

## 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 24-25 February 2015**

The TRIPS Council met on **24-25 February 2015** in Geneva, Switzerland. Mr Abdolazeez Al-Otaibi of Saudi Arabia was elected as Chairperson.

The meeting addressed the following key issues: review of the provisions of Article 27(3)(b), relationship between the TRIPS Agreement and the Convention on Biological Diversity, protection of traditional knowledge and folklore, non-violation and situation complaints, review of the implementation of the TRIPS Agreement under Article 71.1, review of the application of the provisions of the section on geographical indications under Article 24.2, follow-up to the twelfth annual review under paragraph 2 of the decision on the implementation of Article 66.2 of the TRIPS Agreement, technical cooperation and capacity building, intellectual property and innovation: women and innovation, concerns with respect to proposals for plain packaging of tobacco products in the United Kingdom and Ireland, and observer status for international intergovernmental organizations. Furthermore, Bangladesh, on behalf of Least Developed Countries (LDCs), presented a duly motivated request for an extension of the transition period for the protection of pharmaceuticals under the agenda item on "other business". Below is a summary of the key issues and outcomes of this meeting of the TRIPS Council:

#### *Review of Article 27.3b of the TRIPS Agreement*

Article 27(3)(b) provides that member States may exclude from patentability plants, animals and essentially biological processes for the production of plants and animals; must allow patents for microorganisms and non-biological and microbiological processes for the production of plants or animals; and must provide protection for plant varieties either by patents or by an effective sui generis system or by any combination thereof. It further provides that there should be a review of this provision four years after the date of entry into force of the WTO Agreement. In addition, paragraph 19 of the Doha Ministerial Declaration mandates the TRIPS Council, in pursuing its work programme including under the review of Article 27(3)(b), to examine, inter alia, the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), the protection of traditional knowledge (TK) and folklore, and other relevant new developments raised by members pursuant to Article 71.1.

This agenda item is currently discussed in the TRIPS Council together with two other agenda items: the relationship of TRIPS and CBD, and the protection of TK and folklore. During the TRIPS Council meeting in November 2012, Ecuador had proposed (IP/C/M/71) that the WTO Secretariat should prepare a compilation and factual summary of the arguments presented in the discussions in the Council and in the communications submitted by Members on the three agenda items. In subsequent meetings, the Chairman had invited member States to consider Ecuador's proposal. There has been no progress in this regard to date. Furthermore, in 2010 Bolivia presented a proposal (IP/C/W/545) to prohibit the patenting of all life forms, protect innovations of indigenous and local farming communities, prevent anti-competitive practices and prevent IPR claims over TK. Subsequently, in March 2011, Bolivia presented another proposal (IP/C/W/554) to amend Article 27(3)(b) to prohibit the patenting of life forms and parts thereof. There has been no progress on both proposals to date.

During the meeting of the TRIPS Council, Bangladesh (speaking on behalf of LDCs) stated that, based on standards of morality and ethics, LDCs cannot support the patentability of life forms for trade and trade related gains. Bangladesh further stated that it is important to maintain the flexibility on the form of sui generis regime developed for the protection of plant varieties based on individual country systems and requirements as the LDCs believed that this will contribute towards improving the food security situation of indigenous people by ensuring that their inventions are protected and access to seed is guaranteed.

#### *The Relationship between the TRIPS Agreement and the Convention on Biological Diversity*

This agenda item relates to the concerns of developing countries with regard to biopiracy i.e. the misappropriation of biological resources and associated TK. Specifically, it deals with the demands made by developing countries, recently updated in 2011 (TN/C/W/59), that patent applicants should be required to: disclose the source and country of origin of the biological resource and of the traditional knowledge used in the invention; show evidence of obtaining prior informed consent of the owners of biological resources and associated TK; and show evidence of fair and equitable benefit sharing under the relevant national regime. If implemented, the demands of developing countries in this regard would take the form of an addendum to Article 29 of the TRIPS Agreement. Developing countries have also emphasized the need to ensure a mutually supportive relationship between the TRIPS Agreement and the CBD. The position of

member States remains unchanged to date. In addition, developing countries have insisted since 2011 that the CBD be allowed to brief the TRIPS Council concerning the Nagoya Protocol but there has been no agreement in this regard to date.

### *Protection of Traditional Knowledge and Folklore*

This agenda item is related to the question of how to ensure a mutually supportive relationship between the TRIPS Agreement and the CBD. In 2003, the African Group had presented a proposal (IP/C/W/404) to adopt a Decision on Protecting Traditional Knowledge. Furthermore, in 2010 Bolivia had proposed (IP/C/W/545) that the process of review of Article 27(3)(b) should take into account the United Nations Declaration on the Rights of Indigenous Peoples and the protection of traditional knowledge and folklore. In the same proposal, Bolivia stated the need to urgently review Article 27(3)(b) to, inter alia, protect the rights of indigenous communities and prevent any private monopolistic intellectual property claims over their traditional knowledge.

There has been no change on this agenda item to date. Speaking on behalf of LDCs during the meeting, Bangladesh stated that LDCs believed that genetic resources, traditional knowledge and folklore are absolutely sovereign to States.

### *Non-Violation and Situation Complaints*

Non-violation complaints are complaints that occur 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.

There is currently a moratorium on non-violation complaints in relation to intellectual property. This moratorium has been in existence since the TRIPS Agreement entered into force. There is a continued disagreement among member States about whether these types of complaints should be permitted in relation to intellectual property. The moratorium has been extended at every WTO Ministerial Conference and in December 2013, based on a recommendation by the TRIPS Council, the Bali Ministerial Conference extended the moratorium on non-violation and situation complaints until 31 December 2015.

In 2002, Argentina, Bolivia, Brazil, Colombia, Cuba, Ecuador, Egypt, India, Kenya, Malaysia, Pakistan, Peru, Sri Lanka and Venezuela had submitted a paper (IP/C/W/385) stating why non-violation complaints should not apply to the TRIPS Agreement. In June 2014, the United States had

submitted a paper (IP/C/W/599) aimed at ending the moratorium so that non-violation complaints can be applicable to the TRIPS Agreement. Consultations have intensified since 2013, at the demand mainly of the United States, supported by Switzerland. The United States discussed its paper again in the October 2014 TRIPS Council session.

During the meeting of the TRIPS Council in February 2015, the position of member States remained the same. The majority of member States are in favour of an indefinite extension of the current moratorium while the United States and Switzerland are opposed to it.

### *Review of the Implementation of the TRIPS Agreement under Article 71.1*

Article 71.1 of the TRIPS Agreement mandates the TRIPS Council to review the TRIPS Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. Article 71.1 further provides that the TRIPS Council shall, having regard to the experience gained in the implementation of the TRIPS Agreement, review it two years after the expiration of the transitional period in paragraph 2 of Article 65 and at identical intervals thereafter. In addition, pursuant to Article 71.1, the TRIPS Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of the TRIPS Agreement. No proposals have been tabled with regard to this agenda item.

### *Review of the Application of the Provisions of the Section on Geographical Indications under Article 24.2*

Article 24.2 of the TRIPS Agreement mandates the TRIPS Council to keep under review the application of section 3 of the TRIPS Agreement which deals with geographical indications (GI). The review process has taken the form of replies from member States, on a voluntary basis, to a checklist of questions (IP/C/13 and Add.1), on the understanding that the responses are without prejudice to the rights and obligations of countries with respect to the GI section of the TRIPS Agreement. During the meeting of the TRIPS Council held in October 2014, the Chairman had recalled that only a few delegations replied to those questions. He had also encouraged member States to share with the TRIPS Council information regarding any bilateral agreements that contain provisions on the protection of GIs. There has been no change with regard to this agenda item to date.

*Follow-up to the Twelfth Annual Review under Paragraph 2 of the Decision on the Implementation of Article 66.2 of the TRIPS Agreement*

Article 66.2 of the TRIPS Agreement mandates developed country members to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country members in order to enable them to create a sound and viable technological base. In 2003, the TRIPS Council adopted a decision (IP/C/28) on the implementation of Article 66.2 that mandates developed country members to submit annual reports on actions taken or planned in pursuance of their commitments under Article 66.2. The 2003 decision further mandated developed countries to provide new detailed reports every third year and, in the intervening years, to provide updates to their most recent reports.

Annual review meetings are held to discuss the effectiveness of the mechanism to ensure compliance but independent reviews of the reports on Article 66.2 reflect the difficulty in evaluating whether developed countries are complying with their obligations under Article 66.2. LDCs have called (IP/C/W/561 and IP/C/W/562) for clear definitions and parameters to have indicators to evaluate the implementation of Article 66.2. There has been no change in this regard to date. The WTO Secretariat has noted that it is developing an information management tool to facilitate submissions but the tool is not yet available.

During the meeting of the TRIPS Council in February 2015, Bangladesh (on behalf of LDCs) observed that some member States had made an effort to follow the structure that LDCs had proposed in their submission IP/C/W/561 to make the reporting system structured and simple. Bangladesh requested other member States to follow the format suggested by the LDC group because the type and nature of the report is of critical importance for efficient monitoring of implementation. Bangladesh further stated that, from the submitted reports, it is extremely difficult to identify and sort out activities that are specific to the obligation under Article 66.2 due to the absence of a common structure and format.

*Technical Cooperation and Capacity Building*

Article 67 of the TRIPS Agreement provides that, in order to facilitate the implementation of the TRIPS Agreement, developed country members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least developed country Members. Developed countries

are required to provide annual reports on the technical cooperation activities launched in order to facilitate the implementation of the TRIPS Agreement by developing and least developed country Members. Intergovernmental organizations also report on their technical cooperation activities associated to intellectual property. There is usually an overlap between the information provided by developed countries in compliance with Article 66.2 and Article 67.

Australia, Japan, New Zealand, Canada, Switzerland and Norway have presented an update of their intellectual property related technical cooperation activities with developing and least developed countries over the period 2013-14 (IP/C/W/601, Add.1, Add.2, Add.3, Add.4, and Add.5). There have also been reports in this regard by WCO, WHO, FAO and the Gulf Cooperation Council (GCC) to the TRIPS Council in 2014 (documents IP/C/603, Add.1, Add.2, and Add.3). The WTO Secretariat submitted a report (IP/C/W/600) updating the Secretariat's technical cooperation activities concerning TRIPS over the period 2013-2014. There have been no specific proposals with regard to this agenda item to date.

*Women and Innovation*

Since 2012, the United States together with other countries have requested the inclusion of agenda items related to intellectual property and innovation. During the meeting, there was a discussion on the topic of women and innovation which was introduced by the United States and Norway and co-sponsored by the European Union, Japan and Turkey. There was also an intervention by the World Bank on this topic. In its intervention, the World Bank addressed four aspects of the issue of women and innovation: (1) the relationship between entrepreneurship and innovation-related education; (2) inclusive innovation models that bring women into the design and delivery of products for low-income households; (3) addressing the under-representation of women in innovation-related education, and (4) addressing barriers to women's participation in the economy and trade in particular.

Canada, Chile, Chinese Taipei, India, Japan, Mexico, Norway, Switzerland, Turkey, the EU (and Montenegro), and the US, all gave an overview of their strategies for increasing women's participation in the labour market and innovation.

*Plain Packaging for Tobacco Products*

In March 2012, Ukraine launched a legal challenge against an Australian Bill on plain

packaging, which has since been enacted into law. This was followed by four additional complaints by Honduras, the Dominican Republic, Cuba and Indonesia. During the meeting, reacting to the recent developments in Ireland and the United Kingdom, which have both notified the Technical Barriers to Trade Committee of their proposed laws or regulations on plain packaging for tobacco products, the Dominican Republic reiterated its earlier concerns about plain packaging for tobacco products. During the meeting of the TRIPS Council that took place between 28 and 29 October 2014, the five countries that are currently involved in legal disputes with Australia over plain packaging of tobacco products had urged other member States planning similar measures to delay the introduction of such measures until the ruling in the dispute with Australia is published.

The developments in both Ireland and the United Kingdom with regard to the plain packaging of tobacco products was defended by the EU during the meeting of the TRIPS Council in February 2015. According to the EU, Ireland's draft Bill resumed its legislative process on 17 February 2015. Furthermore, the minister of health in the United Kingdom has confirmed the intention of the government to introduce plain or standardized packaging through regulations that is scheduled to be introduced by the end of March, which will enter into force at the same time as the European Tobacco Products Directive in May 2016.

The Dominican Republic, with the support of Nicaragua, Honduras, Cuba, Indonesia, Nigeria, and Zimbabwe, restated the complaint that standardized packaging is a violation of the intellectual property rights of those who own trademark and geographical indications. They urged countries to delay the introduction of such measures until the outcome of the current dispute. According to them, such measures impedes marketing and competition, restricts trade beyond what is needed to protect public health, and has been shown to be unsuccessful in reducing smoking.

Australia, Uruguay, Canada, New Zealand, and Norway (which stated that it had commenced its own consultations on plain packaging) all supported Ireland and the United Kingdom. These countries also rejected the call that countries should wait for the result of the current dispute on plain packaging. Australia also stated that it is inappropriate to comment on the ongoing disputes. The World Health Organization delivered a statement on the role of plain packaging and stated that plain packaging of tobacco products complements other measures such as restrictions on advertising and promotion bans on misleading packaging, and health warnings on packaging. The panels examining the

ongoing disputes on plain packaging for tobacco products have stated that their conclusions will not be published until at least the second half of 2016.

### *Observer Status for International Intergovernmental Organizations*

The TRIPS Council may accept observers on a permanent or ad hoc basis. There are pending requests from thirteen organizations (including the South Centre, the CBD Secretariat, and UNEP) for observer status in the TRIPS Council. CBD and others are invited on an ad hoc basis and recently, observer status on an ad hoc basis has been granted to GCC, ARIPO, OAPI and EFTA. Selected requests for observer status are accepted. There has been no change in this regard to date.

### *Least Developed Countries Request for an Extension of the Transition Period for the Protection of Pharmaceuticals*

On behalf of LDCs, Bangladesh presented a duly motivated request for an exemption for LDCs with regard to the protection and enforcement of patent rights on pharmaceuticals for as long as a country remains an LDC (IP/C/W/605). In 2002, the TRIPS Council had approved a decision extending until 2016 the transition period during which LDCs are exempted from providing patent protection for pharmaceuticals. Subsequently, in June 2013 the TRIPS Council agreed to extend until July 2021 the deadline for LDCs to protect intellectual property rights under the TRIPS Agreement. The 2013 extension is however without prejudice to the earlier extension granted in 2002 with respect to pharmaceutical products.

The proposal presented by Bangladesh equally requested that the TRIPS Council should recommend to the General Council a waiver for LDCs from obligations under Articles 70.8 (mailbox applications) and 70.9 (exclusive marketing rights) for as long as a country remains an LDC. The proposal was supported by Nepal, Brazil, India, and the European Union.

As this proposal was introduced under the agenda item for "other business" and because it was not on the formal agenda of the TRIPS Council meeting, the discussion on the proposal was brief. It is expected that there would be more substantial discussions on the proposal at the next meeting of the TRIPS Council in June 2015.

## Future WTO Meetings

The next meetings of the TRIPS Council for **2015** are expected to take place on **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.

## WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

### High Level International Expert Forum on Technology Transfer

WIPO organized an Expert Forum on International Technology Transfer in the format of a conference on 16-18 February 2015 in Geneva. This event was a deliverable activity under the project on Intellectual Property and Technology Transfer: "Common Challenges, Building Solutions" (CDIP/6/4 Rev.) that was approved by the sixth session of the Committee on Development and Intellectual Property (CDIP).

The Expert Forum was held following the organization of five regional consultation meetings on technology transfer, the elaboration of six peer-reviewed analytical studies and the approval of a concept paper by the CDIP. The six analytical studies and the comments of the reviewers were presented during the Expert Forum.

However, the Expert Forum could not make any recommendation for approval to the CDIP. Rather, the views of the Experts were summarized as "Expert Thoughts" in the report prepared by the Secretariat on the outcome of the Expert Forum. These "Expert Thoughts" which are submitted to the CDIP for consideration and approval with a view to incorporating work towards implementing those "Expert Thoughts" into WIPO work programs are:

- (a) Design a technology transfer platform that would provide information on technologies that are available ("the gives") and those that are needed ("the needs"). This could then evolve into a technology transfer matchmaking platform.
- (b) Disseminate best practice illustrating effective cases of international technology transfer, using, *inter alia*, existing WIPO platforms and success stories from the Global Innovation Index, through periodic regional events.
- (c) Set up a WIPO Technology Transfer Helpdesk, servicing the needs of Member States, to promote information exchange on technology

transfer opportunities and failures, eventually evolving into a "clearing-house" for information and technologies.

- (d) Conduct empirical work on science parks, incubators and accelerators and their effective use of intellectual property for technology transfer.
- (e) Develop training materials that are case study-based to enable more effective technology transfer.
- (f) Raise awareness on the importance of an IP framework, including the accession to PCT, Madrid and Hague systems, which is a necessary but not sufficient condition for effective technology transfer.
- (g) Identify ways to use IPR from publicly-funded research for socio-economic development and implement them with local specific needs, given that *'one size does not fit all'*.
- (h) Continue work on international technology transfer, which was useful and should be endorsed by the CDIP.

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

The 33rd session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) took place from 16 to 20 March 2015 in Geneva, Switzerland. The meeting was chaired by Mr. Adil El Maliki from Morocco.

The SCT discussed issues relating to Industrial Designs, Trademarks, and Geographical Indications. With regard to Industrial Designs, two key issues were discussed: the proposal of the African Group for the inclusion of disclosure requirements in the draft Design Law Treaty (DLT) and the inclusion of an Article on technical assistance in the DLT.

Concerning Trademarks, two key issues were discussed – 1) the Jamaican proposal concerning the protection of country names; and 2) update on Trademark-Related Aspects of the Domain Name System (SCT/33/4 Rev.).

In relation to Geographical Indications, the key issues that were discussed were the proposals by the USA (SCT/30/7 and SCT/31/7) for a work plan on exploring the feasibility of a GI filing system and the proposal submitted by the Czech Republic and others (SCT/31/8 Rev.4) on extending the scope of the WIPO UDRP to country names and GIs. At the end of the session,

the position with regard to these issues remained largely the same.

During this session of the SCT, there was a side event on the protection of country names and nation branding. In addition, after the closing of the session, there was an information meeting on the Draft New Act of the Lisbon Agreement.

### *Industrial Designs*

Since 2005 the SCT has been discussing matters pertaining to national legislation concerning industrial design law, particularly on formalities and procedures, and whether the SCT should take on work towards international harmonization in this area. Currently, the SCT is considering draft Articles on Industrial Design Law and Practice and related draft regulations. Developed countries have been pressing for the SCT to agree to convene a Diplomatic Conference for the adoption of the DLT but differences remain with developing countries, in particular on the acceptance of a provision on technical assistance as an Article under the treaty. Developed countries favour a resolution on technical assistance outside the treaty rather than a treaty provision on technical assistance. In the 32nd session of the SCT, the African Group had also submitted a textual proposal for a specific provision introducing a disclosure requirement regarding the source or origin of industrial designs and whether they are inspired by traditional knowledge (TK) or traditional cultural expressions (TCEs). During the meeting of the SCT, there was disagreement among Member States with regard to the proposal of the African Group for the inclusion of disclosure requirements in the DLT and also with regard to the inclusion of a provision on technical assistance as an Article under the treaty.

In relation to the proposal of the African Group on disclosure requirements, Japan, on behalf of Group B, stated that the disclosure requirement will increase the burden on industrial design applicants and it also questioned how such a requirement will increase policy space. According to Japan, the disclosure requirement does not fall within the scope of the treaty and it also expressed its hope that the current session can convene a diplomatic conference. The EU stated that it remained open on the idea of including a provision on technical assistance in the text of the DLT and it urged the African Group to withdraw its latest proposal on disclosure requirement. According to the EU, the focus of the efforts during the meeting should be solely on convening a diplomatic conference. Romania, speaking on behalf of the CEBS group, also stated that the text of the DLT is mature enough to go to a diplomatic

conference. It stated that the disclosure requirement is not compatible with the DLT.

Greece stated that disclosure applies to substantive requirements, and that the DLT is a formalities treaty. According to Greece, the disclosure requirement is not a formalities requirement but a substantive requirement and design law does not protect the material used for the design. In the same vein, the United States stated that the DLT should not include such a substantive requirement and that the proposed requirement is not relevant to whether a design should be registered. According to the US, Industrial Designs provide protection for the ornamental design and not the material used. The US disagreed that the proposal of the Africa Group has any relevance to the DLT.

Nigeria, speaking on behalf of the African Group, stated that disclosure is the quid pro quo of the IP system and that the question is about what kind of disclosure and for what purposes. Nigeria stated that it does not disagree that design law does not protect the material but ornamentation. According to Nigeria, it is simply demanding that an applicant seeking to register a design should state whether the design is new and whether it is the result of a TK, genetic resources (GR), or TCEs. Nigeria stated that the proposal of the African Group is consistent with innovation: the innovation that happens in rural villages. It stated that some members of ARIPO already have disclosure requirements pursuant to the Swakopmund Protocol. It stated that the Africa Group is committed to the DLT and that the disclosure requirement is not about the protection of TK, GR, and TCEs but about the signalling of information concerning novelty to the examiner of a design application.

With regard to technical assistance, the position of Member States remained the same. Prior to this meeting, developed countries had favoured a resolution on technical assistance outside the treaty rather than a treaty provision on technical assistance. During the meeting, the USA stated that technical assistance is properly handled through a resolution. Canada stated that the negotiations for an Article on technical assistance should be at the diplomatic conference but it should not be a precondition to convene a diplomatic conference. The EU stated that it remains flexible as to whether technical assistance should be in an Article or a diplomatic conference resolution. China stated that technical assistance is an important issue and that to adopt an Article would be a better choice but that it will also support flexibility in this regard.

The chairman concluded that, overall, the situation remained unchanged and that the DLT

would be considered at the next sessions of the General Assembly and the SCT.

### *Trademarks*

The SCT has been discussing the issue of protection of country names against undue registration or use of country names as trademarks. Discussions on this issue have been taken up in the SCT on the basis of past proposals by Jamaica and Barbados. During the meeting, the revised proposal by Jamaica (SCT/32/2) for a Joint Recommendation on the protection of country names was discussed.

Jamaica stated that the protection for country names is not comprehensive and is inadequate and that the aim of its proposed draft Joint Recommendations is not to prescribe binding rules but to establish a coherent and consistent framework in the use of country names.<sup>1</sup> Trinidad and Tobago, aligned itself with Jamaica, and stated that the proposed draft does not prescribe binding rules but guiding rules for IP offices with regard to the registration of country names. Monaco and Switzerland also expressed their support for the Jamaican proposal.

The EU stated that the existing Trademark laws already provide protection for country names and that the draft Joint Recommendations proposed by Jamaica establishes very broad protection for country names. The EU believes that it is necessary to look at the issue from all perspectives, including the perspective of current users of country names. Spain expressed its support for the statement of the EU regarding the Jamaican proposal. According to Spain, what is required is a detailed study of country names from all points of views including the views of current users of country names in legitimate commercial practice. Italy also aligned itself with the statement made by the EU. Romania, on behalf of the CEBS group, stated that at this point, it is important to ensure a careful examination of the potential consequences for all users. The USA stated that some parts of the Jamaican proposal suggest a right for countries to own their name, and establishes a presumption of deceptive use.<sup>2</sup> According to the USA, not all countries agree on the ownership right of a country over its name.<sup>3</sup> Japan stated that the proposal for Joint Recommendations prepared by Jamaica might pose an excessive burden to an applicant for a trademark.

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<sup>1</sup> See, Catherine Saez, 'Standstill on Industrial Design Treaty, Country Names, GIs in WIPO Committee' (*Intellectual Property Watch*, 20 March 2015) <http://www.ip-watch.org/2015/03/20/standstill-on-industrial-design-treaty-country-names-gis-in-wipo-committee/>.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

The chairman noted that the SCT would revert to the Jamaican proposal at its next session and he requested the Secretariat to revise document SCT/30/4 (i.e. the Revised Draft Reference Document on the Protection of Country Names Against Registration and Use as Trademarks) in order to render it more descriptive of Intellectual Property office practices in the area of the protection of country names, for consideration at the next session of the SCT.

During the meeting, the SCT also considered SCT/33/4 Rev. (Update on Trademark-Related Aspects of the Domain Name System). Hungary stated that it still believes that updates for future sessions will be useful and that the issue should still be kept on the agenda. Italy aligned itself with the position of Hungary. The Secretariat was requested to keep Member States informed of future developments in the Domain Name System.

### *Geographical Indications*

In the 30th session of the SCT, the United States of America (USA) had submitted a proposal (SCT/30/7) requesting the WIPO Secretariat to conduct a feasibility study of an international geographical indications filing system and also undertake separate studies on various national law approaches to specific geographical indications topics. However, the proposal was not substantively discussed as delegations did not have sufficient time to evaluate the proposal. In the 31st session of the SCT, the USA had submitted a revised proposal (SCT/31/7) which requested the Secretariat to conduct a survey on existing national GI regimes and for the SCT to discuss the propriety of discussions under the Lisbon Treaty on Appellations of Origin to include GIs within the scope of the Lisbon Treaty. At the 31st session of the SCT, the Czech Republic, France, Germany, Hungary, Italy, Moldova, Spain and Switzerland submitted a proposal on protection of GIs and country names in the domain name system (SCT/31/8 Rev.3). During the meeting, the Secretariat announced that Portugal is now a co-sponsor of SCT/31/8 Rev.3.

With regard to the USA proposals (SCT/30/7 and SCT/31/7), the USA noted that the Lisbon Union may not be in a position to accommodate Geographical Indication (GI) systems and it reiterated its request for a study of national systems as stated in its proposal SCT/31/7. According to the USA, it views the Lisbon Agreement as a reciprocal arrangement and it stated that the Lisbon Agreement has to move away from the reciprocal list exchange model. The USA stated that countries should have the ability to make their own decisions concerning GIs and governments should not take the place of private



parties. The USA stated that the principle of territoriality is important for the GI system and that the receiving country should not be bound to grant protection to the country of origin. According to the USA, the Lisbon Revision Text should eliminate the presumption of deception where there is no local reputation and the Revision Text should also respect the right of prior users. The USA stated that the Revision Text should also give full respect to the right of third parties to request invalidation and it should equally move away from the existing list exchange model.

Italy stated that it could not support the US work plan proposal (SCT/31/7) and that the SCT is not the appropriate forum to discuss the work of other bodies in WIPO. The EU stated that the US proposal would not add anything new and that moving ahead with the Lisbon Revision System should be WIPO's first priority. The EU also stated that the SCT is not the appropriate forum to deal with the revision system and it stated that it could not endorse the US proposal. Romania, speaking on behalf of the CEBS group, stated that the study proposed by the US would not bring added value to the work already done by the SCT. Switzerland stated that it believes that the SCT is neither the proper location nor time to discuss the proposal of the USA. Iran also stated that it could not accept the proposal of the USA.

Chile stated that it supports the undertaking of a study on the manner in which national legislation considers certain aspects of GIs particularly where there is no agreement at the international level. Australia welcomed the opportunity to discuss GIs at the SCT and it expressed its support for the proposal of the USA for a study. According to Australia, it considers the possibility of fees at the national level to be very important, particularly for developing countries and it stated that the Lisbon (Revision) System should accommodate the incorporation of fees. Argentina stated that the SCT is the appropriate place to discuss GIs and it believes that it will be most useful to have a study. Argentina reiterated its concern regarding the revision of the Lisbon system and it stated that the revision will change the essence of the system by broadening its scope of application. Korea stated that it fully supports the proposal of the USA and it aligned itself with the position of Chile, Argentina, and Australia. Korea requested an open diplomatic conference and it also stated that the SCT is the proper place to discuss GIs. Canada stated that there could be added value in a study and it therefore supports further study as proposed by the USA. Japan stated that the SCT is an appropriate forum to discuss GIs and it expressed its support for the proposal of the USA. Russia stated that the survey proposed by the USA would be useful for Russia. Russia further stated that it would like to have a full picture of the protection of

GIs in most countries of the world and learn from them. According to Russia, no system should remain static, they should all develop and it stated that it supports the carrying out of a survey on GIs. Brazil emphasized the need for inclusiveness at the diplomatic conference and it stated that all members should participate on an equal footing at the diplomatic conference.

With regard to the proposal by the Czech Republic and others (SCT/31/8), Hungary reaffirmed its proposal to conduct work on the possible improvement and extension of the list of important geographical names administered by ICANN and the possible extension of the scope of the WIPO Uniform Domain Name Dispute Resolution Policy (UDRP) to country names and geographical indications. Romania, on behalf of the CEBS group, supported the proposal. The EU stated that it was interested in the proposed study. Italy aligned itself with the position of the EU and expressed its support for the proposal. Iran, Mexico, Switzerland, Jamaica, Germany, and France all expressed their support for the proposal.

Australia stated that it does not support the proposal and that there are safeguards to address the concerns (raised in the proposal). The USA also stated that it is not in support of the (proposed) study and that it supports the intervention of Australia, particularly with regard to the point that the safeguards in the Domain Name System and gTLDs are sufficient. According to the USA, a study on GIs in the Domain Name System is premature and the USA would like to separate GIs which are private property rights and country names which are not private property rights.

During the meeting, ICANN stated that there is a list of country names that are protected at the first and second levels and it also stated that the list does not extend to GIs and country capitals. According to ICANN, discussions are already on as to whether the list should be expanded and that work is taking place at ICANN in looking at these issues.

The chairman noted that the SCT, at its next session, would revert to the proposal by the USA (SCT/31/7) and the proposal by the Czech Republic and others (SCT/31/8 Rev.3).

### **Future WIPO Meetings**

The fifteenth session of the Committee on Development and Intellectual Property will be held from **20-24 April 2015**.

The Diplomatic Conference for the adoption of the revised Lisbon Agreement will be held from **11-21 May 2015**.

The twenty-eighth session of the PCT Committee for Technical Cooperation will be held from **26-29 May 2015**.

The eighth session of the PCT Working Group will be held from **26-29 May 2015**.

The thirtieth session of the Standing Committee on Copyright and Related Rights will be held from **29 June to 3 July 2015**.

## **INTERNATIONAL UNION FOR THE PROTECTION OF PLANT VARIETIES (UPOV)**

### **UPOV Council: Forty-Eighth Ordinary Session**

The Thirty-Second Extraordinary Session of the UPOV Council was held on **27 March 2015** in Geneva, Switzerland. Besides the meeting of the Council, the Seventy-First Session of the Administrative and Legal Committee (CAJ) was held on **26 March 2015** and the Eighty-Ninth Session of the Consultative Committee also met on **27 March 2015**.

### *Consultative Committee (CC)*

The Consultative Committee (CC) of UPOV held its eighty-ninth session in Geneva on 27 March 2015. Some information about the developments that occurred during this meeting can be gathered from the report by the President on the work of the eighty-ninth session of the CC (document C(Extr.)/32/5 Prov.)<sup>4</sup> which was considered by the UPOV Council during its session.

The CC considered a number of issues including: extension of the appointment of the Vice Secretary-General; preliminary examination of the conformity of the “Draft provisions of Book Four ‘Plant Varieties’ of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights” of Egypt with the 1991 Act of the UPOV Convention; Special Project Fund; preparation of the draft program and budget of the Union for the 2016-2017 biennium; international system of cooperation; access to UPOV documents and publication of information; communication strategy; interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA); developments of relevance to UPOV in other international fora; and preparation of the calendar of meetings. The CC recommended to the Council to extend the appointment of the Vice Secretary-General

<sup>4</sup> See, UPOV Council, ‘Report by the President on the Work of the Eighty-Ninth Session of the Consultative Committee; Adoption of Recommendations, If Any, Prepared by that Committee’, Thirty-Second Extraordinary Session, Geneva, 27 March 2015 (C(Extr.)/32/5 Prov.).

from 1 December 2015 until 30 November 2018.<sup>5</sup> Concerning the conformity of the Egyptian Draft Law with the 1991 Act of the UPOV Convention, the CC recommended to the Council to note the information provided by the Delegation of Egypt that the English translation of the (Egyptian) Draft Law required verification and that some corrections would be made to the translation in accordance with the original text of the Draft Law.<sup>6</sup> The CC further recommended to the Council to take a positive decision on the conformity of the “Draft provisions of Book Four ‘Plant Variety Protection’ of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights” (“Draft Law”) of Egypt with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Egypt, once the Draft Law is adopted with no changes and the Law is in force, to deposit its instrument of accession to the 1991 Act.<sup>7</sup> In addition, the CC also recommended to the Council to authorize the Secretary-General to inform the Government of Egypt of that decision.<sup>8</sup>

With regard to the international system of cooperation, during the eighty-eighth session of the CC held on 15 and 16 October 2014, the CC had noted the information provided on the WIPO international patent system (PCT), international trademark System (Madrid) and international design system (The Hague) and considered the written contribution by the International Seed Federation (ISF), the International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Trees Varieties (CIOPORA) and CropLife International, in conjunction with their joint presentation at the eighty-eighth session of the CC.<sup>9</sup> Furthermore, during its eighty-eighth session, the CC had 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 CC at its eighty-ninth session, in March 2015.<sup>10</sup> During the eighty-ninth session of the CC, the CC concluded that more time was needed to discuss the issues raised by a possible international system of cooperation and it agreed that the matter should be considered further at its ninetieth session.<sup>11</sup> Furthermore, in order to facilitate its considerations, the CC

<sup>5</sup> Ibid para 5.

<sup>6</sup> Ibid para 6(b).

<sup>7</sup> Ibid para 6(c).

<sup>8</sup> Ibid para 6(d).

<sup>9</sup> See, UPOV Council, ‘Report by the President on the Work of the Eighty-Eighth Session of the Consultative Committee; Adoption of Recommendations, If Any, Prepared by that Committee’, Forty-Eight Ordinary Session, Geneva, 16 October 2014 (C/48/19) para 33.

<sup>10</sup> Ibid para 34.

<sup>11</sup> See, UPOV Council, ‘Report by the President on the Work of the Eighty-Ninth Session of the Consultative Committee; Adoption of Recommendations, If Any, Prepared by that Committee’, Thirty-Second Extraordinary Session, Geneva, 27 March 2015 (C(Extr.)/32/5 Prov.) para 19.

agreed that the Office of the Union should produce a document with more information about the need for an international system and which also provides a business analysis and cost estimate.<sup>12</sup>

Concerning the Interrelation with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), during the eighty-eighth session of the CC held in October 2014, the CC had 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.<sup>13</sup> Several civil society organizations and intergovernmental organizations have submitted comments to the Secretary of the ITPGRFA, particularly on the interrelation of Article 9 on Farmers' Rights of the ITPGRFA with instruments of UPOV and WIPO.<sup>14</sup> The South Centre submission in this regard 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. During the eighty-ninth session of the CC, the CC noted the developments concerning possible areas of interrelations among the international instruments of the ITPGRFA, WIPO and UPOV.<sup>15</sup>

During the meeting, the CC also noted the conclusions of the CAJ to hold its seventy-second session on 26 and 27 October 2015, and not to convene a session of the Administrative and Legal Committee Advisory Group (CAJ-AG) on 30 October 2015.<sup>16</sup> On the basis of the above, the CC recommended to the Council to revise the

Calendar of Meetings in 2015, in order to remove the references to the CAJ-AG.<sup>17</sup>

### *Administrative and Legal Committee (CAJ)*

The Administrative and Legal Committee of UPOV (CAJ) held its seventy-first session in Geneva on 26 March 2015. The session was chaired by Mr Martin Ekvad (European Union).

The CAJ considered the 'Report on developments in the Technical Committee' (document CAJ/71/9). The CAJ also discussed issues relating to the development of information materials concerning the UPOV Convention; variety denominations; matters concerning observers in the Administrative and Legal Committee Advisory Group (CAJ-AG); matters referred by the CAJ to the Consultative Committee and the Council; Information and Databases; Test Guidelines' Procedures (TGP) documents; and Molecular techniques.

During the session, the chairman informed the CAJ that the South Centre had been granted observer status in the Council and the CAJ and that the World Farmers' Organization (WFO) had been granted observer status in the Council, the CAJ and the Technical Committee.<sup>18</sup> Furthermore, during the meeting, the CAJ agreed to consider matters concerning observers in the CAJ-AG in the event that a session of the CAJ-AG is convened by the CAJ.<sup>19</sup> In addition, the CAJ noted that 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 had been reported to the Consultative Committee and the Council, as set out in paragraph 48 of document CAJ/71/2.

The CAJ also decided that, under the item "Program for the seventy-third session", at its seventy-second session, the CAJ would consider the schedule of CAJ sessions in 2016. The CAJ agreed to hold its seventy-second session on **26 and 27 October 2015** and it decided not to convene a session of the CAJ-AG on 30 October 2015.

### *UPOV Council*

The thirty-second extraordinary session of the Council of the International Union for the

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<sup>12</sup> Ibid.

<sup>13</sup> See, UPOV Council, 'Report by the President on the Work of the Eighty-Eighth Session of the Consultative Committee; Adoption of Recommendations, If Any, Prepared by that Committee', Forty-Eight Ordinary Session, Geneva, 16 October 2014 (C/48/19) para 54.

<sup>14</sup> See, The International Treaty on Plant Genetic Resources for Food and Agriculture, 'Submissions of Views and Experiences on the Implementation of Farmers' Rights Submitted by Contracting Parties and Relevant Organizations: Interrelations with UPOV and WIPO – Submissions of information on interrelations with UPOV and WIPO' <http://www.planttreaty.org/content/farmers-rights-submissions>.

<sup>15</sup> See, UPOV Council, 'Report by the President on the Work of the Eighty-Ninth Session of the Consultative Committee; Adoption of Recommendations, If Any, Prepared by that Committee', Thirty-Second Extraordinary Session, Geneva, 27 March 2015 (C(Extr.)/32/5 Prov.) para 25.

<sup>16</sup> Ibid para 27.

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<sup>17</sup> Ibid para 28.

<sup>18</sup> See, Administrative and Legal Committee (CAJ), 'Draft Report on the Conclusions' Seventy-First Session, Geneva, 26 March 2015 (CAJ/71/10 Prov.) para 3.

<sup>19</sup> Ibid para 26.

Protection of New Varieties of Plants (UPOV) was held in Geneva on 27 March 2015. The session was chaired by Ms. Kitisri Sukhapinda (United States of America).

The Council considered a number of issues including: extension of the appointment of the Vice Secretary-General; examination of the conformity of the “Draft provisions of Book Four ‘Plant Varieties’ of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights” of Egypt with the 1991 Act of the UPOV Convention; Adoption of documents; report by the President on the work of the eighty-ninth session of the Consultative Committee; and calendar of Meetings in 2015.

At the request of the Seed and Plant Certification and Registration Institute (SPCRI) of the Islamic Republic of Iran, the Council agreed to defer, until its forty-ninth ordinary session in October 2015, its consideration of the Examination of the conformity of the “Act of Plant Varieties Registration, Control and Certification of Seeds and Plant Materials of 2003” of the Islamic Republic of Iran with the 1991 Act of the UPOV Convention.<sup>20</sup>

During the meeting, the Council decided to extend the appointment of the Vice Secretary-General from 1 December 2015 until 30 November 2018.<sup>21</sup> With regard to the conformity of the Egyptian Draft Law with the 1991 Act of the UPOV Convention, the Council decided to note the information provided by the Delegation of Egypt that the English translation of the (Egyptian) Draft Law required verification and that some corrections would be made to the translation in accordance with the original text of the Draft Law.<sup>22</sup> The Council also decided to take a positive decision on the conformity of the “Draft provisions of Book Four ‘Plant Variety Protection’ of Law No. 82 of 2002 Pertaining to the Protection of Intellectual Property Rights” (“Draft Law”) of Egypt with the provisions of the 1991 Act of the International Convention for the Protection of New Varieties of Plants, which allows Egypt, once the Draft Law is adopted with no changes and the Law is in force, to deposit its instrument of accession to the 1991 Act.<sup>23</sup> In addition, the Council decided to authorize the Secretary-General to inform the Government of Egypt of that decision.<sup>24</sup>

The Council noted the work of the Consultative Committee at its eighty-ninth session, as reported in document C(Extr.)/32/5 and, based on the recommendation of the Consultative Committee,

<sup>20</sup> See, UPOV Council, ‘Report on the Decisions’ Thirty-Second Extraordinary Session, Geneva, 27 March 2015 (C(Extr.)/32/9) para 5.

<sup>21</sup> Ibid para 7.

<sup>22</sup> Ibid para 11(b).

<sup>23</sup> Ibid para 11(c).

<sup>24</sup> Ibid para 11(d).

the Council decided to revise the answer to the FAQ “Can I obtain protection for more than one country from a single application?”

The Council noted the conclusions of the CAJ to hold its seventy-second session on 26 and 27 October 2015, and not to convene a session of the Administrative and Legal Committee Advisory Group (CAJ-AG) on 30 October 2015.<sup>25</sup> On the basis of the foregoing, the Council approved a revision of the Calendar of Meetings in 2015, in order to remove the references to the CAJ-AG.

### Future UPOV Meetings

The next UPOV sessions will be held from **26 to 29 of October 2015** in Geneva, Switzerland. The Administrative and Legal Committee will meet between **26 and 27 October 2015** while the Consultative Committee will meet on **28 October 2015**. The UPOV Council will meet on **29 October 2015**.

## WORLD HEALTH ORGANIZATION (WHO)

### Executive Board of the World Health Organization

The 136th session of the Executive Board (EB) of the World Health Organization was held from 27 January to 3 February 2015 in Geneva. The Executive Board discussed a number of important public health issues including the draft framework of engagement with non-State actors; the outcome of the second International Conference on Nutrition; addressing the health impact of air pollution; outcome of the WHO Conference on health and Climate; global strategy and plan of action on public health, innovation and intellectual property; SSFFC; and antimicrobial resistance (AMR).

A draft framework of engagement with non-State actors for the WHO was prepared by the WHO Secretariat for consideration by the member States of the Board. Consensus was not achieved at the Board and a process decision was adopted (EB136(3)) which noted that further improvements are needed in the list of issues in the framework and invited member States to submit to the Director-General specific proposals for amendment, inclusion or deletion of text from the draft framework. The Director-General was requested to compile the proposals and make them available to member States by 9 March 2015 and convene an open-ended intergovernmental meeting to discuss these

<sup>25</sup> Ibid para 22.

proposals from 30 March to 1 April 2015, and submit a revised framework based on the outcome of the intergovernmental meeting to the sixty eighth session of the Assembly. The EB had identified a non-exhaustive list of issues which need more work among member States. These are – conflict of interest, criteria of due diligence and process risk management, transparency, secondments and provision of personnel, role of the private sector, engagement with particular industries, criteria of attribution to type of non-State actors, in which kind of meetings can NSAs participate, use of funds provided by NSA to support the salary of WHO staff, official relations, policy, norms and standard setting, applicability of the framework to all levels of the WHO and to all 6 regions, general principles that guide collaboration, definition of terms, support to policy making at national level.

The Executive Board also discussed a revised paper prepared by the WHO Secretariat on the health impact of air pollution. A draft resolution on this issue was proposed by Chile, Colombia, France, Monaco, Norway, Panama, Ukraine, USA, Uruguay and Zambia (EB136/CONF./9). A drafting group was constituted and a revised draft resolution (EB/136/CONF./9 Rev.1) was considered. However, consensus could not be achieved in the drafting group. Accordingly it was decided (EB136(14)) that member States would continue to work on the draft in the lead up to the 68<sup>th</sup> session of the World Health Assembly.

The EB also discussed a revised draft Global Action Plan (GAP) on antimicrobial resistance (AMR) that was prepared by the WHO Secretariat after stakeholder consultations pursuant to a resolution adopted by the Assembly in its 67th session in 2014. During the 136th session of the EB, developing countries made a strong call for access to finance, technology and new medicines to fight against antimicrobial resistance (AMR) during their interventions on the proposed GAP. Member States decided to further deliberate on and amend the draft GAP at the meeting of the Strategic and Technical Advisory Group (STAG) on AMR following the EB, in the light of comments made by member States for the consideration by the 68th session of the WHA.

On SSFFC, the EB requested the 68th session of the World Health Assembly (WHA) to postpone the review of the Member State Mechanism (MSM) on SSFFC by one year to 2017.

On the follow up to the report of Consultative Expert Working Group on Research and Development: Financing and Coordination (CEWG), pursuant to the decision by the 67th session of the WHA requesting the WHO Secretariat to explore the option of using an existing mechanism to host a pooled fund for

voluntary contributions towards R&D for diseases that disproportionately affect developing countries in collaboration with UNICEF/UNDP/World Bank/WHO Special Programme for Research and Training in Tropical Diseases, the Secretariat submitted a report proposing a pooled funding mechanism, for the consideration of the EB (EB136/30). This proposal will be discussed further at the 68th session of the World Health Assembly in May 2015.

As part of the follow-up to the report of the CEWG, the WHO Secretariat was also requested to facilitate the implementation of a few R&D demonstration projects to address identified gaps that disproportionately affect developing countries and report to the 68th session of the World Health Assembly. During the 136th session of the EB, a number of countries raised concerns about the funding of these projects. Brazil, Switzerland and Norway announced pledges to support these projects.

On the global strategy and plan of action on public health, innovation and intellectual property, the WHO Secretariat was required by Resolution WHA 62.16 of 2009 to conduct an overall review of the implementation of the GSPOA in 2014. At the 136th the Secretariat presented a report without providing a review (EB136/31) and instead proposed a timeline for the process leading to the presentation to the governing bodies of an evaluation report on the GSPOA in 2017. The EB decided to recommend to the 68th World Health Assembly to extend the deadline of the overall programme review of the global strategy and plan of action on public health, innovation and intellectual property on its achievements, remaining challenges and recommendations on the way forward to 2018, and to recommend to the Assembly to extend the time frame of the plan of action on public health, innovation and intellectual property until 2022. It also requested the Director-General to provide a report for the Sixty-eighth World Health Assembly on options, in consultation with Member States, for the conduct of the comprehensive evaluation and the overall programme review of the GSPOA.

### **Future WHO Meetings**

The sixty-eighth session of the World Health Assembly will be held from **18-26 May 2015**.

The 137th session of the Executive Board of the WHO will be held from **27-28 May 2015**.

## **FOOD AND AGRICULTURE ORGANIZATION (FAO)**

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

#### *Second meeting of the Ad Hoc Technical Committee on Sustainable Use of Plant Genetic Resources for Food and Agriculture*

The second meeting of the *Ad Hoc* Technical Committee on Sustainable Use of Plant Genetic Resources for Food and Agriculture was held in Rome from 2-3 March 2015.

The Committee discussed the development of a toolbox on sustainable use of plant genetic resources for food and agriculture (PGRFA) as a practical instrument to aid Contracting Parties in the implementation of Article 6 of the International Treaty on Plant Genetic Resources for Food and Agriculture. The Committee recommended that the toolbox should address multiple dimensions of sustainable use of PGRFA, consult indigenous and local communities and smallholder farmers including women in the process of further development of the toolbox. The Committee also considered a presentation on an international workshop on the promotion of public private partnerships (PPP) for pre-breeding and another presentation on a platform being developed for co-development and transfer of technology in collaboration between EMBRAPA (Brazil), IARD (Indonesia) and the African Agricultural Technology Platform. On the PPPs for pre-breeding a need for clarity on intellectual property (IP) rights and the IP landscape was identified. Enhanced funding needs were identified as a major challenge for co-development and transfer of technology.

The Committee also discussed experiences of countries and stakeholders regarding breeding strategies and regulations concerning variety release and seed distribution, and in this context it considered a presentation on the functions and processes of seed regulatory frameworks for seed registration and certification in the Philippines. The Committee noted significant impact of variety release systems and seed registration and certification requirements on sustainable use practices of traditional farmers, as well as on plant breeding methodologies that include farmers, and the resulting varieties. The Committee recommended that both formal and informal seed systems be included in the Programme of Work and the Toolbox, in particular to address farmers' needs and the use of farmers' varieties.

The Committee also discussed the issue of identification of inter-relations between the ITPGRFA, and relevant instruments of UPOV and

WIPO. The key question in this regard is whether relevant instruments of UPOV and WIPO facilitate or constrain the implementation of the International Treaty by Contracting Parties? The Committee had a preliminary discussion on possible issues of interrelations between the International Treaty and the relevant instruments of UPOV and WIPO. Following the advice by the Bureau of the International Treaty, it reviewed the tentative list of some of the issues that were mentioned in the submissions received before the meeting, and recommended to forward the entire list in slightly amended form to UPOV and WIPO. However, the Committee did not make any recommendation for consideration by the Governing Body in this regard.

### **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 be held in Brasilia, Brazil, from **2-5 June 2015**.

The sixth session of the Governing Body of the International Treaty will be held in Rome from **5-9 October 2015**.

### **Commission on Genetic Resources for Food and Agriculture**

The fifteenth regular session of the FAO Commission on Genetic Resources for Food and Agriculture was held in Rome from 19-23 January 2015. The session was chaired by Mr. Amar Tahiri from Morocco.

The Commission discussed various matters relating to genetic resources for food and agriculture including progress on the development of a report on *The State of the World's Biodiversity for Food and Agriculture*, development of targets and indicators for biodiversity for food and agriculture, access and benefit-sharing for genetic resources for food and agriculture, climate change and genetic resources for food and agriculture, animal genetic resources, forest genetic resources, plant genetic resources, aquatic genetic resources, micro-organisms and invertebrates, implementation of the multi-year programme of work, and cooperation with international instruments and organizations.

On access and benefit sharing for genetic resources for food and agriculture the Commission discussed the *Draft Elements to Facilitate Domestic Implementation of Access and Benefit-sharing for Different Subsectors of Genetic Resources for Food and Agriculture*. It welcomed the draft ABS Elements and invited the FAO Director-General to bring the ABS Elements

to the attention of the FAO Conference, requested the Secretary to develop materials for awareness raising on the ABS Elements and also develop targeted capacity building and technical assistance at the national level, and continue working with the Secretariats of the International Treaty and the CBD.

The Commission endorsed the *Voluntary Guidelines to Support the Integration of Genetic Diversity into National Climate Change Adaptation Planning* and invited the FAO Director-General to bring them to the attention of the FAO Conference for approval and invited the Secretary of the Commission to transmit the Voluntary Guidelines after adoption by the Conference to the UNFCCC and other relevant international instruments and bodies.

The sixteenth regular session of the Commission will be held in Rome from **30 January to 3 February 2017**.

## **CONVENTION ON BIOLOGICAL DIVERSITY (CBD)**

### **Ad Hoc Open-ended Intergovernmental Committee for the Nagoya Protocol on Access and Benefit-Sharing**

The third meeting of the Open-ended Ad Hoc Intergovernmental Committee for 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 (the Intergovernmental Committee) was held in Pyeongchang, Republic of Korea, from 24 to 28 February 2014. The meeting was chaired by Ms. Janet Lowe from New Zealand.

Some progress was made in particular areas in which decisions were adopted. In brief, the following bodies were established:

- Informal advisory committee (IAC) for the implementation of the Access and Benefit-sharing Clearing-house (ABS-CH)
- Compliance Committee
- Informal advisory committee to provide advice to the Executive Secretary on matters related to the assessment of the effectiveness of the strategic framework for capacity-building and development to support the effective implementation of the Protocol

Also, some instruments were adopted:

- Modalities related to the operation of the ABS-CH
- Guidelines for the Interim National Report on

The Implementation of the Nagoya Protocol

- Cooperative procedures and institutional mechanisms to promote compliance with the Nagoya Protocol and to address cases of non-compliance
- Strategic framework for capacity-building and development to support the effective implementation of the Protocol

Discussions on a global multilateral benefit-sharing mechanism for situations in which the utilization of genetic resources and associated TK occur in transboundary situations or for which it is not possible to grant or obtain prior informed consent did not lead to any substantive outcome. In contrast, the decision adopted<sup>i</sup> recognises that further discussions are needed to reach a common understanding on this matter.

Concerning the financial mechanism of the Protocol, it was decided that all developing countries, in particular Least Developed Countries, Small Island Developing States and countries with economies in transition, are eligible for funding by the Global Environment Facility (GEF) if: (i) they are parties to the Protocol; or (ii) 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 submitted in writing to the Secretariat, for up to four years after the Protocol's entered into force).

Some progress was made through the establishment of new institutions that will guide and develop some of the work that needs to be done for the Protocol's implementation. Nonetheless, once these arrangements start delivering concrete outcomes, there will be a better idea of how the implementation is framed at the global level.

## **UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)**

### **Tenth Meeting of the Technology Executive Committee**

The tenth meeting of the UNFCCC Technology Executive Committee (TEC) was held on 9-12 March 2015 in Bonn, Germany. The meeting was chaired by Gabriel Blanco. Discussions focused on the outcomes of the Lima and Geneva climate conferences, updating the rolling workplan of TEC, technology needs assessments, climate technology financing, enabling environments and barriers, technologies for mitigation, technologies for adaptation, and outreach and communication strategy for TEC.

The TEC took note of the main outcomes of the Lima Climate Conference held on 1-14 December 2014 and also the meeting of the Ad Hoc Working Group on the Durban Platform on Enhanced Action that was held in Geneva on 8-13 February 2015. TEC deliberated on enhancing collaboration between the TEC and the Climate Technology Centre and Network (CTCN), including through exchanging information on policy advice and tools, and their respective work on technology needs assessments (TNAs).

On technology needs assessments, the TEC considered information provided by the secretariat about existing background work on TNAs in order to help to define how to respond to the COP 20 mandate on the provision of guidance on how the results of the TNAs, in particular the technology action plans (TAPs), can be developed into projects that can be ultimately implemented. The TEC requested the task force on TNAs to initiate the work on this matter during TEC 10. The task force discussed and adopted the terms of reference for its work.

On climate technology financing, TECH discussed possible areas of collaboration with the Green Climate Fund (GCF), engagement with the Standing Committee on Finance (SCF) and providing inputs to an in-session workshop on long-term finance as requested by COP 20.

On enabling environments and barriers, TEC agreed to develop a policy brief focused on strengthening national systems of innovation in developing countries and agreed to share the draft at its eleventh session.

The eleventh session of the TEC will be held on **7-11 September 2015** in Bonn, Germany.

## 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).

#### *TPP Officials' Meeting (January - February)*

The Officials of TPP met from **26 January to 1 February 2015** in New York City with the goal of further advance negotiations. The topics that were

discussed include intellectual property, investment, non-confirming measures, state-owned enterprises, rules of origin, environment, and financial services. Progress was made in the area of market access for goods and in several areas.<sup>26</sup>

#### *TPP Officials' Meeting (March)*

The officials of TPP met from **9-15 March 2014** in Hawaii, United States to advance remaining technical issues. The topics discussed include market access, intellectual property, rules of origin, state-owned enterprises, and textiles. Negotiators will continue discussions through intersessional work in the coming weeks.<sup>27</sup>

#### **Future TPP Dates**

There will be a TPP Officials' Meeting from **23-26 April 2015** in Maryland, USA.

### **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.<sup>28</sup> The EU's ambition in all areas, including intellectual property rights, is included in the document. Likewise, US goals are also publicly available.<sup>29</sup>

#### *Eighth Round of Negotiations*

The eighth round of TTIP negotiations was held from 2-6 February 2015 in Brussels.<sup>30</sup> There were discussions in nearly all the areas that will be covered in the agreement except on ISDS/investment protection.<sup>31</sup>

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<sup>26</sup> See generally, Foreign Affairs, Trade and Development Canada, 'Trans-Pacific Partnership (TPP) Free Trade Negotiations' <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/rounds-series.aspx?lang=eng>.

<sup>27</sup> Ibid.

<sup>28</sup> See, Council of the European Union., 'Directives for the Negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America' <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>.

<sup>29</sup> Office of the United States Trade Representative, 'T-TIP Issue Information Center' <https://ustr.gov/trade-agreements/free-trade-agreements/transatlantic-trade-and-investment-partnership-t-tip/t-tip>.

<sup>30</sup> See generally, European Commission, 'Report of the Eighth Round of Negotiations for the Transatlantic Trade and Investment Partnership', 1. [http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc\\_153175.pdf](http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153175.pdf).

<sup>31</sup> Ibid.



With regard to intellectual property rights, negotiators held short but extensive and productive discussions on IPR.<sup>32</sup> As agreed in the previous round, the talks continued with a focus on issues where there is a potential for cooperation and building on positive narratives regarding intellectual property and innovation, intellectual property and small and medium-sized enterprises and best practices.<sup>33</sup>

In relation to geographical indications, parties took stock of discussions held so far, underlining substantive inputs from the EU and deepening conversations on legal alternatives to the trademark system for geographical indication protection.<sup>34</sup> The U.S. side remained non-committal.<sup>35</sup>

### **Future TTIP Negotiations**

The ninth round of TTIP Negotiations will be held from **20-24 April 2015** in New York.

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<sup>32</sup> Ibid. 8.  
<sup>33</sup> Ibid.  
<sup>34</sup> Ibid.  
<sup>35</sup> Ibid.