for the revision of the WIPO Model Law for Developing Countries on Inventions of 1979. Since the proposal did not find any objection from Member States, the Chair noted that it could be discussed in SCP22.

Committee on Development and Intellectual Property (CDIP): Fourteenth Session

The 14th Session of the Committee on Development and Intellectual Property (CDIP) was held from **10-14 November 2014** in Geneva, Switzerland. The meeting was chaired by Ambassador Mohamed Siad Doualeh from Djibouti.

The main outcomes of the session were the finalisation of the Terms of Reference for the Independent Review of the Implementation of the Development Agenda Recommendations, and the consensus reached concerning procedural matters for the Secretariat to organise The International Conference on Intellectual Property and Development.

As regards the Terms of Reference (ToR) for the Independent Review of the Implementation of Development Agenda Recommendations, due to the lack of agreement in the Plenary, informal consultations were held. After some informal meetings, Member States could finally reach consensus on the ToR that were discussed for long time in the CDIP.

Member States also presented their views on the

Concept Paper for the Project on Intellectual Property and Technology Transfer: Common Challenges - Building Solutions (Recommendations 19, 25, 26 and 28) that was prepared by the Secretariat. Following the inclusion of some modifications, Member States approved it. The Concept Paper will provide the basis for the discussions at the High Level International Expert Forum that will take place in January 2015.

Concerning the International Conference on IP and Development, after informal consultations and following a proposal presented by the Group of countries from Latin America and Caribbean (GRULAC), a compromise solution was achieved. The main difference between Member States was in relation to the role that the Secretariat should have in selecting the speakers for the conference. It was agreed that the Secretariat will finalise the list of speakers taking into consideration proposals made by Member States. The Conference will take place at the margin of CDIP16.

Concerning other long-standing issues of the CDIP's agenda, no agreement could be reached. Member States' position remained unchanged on several key agenda items. The Committee was unable to reach an agreement regarding the scope of the Coordination Mechanism, which mandates that all WIPO bodies report on their contributions to the implementation of the WIPO Development Agenda. In particular, the question of whether WIPO's Program and Budget Committee (PBC) as well as the Committee on WIPO Standards (CWS) should be required to report on their contributions to the implementation of the Development Agenda Recommendations remained unresolved. Member States also remained divided regarding a Development Agenda Group (DAG) proposal to create a standing agenda item on IP and development related issues in the CDIP.

Similarly, no decision was taken regarding the implementation of recommendations from the external review of WIPO's technical assistance, which was conducted between 2008 and 2010.

Finally, the project proposal on IP and Tourism submitted by Egypt was also part of informal consultations given the lack of agreement between Member States. The main division remains on the protection of cultural heritage.

The CDIP15, in addition to the evaluation and progress reports of the projects being implemented, will also address longstanding issues that include the implementation of recommendations stemming from the external review of WIPO's technical assistance under discussion since 2011, the decision of the General

⁶ SCP/21/11 REV.

⁷ SCP/20/13 Prov.2

Assembly's decision on CDIP related matters concerning finding agreement on the functioning of the coordination mechanism, and the project proposal on IP and tourism.

Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT): Thirty-Second Session

The 32nd session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications took place from **24-26 November 2014** in Geneva, Switzerland. The meeting was chaired by Mr. Adil El Maliki from Morocco.

The SCT considered the protection of country names against registration as trademarks based on a revised draft joint recommendation that was submitted by Jamaica. Member States also considered a revised proposal on Geographical Indications (GIs), submitted by the U.S, as well as a proposal on the protection of GIs and country names in the domain name system by the delegations of the Czech Republic, Germany, Hungary, Italy, Moldova, Switzerland, France and Spain.

Design Law Treaty

The African Group and Asian-Pacific group reasserted the need to introduce an article on technical assistance in the draft Design Law Treaty (DLT).

Furthermore, the African Group presented a proposal for a new item (ix) to include a requirement to disclose traditional knowledge, such as traditional cultural expressions, in any design application, to be included in article 3(1)(a) of the draft DLT. It was explained that the purpose of the disclosure requirement was to avoid misappropriation of traditional designs. The EU, Group B and the CEBS Group manifested concerns with regards to the new proposal and requested further time to consider the substance.

Japan on behalf of Group B presented a proposal including language for a draft decision to be delivered to the General Assembly (GA) so to convene a Diplomatic Conference in 2015 for the adoption of the DLT. Developing countries, including India, Nigeria, Iran and Kenya on behalf of the African Group, indicated that it is a premature stage to negotiate a draft decision on this matter since the SCT33 will be convened prior to the GA.

Nonetheless, following the African Group's proposal, developed countries indicated that they now need to reconsider their positions both with regards to the flexibility previously shown on

technical assistance as well as the convening of a Diplomatic Conference under the new circumstances.

The Chair concluded that the proposal of the African Group would be included into the revised version of the draft DLT between square brackets. Since many Member States presented their views on the proposal, this will be reflected in footnotes.⁸

Trademarks

During the discussions on trademarks the Committee considered the revised proposal⁹ by Jamaica on the protection of country names against the registration and use as trademarks. This issue has been under discussion in the SCT since 2009. At that time Jamaica submitted a proposal for the Committee to discuss a possible amendment to Article 6ter of the Paris Convention, which would allow country names to be added to the existing categories granted protection from the registration as trademarks.¹⁰

The new proposal contains a joint recommendation, providing a list of guidelines, which trademark offices would be encouraged to use in processing trademark applications bearing trademarks derived from or using country names.

Several delegations from developing and developed countries alike expressed the desire to see further work and discussions on the joint recommendation in the SCT. However, several others voiced opposition to the proposal, expressing concerns about its content and potential negative trade implications.

Taking into consideration the differences in views, the Chair requested the Secretariat to organise a side event for next session, which would offer background on various aspects of the protection of country names and nation branding. Following the side event, the SCT would revert to the item under consideration.

Additionally, the Secretariat presented an update on trademark-related aspects of the Domain Name System (DNS). The SCT requested the Secretariat to keep Member States informed on future developments in the DNS.

Geographical Indications

The Committee discussed two proposals on GIs. The US proposal (SCT/31/7) would request the Secretariat to conduct a survey of existing

⁸ http://www.wipo.int/edocs/mdocs/sct/en/sct_32/sct_32_6_prov.pdf

⁹ http://www.wipo.int/edocs/mdocs/sct/en/sct_32/sct_32_2.pdf

¹⁰ http://www.wipo.int/edocs/mdocs/sct/en/sct_21/sct_21_6.pdf

national GIs regimes for consideration of the SCT.¹¹ It also would request that the SCT discuss the work being done by the WIPO Working Group on the Development of the Lisbon System. The Lisbon Working Group has been discussing a revision of the Lisbon Agreement for the Protection of Appellations of Origin (AO) and their International Registration. The revisions under consideration would expand the scope of the Lisbon Agreement to include GIs. Although the US is not party to the Lisbon Agreement, it has opposed the Working Group's activities, asserting that the group has exceeded its mandate. The US has also voiced its opposition to the Diplomatic Conference, which will be held from 11-21 May 2015 to finalise the revision to the Lisbon Agreement.

The US proposal was supported by several delegations from developed and developing countries alike, including El Salvador, Argentina, Uruguay, Chile, Guatemala, the Republic of Korea, Japan, Australia, Canada and Turkey. Many of those Member States shared the concerns expressed by the US regarding the proposed expansion of the scope of the Lisbon Agreement to include GIs. In general these delegations affirmed that a new survey could shed light on what had changed since the studies had been conducted by the SCT while affirming that the SCT is the appropriate and competent forum to discuss on GIs.

However, the proposal received strong opposition from the EU and was contested by a few developing countries. These countries questioned the added value of a survey on national practices in light of other studies that had been conducted by the Secretariat in the past.

The Committee also considered a proposal jointly sponsored by the Czech Republic, Germany, Hungary, Italy, Moldova and Switzerland that counts with the recent formal support of France and Spain (SCT/31/8 Rev.2)¹² on the "Protection of Geographical Indications and Country Names in the Domain Name System". While the proposal received the support of several Member States, others stated that the study proposed is not necessary at this stage.

Additionally, some Member States were in favour of the elaboration of both studies so to bring clarity on these two subject matters.

Finally, the Chair concluded that the SCT at its next session would explore ways on further work under this item.

¹¹
http://www.wipo.int/edocs/mdocs/sct/en/sct_31/sct_31_7.pdf.

¹²
http://www.wipo.int/edocs/mdocs/sct/en/sct_31/sct_31_8_rev_2.pdf.

Standing Committee on Copyright and Related Rights (SCCR): Twenty-Ninth Session

The Standing Committee on Copyright and Related Rights (SCCR) held its 29th session from **8-12 December 2014** in Geneva, Switzerland. It was chaired by Mr Martin Moscoso from Peru.

Member States continued discussions on the subject of i) limitations and exceptions to copyright for libraries and archives, as well as ii) limitations and exceptions for educational, teaching and research Institutions and persons with other disabilities, and iii) a potential treaty to protect broadcasting organizations.

On the protection of broadcasting organizations, Members held discussions mainly an informal setting. The exchange of views was largely focused on definitions, object of protection and rights to be granted. In plenary, India and the US requested the Secretariat to update some of the reports prepared a few years ago, so that the SCCR have a clearer picture of the current situation and implications of the negotiation. Additionally, some countries also mentioned the significance of having a presentation by technical experts at the 30th session of the SCCR. In this regard, India emphasised the importance of broadcasting organizations of developing countries to be represented.

In the next session of the SCCR the presentation will take place with an emphasis on experts from developing and least developed countries. Member States are invited to send specific questions in advance through the regional coordinators.

Members also continued their work on exceptions and limitations on libraries and archives. In this regard, the Committee heard the presentation by Professor Kenneth Crews who updated the 2008 study of copyright exceptions and limitations for libraries and archives.¹³ Extensive time was dedicated to a substantive Q&A between Members from developed and developing countries alike, observer organizations and Professor Crews who gave detailed and clear replies to the many questions from the audience. Member States thereafter reasserted positions on the issue. Briefly, developed countries represented by the CEBS group, the EU and group B pointed out that there is no consensus for norm-setting work in this area. On the other hand, developing countries highlighted the need of deepening the work on exceptions and limitations for libraries and archives so to have a global perspective on this matter. In particular, they

¹³
http://www.wipo.int/edocs/mdocs/copyright/en/sccr_29/sccr_29_3.pdf.

mentioned the necessity of working on cross border issues that affect the activities of those institutions. The Committee also heard the further presentation of the US on its document SCCR/26/8 (Objectives and Principles for Exceptions and Limitations for libraries and Archives).¹⁴ In addition, Brazil, speaking on behalf of the African Group, Ecuador, India and Uruguay, presented document SCCR/29/4 (Consolidation of Proposed Texts Contained in Document SCCR/26/3).¹⁵

Likewise, on the subject of limitations and exceptions for educational and research institutions and for persons with other disabilities, Member States continued exchanging their views but no agreement could be reached. The Committee heard the presentation of document SCCR/27/8 submitted by the US. Given the lack of time, no detailed discussions took place on this issue.

Finally, some developing countries' delegations mentioned that the allocation of time devoted for the agenda items was not equal (most of the time was dedicated to the potential treaty for the protection of broadcasting organisations). Nevertheless, no modifications were agreed for the next session.

Since no recommendations to the General Assembly could be agreed, the three items will be included in the agenda for the next session of the SCCR that will be held in June 2015.

Future WIPO Meetings

A High Level International Expert Forum on Technology Transfer, mandated by the CDIP, will take place from **16-18 February 2015** in Geneva, Switzerland.

The 22nd Meeting of International Authorities under the Patent Cooperation Treaty will be held from **4-6 February 2015** in Tokyo, Japan.

The Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (33rd session) will meet from **16-20 March 2015**.

The 15th session of the Committee on Development and Intellectual Property will take place from **20-24 April 2015**.

¹⁴

http://www.wipo.int/edocs/mdocs/copyright/en/sccr_26/sccr_26_8.pdf

¹⁵ http://www.wipo.int/edocs/mdocs/copyright/en/sccr_29/sccr_29_4.pdf

The diplomatic conference for the adoption of the revised Lisbon Agreement will be held from **11-21 May 2015** in Geneva, Switzerland.

INTERNATIONAL UNION FOR THE PROTECTION OF PLANT VARIETIES (UPOV)

UPOV Council: Forty-Eighth Ordinary Session

The Forty-Eighth Ordinary Session of the UPOV Council was held on the **16 October 2014** in Geneva, Switzerland. Besides the Council, the 17th session of the Administrative and Legal Committee (CAJ), and the 88th session Consultative Committee also met during the week **13-17 October 2014**.

Consultative Committee (CC)

The CC is the main body that discusses and agrees on policy issues before recommending the same to the Council for formal adoption.

The CC took note of a proposal presented by the seed industry on international filing system, quality assurance and variety denomination search. It also requested the Office of the Union "to prepare a document to clarify the issues raised and possible ways forward with regard to an international system of cooperation, for consideration by the Consultative Committee at its eighty-ninth session, in March 2015"¹⁶.

As regards the interrelation of UPOV with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), the CC noted the communication from the Office of the Secretary of the ITPGRFA, summarizing the latest situation in relation to the invitation from the ITPGRFA to UPOV and WIPO to jointly identify possible areas of interrelations among the respective international instruments of UPOV, WIPO and the ITPGRFA. Several civil society organizations and intergovernmental organizations submitted comments to the Secretary of the ITPGRFA, particularly on the interrelation of article 9 on farmers' rights of the ITPGRFA and UPOV and WIPO¹⁷. The South Centre submission notes that the protection of breeders' rights under the UPOV Convention should be made compatible with the recognition of Farmers' Rights, via interpretation and amendment of the relevant provisions. WIPO, as the UN agency specialized in intellectual property, also has the responsibility of addressing in its committees the issue of Farmers' Rights and of providing countries with advice that contributes to their realization at the national level.

¹⁶ http://www.upov.int/edocs/mdocs/upov/en/c_48/c_48_19.pdf

¹⁷ <http://www.planttreaty.org/content/farmers-rights-submissions>

In the CC, no further steps were agreed.

The CC also continued working on Q&A with regards to the question of whether it possible for subsistence farmers to exchange propagating material of protected varieties against other vital goods within the local community. The CC also confirmed the conformity of Zanzibar's Plant Breeder's Act with UPOV 1991.

Administrative and Legal Committee (CAJ)

The CAJ noted the interest to discuss the relationship and effects of the implementation of the "Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity" for the breeder's exemption, and that this interest would be reported to the CC and the Council.¹⁸

UPOV Council

The Council extended the appointment of Mr. Francis Gurry as the Secretary-General of UPOV for the period between 16 October 2014 and 30 September 2020.

Furthermore, the South Centre was granted observer status both in the UPOV Council as well as in the Consultative Committee (CC) and the Administrative and Legal Committee (CAJ).¹⁹

Future UPOV Meetings

The next UPOV sessions will be held from **23-27 March 2015** in Geneva, Switzerland. The Administrative and Legal Committee will be held on **26 March 2015** being followed by the meetings of the Consultative Committee and the Council (extraordinary session) on **27 March 2015**.

WORLD HEALTH ORGANIZATION (WHO)

Annual meetings of WHO Regional Committees

WHO Regional Committees met in September-October 2014 to set policy and approve budgets and programmes of work for each of the six WHO regions. The following meetings took place in October:

- WHO Regional Committee for the Western Pacific: 13-17 October 2014

- WHO Regional Committee for the Eastern Mediterranean: 19-22 October 2014
- WHO Regional Committee for the Americas: 29 September to 3 October 2014

Future WHO Meetings

The 136th session of the WHO Executive Board will take place from **26 January–3 February 2015** in Geneva, Switzerland. A Special Session on Ebola will be held on **25 January 2015**.

FOOD AND AGRICULTURE ORGANIZATION (FAO)

International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

Second meeting of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing

The second meeting of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing was held from **8-12 December 2014** in Geneva Switzerland. The meeting was co-chaired by Modesto Fernandez Diaz-Silveira of Cuba and Bert Visser from the Netherlands.

The meeting discussed the possibility of developing a range of measures to increase user-based payments and contributions to the Benefit Sharing Fund under the International Treaty. Some participants felt that there is a need to enhance the functioning of the Multilateral System for Access and Benefit Sharing (MLS) as there is very low demand for materials in the MLS. Some participants are of the view that expanding the number of species in the MLS and improving other aspects of the MLS could generate more user-based income for the Treaty's Benefit Sharing Fund. Improvements to the Standard Material Transfer Agreement (SMTA) were also discussed in this context. The Working Group generally agreed that the incentives for users, particularly the seed industry, to use the Multilateral System should be increased. The Co-Chairs proposed a summary of measures on which they believed agreement would be possible. The Working Group agreed that an enhanced MLS should reduce the administrative burden arising from the SMTA for users and also facilitate the functioning of the Third Party Beneficiary. The Working Group recognized that the seed industry and other users would need legal certainty concerning access and benefit sharing arrangements around plant genetic resources for food and agriculture. The Working Group would welcome proposals from the seed industry about

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http://www.upov.int/edocs/mdocs/upov/en/caj_70/caj_70_10.pdf

¹⁹ http://www.upov.int/edocs/mdocs/upov/en/c_48/c_48_21.pdf

a minimum incorporation threshold i.e., a minimum percentage of MLS materials that has to be incorporated into new products.

The Working Group also discussed the possibility of introducing a “termination clause” in the SMTA. Currently, the SMTA does not have a termination clause, and it is felt by some that the introduction of a termination clause can reduce transaction costs for seed companies. However, the Working Group could not reach agreement on whether there is a need to revise Articles 6.7, 6.8 and 6.11 of the SMTA if a termination clause is introduced. The Working Group requested the Co-Chairs and the Secretary of the International Treaty to elaborate on different options for introducing a termination clause for further discussion at the next meeting of the Working Group.

The Working Group stressed on the need for introducing more germplasm collections that are held in the public domain in the MLS. Non-contracting Parties should also be further encouraged to join the Treaty through awareness raising, provision of information and legal advice.

Various regional groups expressed their views on the average expected annual income to the Benefit Sharing Fund in the future. The Working Group was of the view that it is necessary to have a common understanding of the relative weightage of payments and contributions by the seed industry vis-a-vis voluntary contributions by others. It was also of the view that voluntary contributions by the private sector should be encouraged and enabled. This issue will be further discussed at the next session of the Working Group along with an analysis of the targets, contributions to the benefit Sharing Fund and the Global Crop Diversity Trust and their resource mobilization strategies.

Most members of the Working Group agreed that Articles 6.7, 6.8 and 6.11 of the SMTA should be retained. The Working Group requested the FAO Legal Office to give an opinion at its next session on whether it will be consistent with the Treaty to keep only Article 6.11 of the SMTA and delete Articles 6.7 and 6.8.

There was disagreement among the members on whether the payment option under Article 6.8 of the SMTA should be kept voluntary or made mandatory. Article 6.8 of the SMTA states that if a recipient commercializes a product that is PGRFA and that incorporates material in the MLS and where the material is available to others without further restriction for research and breeding, the recipient is encouraged to make voluntary payments. Iran pointed out that the Treaty provides for the possibility of applying mandatory payments where products are available without restrictions on others for further research and

breeding, and hence making payments under Article 6.8 of the SMTA mandatory will not be inconsistent with the Treaty. However, the Working Group could not reach agreement on this issue. At the next session, the Working Group will discuss whether to make payments under Article 6.8 of the SMTA mandatory, whether to indicate a payment rate, and whether to add a requirement under Article 6.8 for provision of non-monetary obligations in case voluntary obligations remain voluntary.

The Working group also agreed to explore ways of improving Article 6.11 of the SMTA. The issues in this regard include reducing administrative and reporting burdens, how to make article 6.11 attractive for users if article 6.8 payment remains voluntary. Discussions will continue on this issue at the next session of the Working Group. The Working Group also agreed on the need to explore territorial approaches to raising income for the Benefit Sharing Fund and ways in which a subscription model could be implemented under Article 6.11 of the SMTA.

In recognition of the importance of non-monetary benefit sharing such as capacity building, technology transfer and information exchange and the need to increase the visibility of initiatives that promote such forms of benefit sharing, the Working Group agreed on a number of initiatives.

The Working Group had initial discussions on the scope of expansion of the MLS that will be discussed in further detail at the next session of the Working Group. There was divergence of views among members on whether the MLS should be expanded and the modalities for the same. Generally, developing countries were wary of expansion of the MLS. They were of the view that expansion of the MLS should be dependent on measures to increase user-based payments. At the request of the Co-Chairs, the FAO Legal Officer clarified that the MLS can be expanded through an amendment of the Treaty or through the adoption of a supplementary agreement such as a Protocol.

Future ITPGRFA Meetings

The Third meeting of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System of Access and Benefit-sharing will take place from **20-24 April 2015** in Brasilia, Brazil. It will be preceded by a one day Regional Consultation.

The Sixth Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture will be held in Rome from **5-10 October 2015**. The meeting will be preceded by two days of regional consultations from **3-4 October 2015**.

Commission on Genetic Resources for Food and Agriculture

The Fifteenth session of the Commission on Genetic Resources for Food and Agriculture (CGRFA 15) will be held from **19-23 January 2015**.

CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

Conference of the Parties to the Convention on Biological Diversity: Twelfth session

The 12th session of the Conference of the Parties to the CBD (COP12) took place from **6-17 October 2014** in Pyeongchang, Republic of Korea. A High-Level Segment focused on Biodiversity for Sustainable Development was held from **15-16 October**.²⁰

The agenda of COP12 included a number of topics and therefore the work of the COP12 was divided between two Working Groups (that also dealt with issues under the Nagoya Protocol first meeting of the COP/MOP1).

Under the umbrella of the Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets, issues discussed included the mid-term review of progress towards the goals of the Strategic Plan for Biodiversity 2011-2020, and the Aichi Biodiversity Targets. It was recognized that there has been progress towards meeting some elements of most Aichi Biodiversity Targets but, in most cases, this progress will not be sufficient to achieve the targets. Another issue of discussion was the use of indicators for monitoring progress for the implementation of the Strategic Plan.²¹

Concerning resource mobilization, it was agreed that there is need for a substantial increase in total biodiversity related funding for the implementation of the Strategic Plan for Biodiversity 2011-2020 from a variety of sources.²² In addition, Parties to the CBD stressed the need for the post-2015 United Nations development agenda and sustainable development goals to support the conservation and sustainable use of biodiversity and also welcomed the integration of biodiversity and ecosystem aspects into the proposed sustainable development goals by the Open Working Group on Sustainable Development Goals.²³

Conference of the Parties serving as the meeting of the Parties to the Nagoya Protocol on Access and Benefit-sharing: First meeting

A significant event under the CBD in recent years is the entry into force of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (NP). After complying with the necessary 50 ratifications, the Nagoya Protocol entered into force on **12 October 2014**. Hence, together with the 12th session of the Conference of the Parties to the CBD, the 1st meeting of the Conference of the Parties serving as the Meeting of the Parties to the Nagoya Protocol (NP COP/MOP1) was held from **13-17 October 2014** in Pyeongchang, Republic of Korea.

With regards the Access and Benefit-sharing Clearing-house (ABS-CH) and information sharing, Parties decided to establish an informal advisory committee (IAC) in order to assist the Executive Secretary with the implementation of the ABS-CH. The IAC will have at least one meeting in the inter-sessional period. Modalities related to the operation of the ABS-CH were also adopted, being the Secretariat responsible for the implementation and administration of the ABS-CH.²⁴

In respect to monitoring and reporting, Parties agreed to Guidelines for the Interim National Report on the Implementation of the Nagoya Protocol. In this regard, it should be highlighted that both Parties and non-Parties are invited to provide feedback on the guidelines and the format for submission of the interim national report. The Secretariat will compile the information included in the interim national reports as well as information published in the ABS-CH and present it in the NP COP/MOP3.²⁵

Other important discussions referred to compliance under the Nagoya Protocol. A Compliance Committee was established and it will have at least one meeting before the NP COP/MOP2. In addition, Parties adopted cooperative procedures and institutional mechanisms to promote compliance with the Nagoya Protocol and to address cases of non-compliance. A contact group was established to conduct consultations on compliance related issues. Concerning the composition of the Compliance Committee, delegates discussed about the participation of representatives of indigenous and local communities (ILCs). It was finally agreed that in addition to the countries' nominations that could include representatives from ILCs, two representatives from ILCs will be nominated by this communities to act as

²⁰ <http://www.cbd.int/cop12/hls.shtml>.

²¹ UNEP/CBD/COP/12/L.12

²² UNEP/CBD/COP/12/L.32

²³ UNEP/CBD/COP/12/L.14

²⁴ UNEP/CBD/NP/COP-MOP/1/L.8.

²⁵ UNEP/CBD/NP/COP-MOP/1/L.10.

observers. Nominations will be presented to the COP/MOP for their election.²⁶

The Plenary elected members and alternate members for the Compliance Committee. The following countries are represented: Egypt, Madagascar, Uganda and alternate Namibia from the African Group; India, Samoa and Indonesia from the Asia-Pacific; Switzerland, Spain, the EU and alternate Norway from the Western European and Others Group; Mexico, Peru and Guyana from GRULAC; Belarus, Albania, Poland and alternate Tajikistan from CEE. Additionally, the following representatives from ILCs were elected: Tualip Tribes, Tebtebba and alternate Forest Peoples Programme.

Following a Brazilian proposal, Parties decided to take stock of the use of sectoral and cross-sectoral model contractual clauses, voluntary codes of conduct, guidelines and best practices and/or standards in relation to ABS. It will be done four years following the entry into force of the Protocol, together with its first assessment and review.²⁷

With regards to capacity building²⁸, Parties adopted a strategic framework for capacity-building and development to support the effective implementation of the Protocol. The strategic framework is a reference document to guide the policies and actions of Parties, relevant organizations and donors in relation to capacity-building and development for the implementation of the Protocol. It includes practical capacity-building and development activities as well as key areas for them. An important element included in the document, and that has been highlighted by developing countries during the whole negotiating process, is that it recognises that most developing country Parties, in particular LDCs and small island developing States, and Parties with economies in transition lack the necessary capacities to effectively implement the Protocol. Concerning the guiding principles, it is clearly stated that activities are demand-driven and based on the needs and priorities identified through national self-assessments. An evaluation of the strategic framework will be carried out in 2020. In addition, Parties also agreed to establish an informal advisory committee to provide advice to the Executive Secretary on matters related to the assessment of the effectiveness of the previously mentioned strategic framework.

In reference to awareness-raising of the importance of genetic resources and associated traditional knowledge, Parties adopted a

strategy²⁹ that aims at providing a systematic and coherent approach to assist them in the implementation of Article 21 of the Protocol. It should be highlighted that it affirms that awareness-raising activities should be country-driven and respond to the specific needs and contexts of each Party.

A contact group was established to deal with the discussions on a global multilateral benefit-sharing mechanism. The decision³⁰ on this topic recognises that further discussions to reach a common understanding on this matter are needed. Parties, other Governments, international organizations, ILCs, and relevant stakeholders are invited to send their views on situations which may support the need for a global multilateral benefit-sharing mechanism that are not covered under the bilateral approach; as well as possible modalities for a global multilateral benefit-sharing mechanism as well as information regarding the implications of different scenarios on these modalities.

In addition, two further activities will be conducted by the Executive Secretary, subject to the availability of funds, namely: (i) a study on the experiences gained with the development and implementation of the Nagoya Protocol and other multilateral mechanisms; and the potential relevance of ongoing work undertaken by other processes, including case studies in relation to ex situ and in situ genetic resources, traditional knowledge associated with genetic resources, and transboundary situations; and (ii) convene a meeting of a regionally balanced expert group to review both the synthesis of views and the study referred mentioned above.

Matters related to the financial mechanism of the Protocol were discussed in conjunction with those of the CBD's mechanism. Specifically, it was decided that all developing countries, in particular LDCs, SIDS and countries with economies in transition, are eligible for funding by the GEF if they are parties to the Protocol; or they are parties to the CBD and provide a clear political commitment towards becoming parties to the Protocol, accompanied by indicative activities and expected milestones, in the form of a written assurance to the Secretariat, for up to four years after the Protocol's entered into force. Additionally, regarding the sixth replenishment of the GEF (GEF-6), the COP/MOP urges parties to prioritize ABS during the programming of their GEF-6 national allocations.

²⁶ UNEP/CBD/NP/COP-MOP/1/L.11

²⁷ UNEP/CBD/NP/COP-MOP/1/L.5

²⁸ UNEP/CBD/NP/COP-MOP/1/L.6

²⁹ UNEP/CBD/NP/COP-MOP/1/L.7

³⁰ UNEP/CBD/NP/COP-MOP/1/L.9

Future CBD Meetings

Both the COP13 and the NP COP/MOP2 will take place in Mexico in November **2016**.

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)

UNFCCC Climate Technology Centre and Network (CTCN)

The Climate Technology Centre and Network's mission (CTCN) is to stimulate technology cooperation and to enhance the development and transfer of technologies and to assist developing country Parties at their request in order to build or strengthen their capacity to identify technology needs, to facilitate the preparation and implementation of technology projects and strategies.

The fourth meeting of the CTCN Advisory Board took place on 8-10 October 2014 in Copenhagen, Denmark. The meeting was co-chaired by Fred Onduri of Uganda acting as Chair and Matthew Kennedy of Ireland acting as Vice-Chair.³¹

Bonn Climate Change Conference

The sixth part of the second session of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) was held from **20-25 October 2014** in Bonn, Germany.

The ADP continued discussions on elaborating the elements of a draft negotiating text for the outcome of the ADP negotiations and on the information to be contained in the intended nationally determined contributions (INDCs) that Parties are supposed to submit in 2015 prior to COP21 in Paris. Developing countries continued to express concerns over the negotiating process being used with the ADP and over the lack of balance in the treatment of the various elements for the outcome of the ADP negotiations.

Twentieth session of the Conference of the Parties of the UNFCCC

The 20th session of the Conference of the Parties (COP20) of the UNFCCC took place from **1-12 December 2014** in Lima, Peru.³² Other bodies also met during those days, namely: the 10th session of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol (CMP10), the 41st session of the Subsidiary Body

³¹

<http://www.unep.org/climatechange/ctcn/Newsmedia/News/tabid/771782/Default.aspx>.

³²

http://unfccc.int/meetings/lima_dec_2014/meeting/8141.php.

for the Implementation of the Convention (SBI41), the 41st session of the Subsidiary Body for Scientific and Technological Advice (SBSTA41) and the seventh part of the 2nd session of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP2-7).

One of the documents presented for Parties' consideration was the Joint annual report of the Technology Executive Committee and the Climate Technology Centre and Network for 2014.³³ In this regard, countries recognised the need for the technology needs assessment process to be improved in order to facilitate the implementation of the project ideas emanating from it (to be done through the provision of technical assistance and finance to each technology needs assessment, which should also aim to integrate economic, environmental and social aspects into the development of the technology needs assessment). The COP also requested the Technology Executive Committee to provide guidance on how the results of the technology needs assessments, in particular the technology action plans, can be developed into projects that can be ultimately implemented, and to provide an interim report on its preliminary findings to the subsidiary bodies at their forty-third sessions.³⁴ The G77 and China emphasised that the Technology Executive Committee and the Climate Technology Centre and Network need to deliver tangible and meaningful technology transfer for developing countries.

Future UNFCCC Meetings

The third session of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP) will be held from **8-13 February 2015** in Geneva, Switzerland.

The 10th session of the Technology Executive Committee will be held from **9-12 March 2015** in Bonn, Germany.

The COP21 will be held from **30 November to 11 December 2015** in Paris, France.

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)

CSTD 2014-2015 Inter-sessional Panel

The Inter-sessional Panel 2014/2015 of the Commission on Science and Technology for Development (CSTD) was held from **26-28 November 2014** in Geneva, Switzerland.

³³ <http://unfccc.int/resource/docs/2014/sb/eng/03.pdf>.

³⁴

http://unfccc.int/files/meetings/lima_dec_2014/decisions/application/pdf/auv_cop20_tec_ctcn.pdf.

The Panel addressed two priority themes, namely: (i) Strategic foresight for the post-2015 development agenda, and (ii) Digital development. In addition, it devoted a day for discussions on the CSTD's 10-year review of the implementation of the World Summit on the Information Society (WSIS) outcomes.

Future UNCTAD Meetings

The Eighteenth session of the Commission of Science and Technology for Development (CSTD) will be held from **4-8 May 2015** in Geneva, Switzerland.

INTERNET GOVERNANCE FORUM (IGF)

The Internet Governance Forum is an open forum. It was established by the World Summit on the Information Society (WSIS) in 2006 in order to discuss public policy issues related to key elements of Internet governance.

The ninth Internet Governance Forum (IGF) took place from **2-5 September 2014** in Istanbul, Turkey. Among the topics discussed, these include policies enabling access, Internet as an engine for growth and development, and critical Internet resources, among others.³⁵

A multistakeholder group of participants drafted a statement to send to the UN to request a renewal of the mandate of the IGF and longer cycle for each mandate given to the IGF. National and regional IGF initiatives called for increased cross-fertilization between national and regional IGFs and the global IGF. The IGF developed draft best practice documents on developing meaningful multistakeholder mechanisms, regulation and mitigation of spam communications, Internet security, creating an enabling environment for developing local content, and online child safety and protection. Recommendations were made on how the debate on network neutrality can be taken forward.

Future IGF Meetings

The Tenth Annual IGF Meeting will take place from **10-13 November 2015**, in João Pessoa, Brazil.

INTERNATIONAL TELECOMMUNICATION UNION (ITU)

ITU Plenipotentiary Conference 2014

The Plenipotentiary Conference, that is held every four years, is the highest policy-making body of the ITU.

The 2014 ITU Plenipotentiary Conference was held from **20 October to 7 November 2014** in Busan, Republic of Korea. It was chaired by Mr Wonki Min, Republic of Korea.

A decision was approved on “Combating counterfeit telecommunication/information and communication technology devices”³⁶. It therefore was resolved to assist Member States in addressing their concerns with respect to counterfeit telecommunication/ICT devices through information sharing at regional or global level. This resolution should be read in conjunction with Resolution 79³⁷ that was approved in the World Telecommunication Development Conference (WTDC) held from 30 March to 10 April 2014 in Dubai, United Arab Emirates.

The next ITU Plenipotentiary Conference would take place in **2018**.

FREE TRADE AGREEMENTS

TRANS-PACIFIC PARTNERSHIP AGREEMENT (TPP)

Twelve countries, namely Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States of America and Vietnam, are currently negotiating a comprehensive Trans-Pacific Partnership Agreement (TTP). The Philippines is assessing the potential benefits of joining the TPP before making a decision about it.

TPP Ministerial Meeting (October)

TPP Chief Negotiators met from **19-24 October 2014** in Canberra, Australia.

Ministers and Heads of Delegation from TPP countries met in Sydney from **25-27 October 2014** to continue to lay the groundwork towards an ambitious, comprehensive, high-standard and balanced agreement. Considerable progress was reported across several areas and negotiators will

³⁶ Resolution COM5/4

³⁷ http://www.itu.int/en/ITU-T/C-1/Documents/WSHP_counterfeit/WTDC-14-RESOLUTION%2079.docx

³⁵ <http://www.intgovforum.org/cms/documents/igf-meeting/igf-2014-istanbul/308-igf-2014-chairs-summary-final/file>

continue their work, guided by the instructions provided by Ministers. Among the issues discussed were intellectual property, environment, legal, market access, state-owned enterprises, and investment.³⁸

TPP Leaders' and Ministers' Meeting (November)

TPP Ministers met on **8 November 2014**, prior to a TPP Leaders' meeting on **10 November 2014**, in Beijing, China.

The Trade Ministers' Report to Leaders states that there are still remaining issues in the text of the agreement, including related to intellectual property, State-owned enterprises, environment, and investment. In particular, Leaders point out that the IP chapter "is one of the most complex and challenging areas of the agreement, but we have made substantial progress in developing common approaches that will promote creative and technological advances that will benefit all of us"³⁹.

Furthermore, Ministers acknowledge that given the economic potential of the Internet, they are "far along in reaching agreement on rules that will promote the development of the digital economy, in a manner consistent with governments' legitimate public policy interests, such as regulating for the purpose of privacy protection"⁴⁰.

TPP Leaders' Meeting (December)

A TPP officials' meeting took place from **8-12 December 2014** in Washington, USA. In parallel to the Chief negotiators' meeting, there were meetings on market access, rules of origin, environment, State enterprises and legal affairs.

Future TTP Dates

TPP countries would be planning to hold an informal round in late January in the United States followed by a ministerial meeting in February or March. Date and location of the next TPP meeting are still to be determined.

EU-US FTA (Transatlantic Trade and Investment Partnership – TTIP)

In October 2014, the EU made public the instructions of the Council for the TTIP

negotiations.⁴¹ EU's ambition in all areas, including intellectual property rights, is included in the document. Likewise, US' goals are also publicly available.⁴²

Seventh Round of Negotiations

The seventh round of TTIP talks took place from **29 September – 3 October 2014** in Washington, United States of America.

Progress was reported on technical work of the regulatory component. Discussions on market access consisted of market access texts, services and investment offers and agricultural non-tariff barriers. No negotiating sessions took place on tariffs, procurement, sustainable development, competition policy, rules of origin or financial services but many of those groups remain in regular contact intersessionally, including via DVCs. Also, no discussions were held on investment protection or investor-to-state dispute settlement.⁴³

Concerning rules, discussions took place on customs and trade facilitation, energy and raw materials, intellectual property rights (IPRs) (including geographical indications-GIs), dispute settlement, Small and Medium Enterprises' and legal and institutional issues. Concerning IPRs, held extensive discussions on IPR, with focus on issues on which there is a potential for cooperation. They agreed on objectives that the cooperation provisions should reflect. No substantive progress was made on GIs further than the EU providing elements that support its request for more protection of its GIs in the US.

Future TTIP Negotiations

Date and location of the next TPP meeting are still to be determined.

NATIONAL DEVELOPMENTS

Indian Supreme Court rejected Bayer's appeal to set aside a compulsory license on a cancer drug

In 2012, the Indian Patent Office issued a compulsory license to the local company Natco Pharma for a cancer drug: sorafenib tosylate (trade name Nexabar) patented by Bayer.⁴⁴ The

³⁸ <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/tpp-tp/rounds-series.aspx?lang=eng#a10>.

³⁹ <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/tpp-tp/mrl-rmd.aspx?lang=eng>.

⁴⁰ <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/tpp-tp/mrl-rmd.aspx?lang=eng>.

⁴¹ <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>.

⁴² <http://www.ustr.gov/about-us/press-office/press-releases/2014/March/US-Objectives-US-Benefits-In-the-TTIP-a-Detailed-View>.

⁴³ http://trade.ec.europa.eu/doclib/docs/2014/october/tradoc_152859.pdf.

⁴⁴ South Centre, IP Negotiations Monitor 6, Period covered: August–December 2012.

rationale for the issuance of the compulsory license was though the patented Bayer's drug was available; it was only affordable by a small percentage of eligible patients. Consequently, the drug was not "reasonably affordable" by the public.⁴⁵

After the compulsory license was granted, Bayer challenged the decision before the Intellectual Property Appellate Board (IPAB), Bombay High Court. Nonetheless, it was unsuccessful and the grant of compulsory licence was confirmed. The only modification was made to the royalty so to increase from 6 per cent to 7 per cent. This rise was based on the grounds that "an increase of one percent to the royalty fixed by the Controller would meet the ends of justice"⁴⁶.

Bayer also presented the case before the Indian Supreme Court that on 12 December 2014 finally dismissed the demand.⁴⁷ As a result, the compulsory license will continue being valid for the term that the patent has been granted.

⁴⁵

http://www.ipindia.nic.in/ipoNew/compulsory_License_12032012.pdf.

⁴⁶ <http://www.ipab.tn.nic.in/045-2013.htm>.

⁴⁷

<https://donttradeourlivesaway.wordpress.com/2014/12/13/breaking-news-supreme-court-of-india-rejected-bayers-appeal-to-set-aside-cl-on-cancer-drug-sorafenib-tosylate/>.