



**SOUTH
CENTRE**

South Centre Statement at the 12th Session of the World Intellectual Property Organization (WIPO) Advisory Committee on Enforcement

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In line with the mandate of the WIPO Development Agenda, WIPO must approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, in accordance with Article 7 of the TRIPS Agreement.

Article 7 of the TRIPS Agreement states that “the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations”.

In this regard, the Advisory Committee on Enforcement (ACE) should serve as a forum for Member States to review and discuss WIPO activities and share their national experiences, to ensure they are aligned with the objective expressed in Article 7 of the TRIPS agreement.

Under Part III of the TRIPS Agreement, WTO members are required to ensure that enforcement procedures are available under their law, ensuring these shall be fair and equitable. As intellectual property rights are private rights, the primary responsibility of enforcing IPRs lies on the right holders, not on governments.

The TRIPS Agreement recognizes the need to allow considerable flexibility to governments to determine how to frame their IP enforcement system and to ensure proper balance between the interest of the right holder and the public interest. Importantly, the TRIPS Agreement does not create any obligation with respect to the distribution of resources as between enforcement of IPRs and the enforcement of law in general.

The ACE focus on the sharing of national experiences of IP enforcement is a good approach. In future, the ACE would do well to also give attention to issues of:

1. Abuse of IP rights, abuse of IP enforcement procedures, and anticompetitive practices. It is important that national experiences on safeguards against these abuses are shared in the ACE.
2. Sharing the experience of any threats or tactics that a member may suffer that undermine their right to use TRIPS flexibilities in the area of IP enforcement. It is unfortunate that submissions to the ACE on national initiatives for strengthening IP enforcement reference the listing of a country in the United States Special 301 Watch List as a driving factor behind the adoption of such initiatives. Members should

abstain from such practices, as recommended by the report of the United Nations Secretary-General's High Level Panel on Access to Medicines.

3. Consideration on the need to improve the data sources for studies aiming to quantify the global scale of counterfeiting and piracy, and ensuring that the terms used are those defined under the WTO TRIPS Agreement. The methodology and resulting estimates in recent studies are not reliable. For example, the recent OECD/EUIPO study – Mapping the Real Routes of Trade in Fake Goods – misleadingly defines counterfeit and pirated goods as “goods that infringe trademarks, copyrights, patents or design rights” and uses customs seizures as the main data source.
4. Discussion on the newly adopted definition of substandard and falsified medicines by WHO, in order to clearly distinguish issues of IPR infringement in relation to medical products from issues of quality, safety and efficacy. The 2017 World Health Assembly of WHO adopted a decision not to use the term counterfeit in relation to quality-compromised medicines, as counterfeiting refers to specific forms of IP infringements and are not related to quality standards of medicines.
5. Review of WIPO technical assistance in the area of IP enforcement. Adequate training is necessary to ensure that relevant government institutions involved in IP enforcement can appropriately determine on a case by case basis the balance between the interest of the right holder and the public interest. The Advisory Committee on Enforcement should carry out a review of WIPO technical assistance activities to ensure that it is adequately oriented to provide national enforcement agencies with proper training upon request.