

# Quarterly Report

1 October to 31 December 2019

This Quarterly Report summarizes the activities undertaken by the South Centre during the period 1<sup>st</sup> October to 31 December 2019. It is intended to provide information, organized by themes, about recent developments in the areas covered by the Centre's Work Program, meetings organized or co-organized by the Centre to examine particular issues or provide analytical support for negotiations taking place in various international fora, and conferences and other meetings where the Centre has participated. It also informs about publications made and publication/websites/social media metrics.

*The South Centre is the intergovernmental organization of developing countries that helps developing countries to combine their efforts and expertise to promote their common interests in the international arena. The South Centre was established by an Intergovernmental Agreement which came into force on 31 July 1995. Its headquarters is in Geneva, Switzerland.*

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# **1. Intellectual property and biodiversity, traditional knowledge and access and benefit sharing**

## **A. Recent Developments**

The linkage between intellectual property and biodiversity, traditional knowledge and access and benefit sharing is an important issue for developing countries in international negotiations. In this quarter, one of the major developments was the renewal of the mandate of the World Intellectual Property Organization (WIPO) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) that is carrying out negotiations on the matter for the period 2020-21. The WIPO Assemblies renewed the IGC mandate to finalize an agreement on international legal instrument(s), without prejudging the nature of the outcome(s), relating to intellectual property which will ensure the balanced and effective protection of genetic resources (GRs), traditional knowledge (TK) and traditional cultural expressions (TCEs). In 2021, the WIPO General Assembly will decide on whether to convene a diplomatic conference and/or continue negotiations. The South Centre supported developing countries in these discussions.

Another major development in this period was preparations for the negotiations to be completed in 2020 on a new treaty under the United Nations Convention on the Law of the Sea on marine genetic resources in areas beyond national jurisdictions. The priorities for developing countries include the sharing of benefits from access and utilization of marine genetic resources, addressing the admissibility and scope of patent claims for inventions related to these resources, as well as capacity building and transfer of marine technology.

At the Council for TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) of the World Trade Organization (WTO) in October 2019, developing countries continued to seek progress in the discussions on the standing agenda items on 1) the review of Article 27.3(b) of the TRIPS Agreement that refers to patenting of plants and animals and their parts which is not required by the TRIPS Agreement, and plant variety protection that can be granted through patents or a sui generis regime; 2) the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) including its Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (Nagoya Protocol). On this item, many developing countries reaffirmed the position that an amendment to the TRIPS Agreement should be adopted to include a mandatory requirement for patent applications to disclose the source and origin of the genetic resources and associated traditional knowledge used in an invention, according to the proposal TN/C/W/59. The Secretariat was called upon again to review the factual notes on these agenda items, and to invite the CBD Secretariat to give a factual update on the Nagoya Protocol that came into force in 2014. The Council for TRIPS could not reach agreement on any of these proposals, notably due to the opposition of the United States.

The governing body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) of the Food and Agriculture Organization (FAO) met in November. The governing body could not agree on measures to enhance the Multilateral System. The potential implications of the use of digital sequence information (DSI) on PGRFA on the objectives of the International Treaty, including the exchange, access and the fair and equitable sharing of the benefits arising from their use, was also considered but no agreement was reached on the way forward. The treatment of DSI is also being considered by an expert group in the context of the CBD.

## B. Publications

### **SOUTHNEWS No. 302, 27 November 2019: Patents, Digital Sequence Information and the ITPGRFA: A Reflection on Current Trends and Future Impacts**

Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=0b40a69e55>



Photo credit: Oxfam (<https://oxfam.app.box.com/s/u7ib4sqy8m9d3nuyp8ddb1ok270uv2ux>)

*The South Centre and Oxfam Novib organized a side event on the occasion of the Eighth Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) to present trends in the patenting of plant genetic material and digital sequence information around the world, and reflect on the impact of these trends in light of the Treaty and the accessibility of PGRFA for further research, breeding and use by farmers around the world. This meeting was held on 12 November 2019 in Rome, Italy.*

### **SOUTHVIEWS No. 188, 24 December 2019: Intellectual Property and Plant Protection: Developments and Challenges in Asia by Dr. Kamalesh Adhikari**

Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=8bd07ee18c>

*The article is based on the introduction chapter of the book Intellectual Property Law and Plant Protection: Challenges and Developments in Asia. The book provides a detailed and critical account of the origin, evolution, and implementation of intellectual property laws for plant varieties in Asia. In so doing, the book, which is edited by Dr. Kamalesh Adhikari and Dr. David J. Jefferson, undertakes a comprehensive socio-legal investigation into a number of developments and challenges concerning the governance of plant varieties in two types of Asian countries: countries that have already introduced intellectual property laws for plant varieties (e.g., India, Indonesia, Malaysia, Pakistan, Thailand, the Philippines, Cambodia, and Laos); and countries that are in the process of drafting or debating such laws (e.g., Nepal, Sri Lanka, Timor-Leste, and Myanmar).*

## C. Participation in External Conferences and Meetings

**6 November, Montpellier** – The South Centre Executive Director participated in the Scientific Council at the Université de Montpellier to promote collaboration projects on biodiversity, protection of environment and health.

**11-16 November 2019, Rome** - Eighth Session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA)

## **2. World Intellectual Property Organization**

### **A. Recent Developments**

The WIPO is the most active forum for negotiations on intellectual property rights. During the reporting period, the 59th series of meetings of the Assemblies of member States of WIPO took place from 30 September to 9 October. Major issues discussed in the Assemblies included approval of the process of receiving nominations for election of the new WIPO Director-General in 2020, election of members to the WIPO Coordination Committee, selection of countries for the establishment of new WIPO external offices, adoption of the WIPO Program and Budget for the 2020-21 biennium, decision on the convening of a diplomatic conference for the adoption of the Design Law Treaty, and renewal of the mandate of the WIPO Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore (IGC).

The Assemblies approved the initiation of the process for receiving nominations from member States for the appointment of the new Director-General (DG) of WIPO in an extraordinary session of the Assembly on 7-8 May 2020. The election of the new Director-General is of particular significance as it will be the first time that WIPO member States will elect a new DG at the end of two terms. The WIPO Convention has been amended to limit the term of the DG to two terms, but it has not been ratified by most member States and has not come into effect.

Increasing the representation of developing countries in the WIPO Coordination Committee in view of the increase in membership of developing countries to the Paris and Berne Conventions administered by WIPO, has been a major demand of developing countries. The 2019 WIPO Assemblies were invited to elect 88 member States to the Coordination Committee. However, the Assemblies also agreed to keep the composition of the Coordination Committee to 83 member States, and that further consultations would take place on the five seats that remained vacant in 2019.

Another major demand of developing countries has been about including all WIPO member States as full members of the WIPO Programme and Budget Committee (PBC) which sets the programmatic priorities for the organization and allocates the necessary budgets to support such activities. The WIPO General Assembly elected 44 member States to the PBC and agreed to undertake consultations on the composition of the PBC before the Assemblies in 2021.

The General Assembly also adopted the WIPO Program and Budget for the 2020/21 biennium after much discussion on the issue of financing the projected deficit in the revenues of other Unions, specifically in the context of the deficit of the Lisbon Union to generate sufficient revenues, and the methodology for recovering the deficit. This has been of particular interest to the US, which is not party to the Lisbon system. The Assembly agreed that all treaty Unions administered by WIPO should have adequate financing, and that deficits of fee-financed Unions like the Lisbon Union should be recovered through measures in accordance with the treaty concerned, and any outstanding deficit thereafter can be recovered first from the reserves of contribution-financed Unions, and thereafter from the reserves of other fee-financed Unions.

An issue of major interest to many WIPO member States has been the establishment of new WIPO External Offices. Ten countries had submitted applications for establishing External Offices. Though it was agreed that four new External Offices would be established in the 2018-

19 biennium, including an External Office in Colombia, no agreement could be reached due to the lack of consensus on the two countries to be selected for establishing new External Offices in Asia. The 2019 General Assembly decided to undertake an evaluation of the WIPO External Offices in 2021 and to defer the consideration of 10 applications from member States for opening new External Offices in the 2018-19 biennium, and consider opening 4 new External Offices from these 10 applications, including Colombia, in the 2022-23 biennium.

The WIPO General Assembly also renewed, as noted, the mandate of the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore (IGC) to undertake text based negotiations for the 2020-21 biennium, and established a specific work programme for the IGC sessions in this regard. Though developed countries sought a decision by the General Assembly on convening a Diplomatic Conference for the adoption of the Design Law Treaty that establishes formalities requirements for industrial design registration applications, there was no agreement on a proposal by the African Group to include a provision on technical assistance and to enable countries to introduce a disclosure requirement regarding source or origin of TK or TCEs used in an industrial design. The General Assembly agreed to consider the matter at the next session of the General Assembly in 2020.

## **B. Publications**

### **SOUTHNEWS No. 284, 4 October 2019: Statement by the South Centre to the 2019 Assemblies of the Member States of WIPO**

Available at: <https://mailchi.mp/southcentre/southnews-statement-by-the-south-centre-to-the-2019-assemblies-of-the-member-states-of-wipo?e=0ba6f79724>



*The 2019 session of the World Intellectual Property Organization (WIPO) Assemblies will take major decisions concerning the full participation and effective representation of all member States of WIPO, particularly the developing countries, in key governing bodies of WIPO, including the Coordination Committee and the Program and Budget Committee. It will also commence the process of appointment of the new Director-General of WIPO in 2020. The General Assembly will be called upon to provide direction for effective progress and conclusion of critical norm setting processes that have been undertaken for many years, particularly the negotiations for an international legal instrument on genetic resources, traditional knowledge and traditional cultural expressions, and the development of new rules such as on exceptions and limitations to copyright for people with cognitive and learning disabilities, for libraries and archives and for educational and research institutions.*

## **C. Participation in Other External Conferences and Meetings**

**21-25 October 2019, Geneva** - Thirty-Ninth Session of the WIPO Standing Committee on Copyrights and Related Rights (SCCR)

**4-7 November 2019, Geneva** - Forty-Second Session of the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT)

**18-22 November 2019, Geneva** - Twenty-Fourth Session of the WIPO Committee on Development and Intellectual Property (CDIP)

**2-5 December 2019, Geneva** - Thirty-First Session of the WIPO Standing Committee on the Law of Patents (SCP)

### **3. Health**

#### **A. Recent Developments**

Universal Health Coverage (UHC) has been a major topic of discussion in recent years. Following discussions and negotiations on health issues after the World Health Assembly in May 2019, the High-Level Meeting on Universal Health Coverage (UHC) of the United Nations (UN) General Assembly held in September adopted an important political declaration on the matter. The declaration affirmed the political will of all countries to achieve UHC and stop the rise of catastrophic out-of-pocket health spending and gave a strong emphasis on access to quality and affordable medicines, vaccines, diagnostics and health technologies. The declaration also requested the UN system to support countries in their efforts to implement UHC. The South Centre organized briefings for health delegates from developing countries in Geneva apprising them of the outcomes of the political declaration and particularly emphasised the need to address primary health care, access to medicines and other medical technologies as well as the critical aspect of antimicrobial resistance, as integral to realizing UHC.

During the reporting period, an Expert Committee of the World Health Organization (WHO) on biological standardization met in October 2019 to consider the updating of the 2009 WHO guidelines on similar biotherapeutic products (SBP guidelines). Six experts from developing countries made a joint submission to the Expert Committee pointing out that the requirements under the existing WHO SBP guidelines to undertake phase III clinical trials for approval of similar biotherapeutic products were unnecessary as technology has matured to make it easier to assess the quality and efficacy of similar biotherapeutic products based on the similarity of the structure to the originator product, without any further clinical studies. Clinical studies require significant time and resources, and thus any unnecessary requirement to conduct such studies for marketing approval of such products unjustifiably delays and effectively compromises access to affordable biotherapeutics.

#### **B. Publications**

**SOUTHNEWS No. 283, 1 October 2019:** [Gro Harlem Brundtland addresses the UN High-Level Meeting on Universal Health Coverage](#)

**SOUTHNEWS No. 293, 31 October 2019:** [Submission to the WHO Expert Committee on Biological Standardization for Updating of the 2009 Similar Biotherapeutic Products \(SBP\) Guidelines \(October 2019\)](#)

## C. Participation in External Conferences and Meetings

**29-30 October 2019, Berlin** - DNDi and Founders' Symposium. On the occasion of the 15<sup>th</sup> anniversary of the DNDi.

**31 October 2019, Geneva** - Joint Technical Symposium by the World Health Organization (WHO), the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) on Cutting-Edge Health Technologies: Opportunities and Challenges

## 4. Antimicrobial Resistance

### A. Recent Developments

Antimicrobial resistance is recognized as a top global health threat. The WHO has established a joint tripartite Secretariat on AMR together with the World Organisation for Animal Health (OIE) and the FAO, in response to the UN Secretary-General's report on the implementation of the high level declaration on AMR and the recommendations of the UN Interagency Coordination Group on Antimicrobial Resistance (IACG). Additional work concerning AMR governance and programme is on-going at the WHO Secretariat. The Tripartite Secretariat on AMR held an informal consultation on the global development and stewardship framework, which should include issues of access, research and development (R&D), innovation and stewardship of antimicrobials (the narrowing down of the framework to fewer elements, however, would not be in line with the mandate). The Tripartite Secretariat also held an online consultation on the terms of reference for a new global governance structure, focusing on a Global Leadership Group (GLG). The South Centre made an online submission and supported developing countries to make their submissions through meetings and written comments.

The Codex Intergovernmental Task Force on Antimicrobial Resistance met again in December to discuss updating the Code of Practice to Minimize and Contain Foodborne Antimicrobial Resistance and the Guidance on Integrated Surveillance of Antimicrobial Resistance. The task-force agreed to the update of the Code of Practice. The work on the guidelines continues in 2020.

### B. Publications

**SOUTH CENTRE NEWS ON AMR No. 35, 11 December 2019: How to keep our food safe while addressing antimicrobial resistance? Codex Alimentarius meets to update its guidelines by Mirza Alas**

Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=893dee7e25>



*The CODEX Ad Hoc Intergovernmental Task Force on Antimicrobial Resistance (TFAMR) is meeting this week to discuss key issues on food safety including the use of antimicrobials for growth promotion, definitions on preventive use, prophylaxis and the role of advertisement. The 7th session of the Task Force is taking place in Pyeongchang, Korea from 9-13 December 2019. The TFAMR was set up in 2011 and aims to “develop science-based guidance on the management of foodborne antimicrobial resistance.” Prior to the start of the meeting, two working groups began preliminary discussions to advance the Code of Practice to Minimize and Contain Foodborne Antimicrobial Resistance and Guidance on Integrated Surveillance of Antimicrobial Resistance.*

#### **Other SOUTH CENTRE NEWS ON AMR:**

**SOUTH CENTRE NEWS ON AMR No. 33, 14 October 2019:** [WHO opens consultation on One Health Global Leaders Group on Antimicrobial Resistance until 8 November](#)

**SOUTH CENTRE NEWS ON AMR No. 34, 1 November 2019:** [WHO launched a new toolkit to assist healthcare facilities in developing countries to improve the use of antibiotics](#)

#### **C. Conferences and Meetings Organized**

**12 November 2019, Paris** - Meeting with the Head of the Science and New Technologies Department of the World Organisation for Animal Health (OIE) for collaboration between the South Centre and OIE on issues on antimicrobial resistance.

**21-23 November 2019, Geneva** - Capacity Building Workshop on Antimicrobial Resistance, organized by ReAct – Action on Antibiotic Resistance, the International Federation of Medical Students’ Associations, the IDEA Initiative at the Johns Hopkins Bloomberg School of Public Health and South Centre. Participants were students, winners of the Innovate4AMR international student competition on designing innovative solutions for antimicrobial stewardship in resource-limited healthcare settings, with the objective of ensuring access and increasing equity.

#### **D. Participation in Other External Conferences and Meetings**

**18 October 2019, Berlin** - Humanitarian Congress: Panel discussion on antimicrobial resistance (AMR) – Organized by Médecins Sans Frontières, Médecins du Monde, the German Red Cross and Ärztekammer Berlin in partnership with Green Peace. South Centre staff participated in the panel.

### **5. Use of TRIPS Flexibilities for Public Health**

#### **A. Recent Developments**

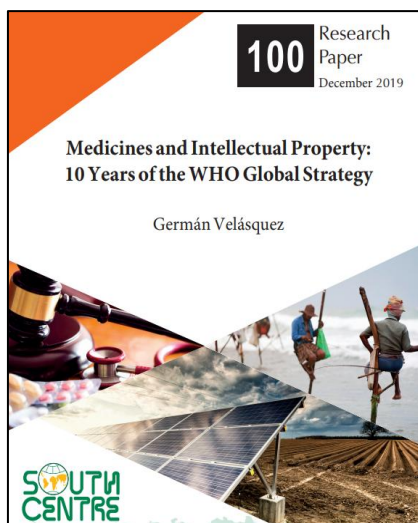
The South Centre continues to provide fact-based analysis, expert advice and negotiation assistance in the area of use of flexibilities available under the WTO TRIPS Agreement to promote public health. The South Centre supports negotiations in multilateral, bilateral and regional forums, as well as in the design, review and implementation of national law and policy. Various publications and training materials were produced in the quarter. Numerous trainings were held for patent authorities and examiners, policy makers from Ministries of Health, Foreign Affairs, Trade, Industry, as well as for judges. The first Global Forum focusing on TRIPS

flexibilities was also organized in December 2019, bringing together academics and high level policy makers.

## B. Publications

### Research Paper 100, December 2019: Medicines and Intellectual Property: 10 Years of the WHO Global Strategy by Germán Velásquez

Available at: <https://www.southcentre.int/research-paper-100-december-2019/>



*The negotiations of the Intergovernmental Working Group on Public Health, Innovation and Intellectual Property (IGWG) (2006-2008), undertaken by the Member States of the World Health Organization (WHO), were the result of a deadlock in the 2006 World Health Assembly where the Member States were unable to reach an agreement on what to do with the 60 recommendations in the report on Public Health, Innovation and Intellectual Property submitted to the Assembly in the same year by a group of experts designated by the Director-General of the WHO. The result of these negotiations was the Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property (GSPOA) that was approved by the World Health Assembly in 2008. One of the objectives of the IGWG's Global Strategy and Plan of Action was to substantially reform the pharmaceutical innovation system in view of its failure to produce affordable medicines for diseases that affect the greater part of the world's population living in developing countries. The intellectual property (IP) rights imposed by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the trade agreements could become some of the main obstacles to accessing medicines. The GSPOA made a critical analysis of this reality and opened the door to the search for new solutions to this problem. Ten years after the approval of the GSPOA, the results are uncertain and poor.*

### Research Paper 101, December 2019: Second Medical Use Patents – Legal Treatment and Public Health Issues by Clara Ducimetière

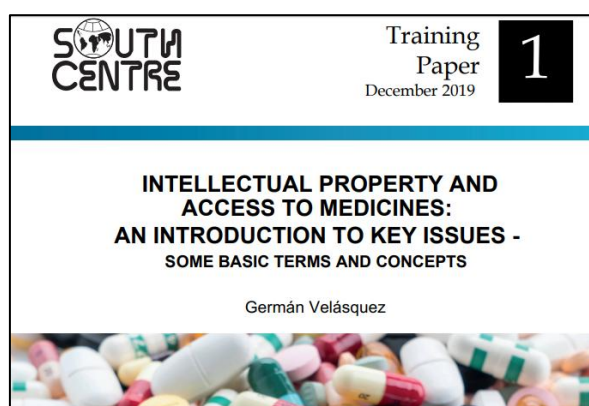
Available at: <https://www.southcentre.int/research-paper-101-december-2019/>

Where patents on second medical indications are granted, their impact on access to health is quite significant. We will thus address the issue of access to medicines and in particular, the impact of second medical use patents in developing countries. We will see that some legal and practical safeguards are necessary to reduce the negative impact that these patents have on public health. We will also focus on infringement issues arising from second medical use, which might affect access to health.

*This paper attempts to give an overview of the debate surrounding the patentability of new therapeutic uses for known active ingredients, both in developed and developing countries. After close scrutiny of international patentability standards, this paper concludes that second medical uses do not qualify per se for patent protection and have only been protected in several jurisdictions by means of a legal fiction. The increasing acceptance of second medical use patents seems to result from strategic patent filing from pharmaceutical companies to extend the life of existing patents, justified mainly for financial reasons. However, these practices have a detrimental impact on generic competition and, hence, on the access to medicines and the public health, in particular in developing countries. Therefore, this paper argues that a sound patent policy in line with public health objectives, in particular, an enhanced access to medicines, should not allow for the grant of second medical use patents.*

**Training Paper 1, November 2019: Intellectual Property and Access to Medicines: An Introduction to Key Issues – Some Basic Terms and Concepts by Germán Velásquez**

Available at: <https://www.southcentre.int/training-paper-1-december-2019/>



*The “South Centre Training Materials” is a new series of documents designed to support South Centre training workshops and seminars in developing countries to improve access to medicines. Improving equity in access to medicines is an essential part of the realization of government responsibilities with regard to the right to health, a fundamental human right legally recognized by many governments. These training materials will be available to governments, agencies and institutions carrying out training of various kinds, to improve access to medicines as a fundamental component of universal health coverage.*

**SOUTHNEWS No. 285, 7 October 2019: Palabras de Bienvenida en la Reunión de Alto Nivel sobre Políticas de Propiedad Intelectual para Facilitar el Acceso a Medicamentos**

Available at: <https://mailchi.mp/southcentre/southnews-palabras-de-bienvenida-en-la-reunion-de-alto-nivel-sobre-politicas-de-propiedad-intelectual-para-facilitar-el-acceso-a-medicamentos?e=0ba6f79724>

*Palabras de Bienvenida de Dr. Dennis José Angulo Alguero, Vice-ministro de Salud de Costa Rica, en la Reunión de Alto Nivel sobre Políticas de Propiedad Intelectual para Facilitar el Acceso a Medicamentos, organizada por el Centro Sur y la Caja Costarricense de Seguro Social en San Jose, Costa Rica, 2-4 Octubre 2019. El Dr. Angulo Alguero recuerda el compromiso de Costa Rica en garantizar el derecho a la salud y el acceso a medicamentos. En ese sentido, afirmó que es necesario que los países fortalezcan las capacidades para "continuar con la lucha sobre el acceso a los medicamentos, estableciendo procedimientos innovadores que permitan que el precio de los medicamentos esté en relación a la riqueza de los países y que los mismos ingresen a los sistemas de salud pública de acuerdo a su efectividad".*

**SOUTHNEWS No. 285(2), 7 October 2019: Central American and Caribbean policy makers seek use of TRIPS flexibilities to reduce drug prices by Thamara Romero**

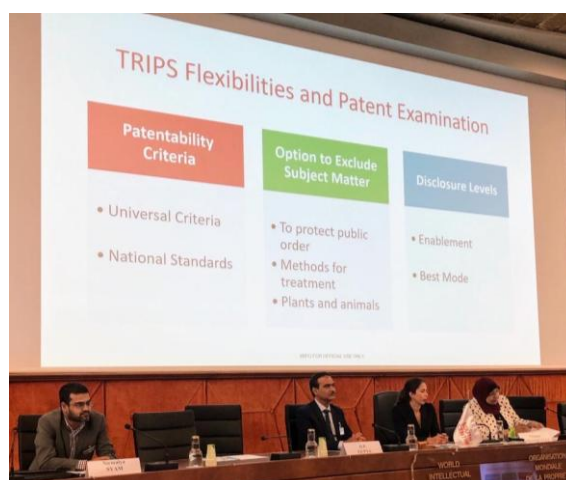
Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=e77b9470c6>



*A High Level Regional Meeting on Intellectual Property Policies to Facilitate Access to Medicines was held on 2-4 October 2019 in San José, Costa Rica, organized by the South Centre together with the Caja Costarricense de Seguro Social (Costa Rican Social Security Fund). The meeting brought together representatives of the ministries of health, trade, foreign affairs and intellectual property offices from El Salvador, Guatemala, Honduras, Nicaragua, the Dominican Republic and Cuba. The policy makers discussed on concrete measures to promote greater use of the flexibilities contained in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) for access to medicines and therapies. The South Centre was strongly encouraged to continuously support the Central American region in these efforts.*

**SOUTHNEWS No. 290, 22 October 2019: Heads of Intellectual Property Offices from Egypt and India Share Experience on the Importance of Substantive Patent Examination of Pharmaceutical Products by Nirmalya Syam**

Available at: <https://mailchi.mp/southcentre/southnews-heads-of-ip-offices-from-egypt-and-india-share-experience-on-the-importance-of-substantive-patent-examination-of-pharmaceutical-products?e=0ba6f79724>



*The Heads of Intellectual Property (IP) Offices of Egypt and India shared their experiences on how their policies and practices on the substantive examination of pharmaceutical patent applications support medical innovation and*

*access to medicines. The presentations were made at a Side Event organized by the South Centre with its co-sponsors during the 2019 Assemblies of the World Intellectual Property Organization (WIPO) (4<sup>th</sup> October). The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) requires members of the World Trade Organization (WTO), with the exception of Least Developed Countries (LDCs), to make patents available for inventions, provided they comply with the criteria for patentability. A critical flexibility under the TRIPS Agreement is the ability of countries to define how to establish and apply the patentability criteria in determining whether to grant a patent. Countries can apply rigorous standards for the examination of patent applications for pharmaceutical products. Lax patent examination can have detrimental effects through the proliferation of low quality patents that do not protect genuine inventions and instead may stifle legitimate competition and restrict access to medicines.*

**SOUTHNEWS No. 301, 21 November 2019: Regional and National Policymakers Exchange Experiences on the Use of TRIPS Flexibilities for Access to Medicines in Regional and National Workshops organized by the South Centre and the Policy Analysis and Development Agency, Ministry of Foreign Affairs, Indonesia by Nirmalya Syam**

Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=7e9ce15b59>



*The South Centre and the Policy Analysis and Development Agency (PADA), Ministry of Foreign Affairs, Republic of Indonesia organized a regional and a national workshop on intellectual property and access to medicines for policymakers in Jakarta on 18-20 September 2019. Participants from 14 countries in Asia and 51 officials from Indonesia participated in these workshops to exchange experiences on the scope of use of the flexibilities allowed by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to ensure access to affordable medicines and the importance of policy coherence between different national agencies in this regard.*

**SOUTHNEWS No. 310, 22 November 2019: South Centre imparted training for Latin American Judges on intellectual property and access to medicines by Vitor Ido**

Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=b1dd956328>



*Judges of Latin American countries gathered in a seminar co-organized by the South Centre and the Consejo de Estado de Colombia (Council of State of Colombia) to examine the flexibilities of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) available to protect public health and their appropriate interpretation and implementation in national legislations. The specialised training took place in Cartagena de Indias, Colombia, from 19-21 November 2019. Participants discussed regional and national approaches to ensure coherence between policies and legal adjudication, to avoid undue restrictions to competition and support access to medicines.*

**SOUTHNEWS No. 305, 16 December 2019: Academics support South Centre work on TRIPS flexibilities for Public Health by Viviana Muñoz Tellez**

Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=4216b5209d>



*The Global Forum on Intellectual Property, Access to Medicines and Innovation was held on 9-10 December in Munich, organized by the South Centre, together with the Max Planck Institute for Innovation and Competition. The Global Forum brought together renowned academics and policy experts from around the globe, together with policy makers and members of the judiciary from developing countries. Academics supported the use of policy flexibilities in the intellectual property legal system to promote access to medicines and therapies, through technical presentations and exchanges. The South Centre was strongly encouraged to continue with its activities to support developing countries in this area.*

***Other SOUTHNEWS:***

**SOUTHNEWS No. 288, 16 October 2019: [The WTO TRIPS Council will discuss measures to increase transparency on R&D costs and prices and experiences of the use of the TRIPS flexibilities that have promoted access to medicines](#)**

**C. Other Conferences and Meetings Organized**

**10-11 October 2019, Buenos Aires** - Latin American Regional Workshop on Intellectual Property Policies to Facilitate Access to Medicines, organized by the South Centre and the University of ISALUD Foundation. Participants from Ministries of Health, Foreign Affairs, and Heads of Intellectual Property Offices of Argentina, Bolivia, Brazil, Colombia, Ecuador, Paraguay and Peru. The promotion of equity in access to medicines is essential to the exercise of States' health responsibilities. However, governments face major challenges that impede progress towards this goal, in large part because of obstacles to access to treatment and problems of sustainability of health systems. The Meeting discussed intellectual property policies that governments can implement to expand local production and procurement of quality medicines at affordable prices.



**11 December 2019, Munich** - Training of Trainers on Pharmaceutical Patent Examination, organized by the South Centre. Capacity building led by Prof. Carlos Correa on the examination of pharmaceutical patents, in the effort that the participants in the future can provide subsequent trainings to patent examiners. The participants included South Centre staff working in intellectual property and health issues and from collaborating institutions in Argentina, India, South Africa and Ukraine.

**18-19 December 2019, Cape Town** - Regional Training Seminar on the Role of Patent Offices in Promoting Access to Medicines, organized by the South Centre and the African Union. Participants were patent examiners from 22 African Union Member States, and representatives from the regional IP organizations African Regional Intellectual Property Organization (ARIPO), and the *Organisation Africaine de la Propriété Intellectuelle* (OAPI). The objective of the seminar was to increase the institutional capacity of patent offices and relevant authorities in African countries to effectively use the flexibilities of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) to protect public health. The seminar fostered dialogue among patent authorities and discussed policy options as well as provided specialized training to patent examiners on substantive examination of pharmaceutical patents.



#### **D. Participation in External Conferences and Meetings**

**4 and 5 December 2019, Guatemala** - Central American Regional Technical Meeting - Using TRIPS Flexibilities to Increase the Affordability of Treatment for HIV, Tuberculosis and Hepatitis. Organized by The Regional Office of the International Treatment Preparedness Coalition (ITPC LATCA). Presentation by South Centre staff on successful experiences of working with policymakers to ensure access to affordable medicines in Latin America.

## 6. Climate Change

The global climate crisis continues to cause damage and suffering across the globe and particularly in the global South largely situated in low latitudes. The consequences of a changing climate were felt, for instance, in the horn of Africa where floods forced hundreds of thousands of people to leave their homes following unseasonal heavy rain in November. Parts of South Asia faced moreover one of the heaviest rainfalls in the last 25 years during this year's monsoon season, which lasted a month longer than usual and extended into October. Similarly, parts of Latin America experienced heavy rain in the beginning of December that led to deadly floods and landslides. Experts have warned about these consequences and called for unprecedented transition in all aspects of society, if we are to prevent global warming from exceeding 1.5°C and to protect millions of vulnerable people. A recently published [report](#) by the United Nations Environment Programme, however, paints a bleak picture for the future. Despite very clear scientific warnings, the world has in fact increased greenhouse gas emissions at a rate of 1.5% per year in the last decade, making it extremely challenging to limit global warming to 2°C, let alone 1.5°C.

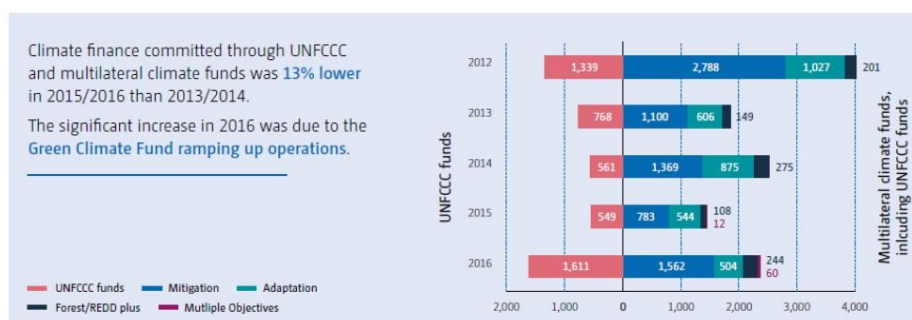
At the recently concluded 25<sup>th</sup> Conference of Parties (COP25) in Madrid little progress was made in agreeing to meaningful next-steps in tackling the climate crisis. Parties were unable to find an agreement on enhancing their emission reduction targets. Developing countries collectively and/or individually stated clearly that developed countries need to fulfill their commitments relating to the provision of finance and other supportive measures to developing countries, before countries in the South can scale up their ambitions while revising their submitted National Determined Contributions (NDCs). Developing countries pushed also for progress on the issue of loss and damage finance, capacity building, and long-term finance, which were all areas that were challenged by the developed countries. Heavy discussions erupted moreover over the market mechanism under Article 6 of the Paris Agreement without reaching an agreement on the rules governing the carbon market system. On the positive side, COP25 was applauded for being the COP that has given most attention to the role of science. Other positive outcomes included the approval of a new Gender Action Plan and a work plan for the Local Communities and Indigenous Peoples Platform (LCIPP).

Overall, the COP25 fell far short of the expectations of vulnerable countries, civil society, youth movements and others. The pressure on the international community and on next year's COP to address the climate crisis has certainly only increased.

### B. Publications

#### Climate Policy Brief 21, December 2019: The State of Play of Climate Finance – UNFCCC Funds and the \$100 Billion Question by Mariama Williams

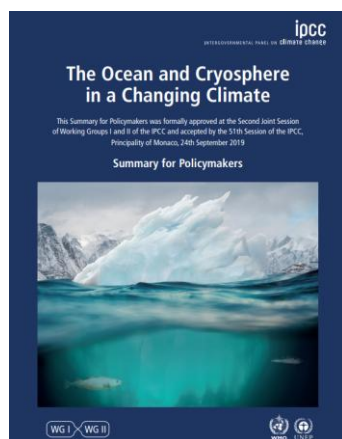
Available at: <https://www.southcentre.int/climate-policy-brief-21-december-2019/>



*Climate finance flows from developed to developing countries is key to meet the Paris Agreement goals and for meaningful climate action in the countries of the South, as proposed in their Nationally Determined Contributions (NDCs). However, there is much concern that the current flow of finance is insufficient and inadequate to meet the expectations surrounding both the NDCs and the Paris Agreement. The issues include the vexing issue of loans versus grants, as, increasingly, climate financing is being provided in the form of loans (both concessional and non-concessional) which portends rising debt challenges for many developing countries. Another key issue concerns the persistent imbalance in adaptation finance, which continues to be a challenge for developing countries, despite the provisions in the Cancun and the Paris Agreement.*

**SOUTHNEWS No. 286, 8 October 2019: Summary for Policymakers of the IPCC's landmark Special Report on the Ocean and Cryosphere in a Changing Climate adopted in Monaco by Rajesh Eralil**

Available at: <https://mailchi.mp/southcentre/southnews-summary-for-policymakers-of-the-ipccs-landmark-special-report-on-the-ocean-and-cryosphere-in-a-changing-climate-adopted-in-monaco?e=0ba6f79724>



*The Summary for Policymakers (SPM) of the Intergovernmental Panel on Climate Change (IPCC)'s landmark report Special Report on the Ocean and Cryosphere in a Changing Climate (SROCC) was approved by the 195-member body and presented to the general public on 24 September 2019 in Monaco. The intensive line-by-line review process originally scheduled from 20 to 23 September was extended until the 24th. The report highlights that climate change has led to warming of the oceans and to the loss of glaciers and ice sheets, which contribute to sea level rise. These alarming dynamics affect ecosystems and more than 1.2 billion people in mountainous regions, low-lying coastal zones and small island developing states. The SPM stresses that unless we reduce emissions urgently and drastically, the oceans and cryosphere (the frozen parts of the planet) will continue to change throughout the century with serious consequences for life on land and in water. The report is an important scientific input that will inform future climate negotiations, including the upcoming Climate Change Conference (COP25) in Chile in December 2019.*

**SOUTHNEWS No. 303, 10 December 2019: Climate change finance: spotlight on the 24th meeting of the Board of the Green Climate Fund by Rajesh Eralil**

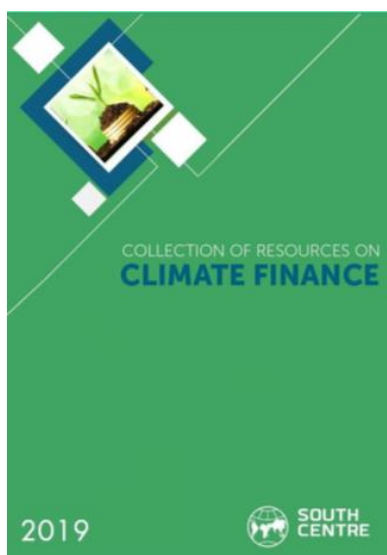
Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=4018c58d59>

*Despite heated debates, the Green Climate Fund (GCF)'s board successfully approved at its 24th meeting (B24) a total of 13 projects and accredited 7 more entities to the fund. Due to objections raised by the US and Japan on a Chinese project approval, the fund, for the first time ever, made use of its recently agreed voting procedure, which eventually allowed the long-standing proposal to be approved. Post-B24, the fund's aggregated project funding*

*increases to \$5.6 billion with 124 projects. Direct access for entities from the South to GCF funds continues to severely lag behind compared to access for international entities. Even though 56 out of 95 accredited entities are from developing countries, only 14% of project funding is channeled through direct access entities with the remainder reaching developing countries through international entities.*

**Collection of Resources on Climate Finance by the South Centre (October 2019)**  
**edited and compiled by Rajesh Eralil with Yamrote Haileselassie**

Available at: <https://www.southcentre.int/collection-of-resources-on-climate-finance-october-2019/>



*This Collection contains various types of resources ranging from analytical & research papers, step-by-step guidance documents, short policy briefs, infographics, websites and digital tools dealing with the thematic area of climate finance that are all published after 2010. These resources are curated to support decision-makers and practitioners in finding, easily and in one place, practical resources to navigate the fast-changing and complex climate finance landscape. The resources focus specifically on International Climate Finance and multilateral financing mechanisms without going into detail on climate change & sectoral issues, national (public/private) climate financing and other financing mechanisms. For each resource, a short summary is provided to give the reader a snapshot of its content along with a link to access the full resource.*

### **C. Participation in Other External Conferences and Meetings**

**28 September - 6 October 2019, New Delhi** – South Centre’s Senior Adviser on Sustainable Development and the Senior Programme Officer participated in the Second Lead Author Meeting for the IPCC Working Group III contribution to the IPCC Sixth Assessment Report (AR6). The Senior Programme Officer is a Coordinating Lead Author in chapter 15 on climate investment and finance of AR6. The meeting considered the informal review comments of the Zero Order Draft of each of the 17 chapters of the report and started the process of preparing the First Order Draft. The meetings held preliminary discussions on the report’s “storyline” and the Summary for Policymakers, while also continuing the processes that started in the First Lead Author Meeting on cross-cutting issues.

**19 – 29 October 2019, Singapore** - South Centre’s Senior Adviser on Sustainable Development participated in his capacity as Vice Chair of IPCC, member of the IPCC Bureau, and member of the IPCC Executive Committee in i) the scoping meeting for the Synthesis Report of the Sixth Assessment Report (AR6) of the IPCC; ii) the Fifty-seventh Session of the IPCC Bureau; and iii)

the seventieth meeting of the IPCC Executive Committee. In addition to that, contributions were made to the development of the contents of the outline of the Synthesis report of the IPCC AR6. The meetings offered also the opportunity to discuss with a number of participants from developing countries strategies to better the adequate participation of developing country scientists and experts in the Core Writing Team of the Synthesis Report when it will be composed.

**28-30 October 2019, Paris** – The Organisation for Economic Co-operation and Development (OECD) workshop and Green Finance Forum. The goal of the mission was to participate in two OECD sessions: 1. Workshop on ‘tracking the consistency of investments and financing with climate objectives’ and 2. ‘Forum on Green Finance and Investment 2019’. Participating in these two sessions helped the South Centre and its climate work to expand and update its knowledge base on how developed countries intend to channel climate finance/investments to developing countries. De-risking private investments (with public money) has evolved to be the dominating strategy in attracting private capital to channel their trillions of funds to green areas.

**30 October - 3 November 2019, Sharm El-Sheikh** – The South Centre participated in the African Group of Negotiators for Climate Change’s preparatory plenary meeting for the 25th Conference of the Parties (COP25) to the UNFCCC and to make presentations on the IPCC Special Report on Land and Climate and the IPCC Special Report on the Ocean and Cryosphere. Attendees of the meeting were furthermore informed on how they can be part of the IPCC assessment as reviewers of the various drafts of the reports. The meetings offered the opportunity to further explain to the negotiators the importance of science in better understanding climate change issues and to find response options adapted to specific situations.

**22-23 November 2019, Vienna** - Feminists Climate Conference. South Centre was invited to speak on climate change broadly as well as on the effects of climate change on women in the Global South and to give examples of projects for climate protection initiated and implemented by women in the Global South. The conference facilitated discussions on how to move forward with the work of supporting women’s climate change efforts from Europe and in particular, Austria. The meeting also offered South Centre the opportunity to discuss with key stakeholders in Germany, particularly the Green party, climate justice issues, climate finance and climate and gender.

**1-14 December 2019, Madrid** – 25<sup>th</sup> Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC COP25). South Centre’s Senior Advisor on Sustainable Development, representing both the Intergovernmental Panel on Climate Change (IPCC) and the South Centre, participated as a speaker and facilitator in various events discussing the scientific basis for a better understanding of climate change, its impacts, and response strategies. These included, for instance, the event on “Africa’s Development in the age of stranded assets” or the widely followed [press conference](#) titled “Unite Behind The Science” in which leading youth activist Greta Thunberg and her platform facilitated a discussion on the role and importance of science in climate action. At another event, the Senior Advisor presented at the “Africa Day” the program on “Designing African Energy Transition for Social and Economic Transformation”, which was developed by the South Centre under the auspice of the African Energy Commission of the African Union Commission.

**6-7 December 2019, Madrid** – Side event of the Standing Committee on Finance (SCF) at COP25. South Centre was part of a panel that discussed the *Strategic engagement on climate finance with the Standing Committee on Finance*. The event focused on the Standing Committee on Finance’s relationships with all its stakeholders. It was a strategic discussion on the work of the Committee,

with a focus on how it can support non-Party stakeholders on furthering their agenda, as well as how its flagship products could be used to complement their work. South Centre was invited by the UNFCCC Climate Finance team to share its experience with using the output of the SCF as well as how we view the preparation for the SCF's next flagship report, the 2020 biennial report on climate finance (BA), and comments on the Outline of the proposed SCF 2020 Forum (which will focus on nature-based solutions).

## **7. International Tax Cooperation**

### **A. Recent Developments**

On 9 October 2019, the OECD Secretariat released a Proposal for a "Unified Approach" under 'Pillar One' of the base erosion and profit shifting (BEPS) Project. Pillar One primarily deals with taxing the digital economy. This document was opened for public input and claimed to take elements from the three proposals under consideration - US, UK and the Group of Twenty-four (G24) – to forge a common solution to taxing the digital economy. The deadline for submission of comments was barely a month. Civil society raised two key concerns: (i) the OECD Secretariat was intervening in the discussion by effectively removing the G24's proposal from further consideration and hence biasing the talks in favour of OECD members (ii) the short deadline was seen as inadequate, especially for developing country members of the Inclusive Framework. The OECD proposal was also seen as excessively tilting towards the US proposal of marketing intangibles, and had questionable benefits for developing countries and market jurisdictions. Subsequently, on 8 November the OECD Secretariat also invited public input on the Global Anti-Base Erosion (GloBE) Proposal under Pillar Two, this time giving less than a month for submission of comments. Pillar Two seeks to come up with a global minimum corporate tax rate. There continue to be tensions even among the OECD members with the US threatening tariffs on countries who try to tax the profits of US-based digital companies.

### **B. Publications**

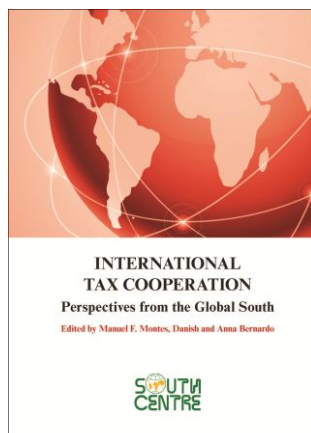
#### **Tax Cooperation Policy Brief 10, November 2019: Addressing Developing Countries' Tax Challenges of the Digitalization of the Economy by Monica Victor**

Available at: <https://www.southcentre.int/tax-cooperation-policy-brief-10-november-2019/>

*This Policy Brief sheds light on some of the implications for developing countries concerning the new international taxation global governance structure and the ongoing corporate tax reform process under the Organisation for Economic Co-operation and Development and the Inclusive Framework on Base Erosion and Profit Shifting (BEPS) Project umbrella in the context of the digitalization of the economy. The objective is to inform developing country tax authorities on the issues that may require further South-South cooperation and action to protect taxing rights that are of vital importance for the achievement of the Sustainable Development Goals. Firstly, the new international collaborative mechanisms created after the BEPS Project – the Platform for Collaboration on Tax and the Inclusive Framework on BEPS – are described. Secondly, the international tax reform proposals under negotiations in the Inclusive Framework on BEPS are outlined. The final remarks will address the challenges for developing countries to participate in the ongoing international tax reform effectively.*

**Book by the South Centre, December 2019: International Tax Cooperation: Perspectives from the Global South** edited by Manuel Montes, Danish and Anna Bernardo

Available at: <https://www.southcentre.int/book-by-the-south-centre-2019-3/>



*A substantive reform of the global tax system involving a variety of multilateral platforms is underway. The question is not whether the tax standards and practices will change, but in which direction.*

*Developing countries have long sought changes in rules, standards and procedures shaping the allocation of taxing rights among sovereign states. In the wake of the 2008-2010 Great Recession, developed country governments engaged in massive public sector layoffs and channeling enormous public resources to bail out large financial companies and their wealthy investors. The Panama Papers, the Paradise Papers, the Lux Leaks became household words in the United States and Europe because of the journalistic coverage. Other scandals, such as the “cum/ex” fraud in Germany involving a loophole in the taxing of dividend receipts were less known but just as materially significant. Tax reform, particularly as it applied to the treatment of corporations working in multiple tax jurisdictions, thus became not only a problem of developing countries but an issue of global concern.*

*In November 2016, the South Centre launched the “South Centre Tax Initiative” (SCTI), a project to build a network of tax officials and experts from the South to advance the interests of developing countries in the current global effort at tax reform and combat against illicit financial flows. This publication is an outcome of this project based on contributions from developing country officials. It is part of an effort to create international literature among the practitioners of tax policies and administrations from developing countries to share the technical content of developing country innovations within the international tax community. The book analyzes particular cases or issues in order to draw lessons from experiences on tax reform which may be useful for other developing country officials and practitioners around the world and promote tax cooperation.*

**SOUTHNEWS No. 297, 8 November 2019: Developing country tax officials and experts discussed how to strengthen the role of the UN Tax Committee in the face of new challenges** by Abdul Muheet Chowdhary and Daniel Uribe

Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=000234a6c6>



*On the sidelines of the XIX Session of the United Nations Committee of Experts on International Cooperation in Tax Matters (UNTC), held on 15th October 2019, the South Centre, in partnership with the International Centre for Tax and Development (ICTD) and the BEPS (Base Erosion and Profit Shifting) Monitoring Group, organized an expert-level peer exchange. This exchange was open to participation by all the developing country Members of the UNTC, the Member States of the Group of 77 (G77) and China as well as experts and developing country officials working with, or nominated by, the South Centre or the ICTD.*

*The aim of the peer exchange discussion was to better inform participants about the meetings of the UNTC and its subcommittees while generating a comprehensive dialogue among the membership of the UNTC, G77+China and all other developing countries. Many issues appearing under the agenda of the UNTC were addressed, particularly the challenges on taxing the digital economy and the modifications of the United Nations Model Convention.*

**SOUTHNEWS No. 300, 20 November 2019: South Centre Tax Initiative submission to the OECD Secretariat's "Unified Approach" under Pillar One by Abdul Muheet Chowdhary**

Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=a76ef527b7>

*The South Centre Tax Initiative (SCTI), the South Centre's flagship program for promoting cooperation among developing countries on international tax matters, submitted its comments in November 2019 to the OECD Secretariat's Proposal for a "Unified Approach" under Pillar One. This proposal is the key solution proposed by the OECD to address the challenge of taxation in the digital economy. In today's world, it is a common occurrence that large multinational enterprises pay little or no taxes on their global profits by exploiting gaps in international tax rules. Revenue lost to corporate tax avoidance could go a long way in financing sustainable development and actions regarding climate change.*

*Tax avoidance affects both developed and developing countries; in response to global concerns and increasing political pressure, the OECD sought to address this issue through its "Inclusive Framework" on Base Erosion and Profit Shifting (BEPS) by updating the rules on international taxation. This is the text of the South Centre Tax Initiative's comments on the OECD proposal.*

### **C. Other Conferences and Meetings Organized**

**9-10 December 2019, New Delhi** – Third Annual Developing Country Forum for South-South Cooperation in International Tax Matters. The Forum was jointly organised by the South Centre in collaboration with the Research and Information System for Developing Countries (RIS), New Delhi and the Ministries of Finance and External Affairs of the Government of the Republic of India. The Forum brought together nearly 90 participants including government officials, academics, civil society and experts from other international organizations. The two day Forum covered a range of topics in international taxation including the digital economy, offshore indirect transfers, extractive industries, tax risk assessment and fugitive economic offenders. The Forum provided an excellent opportunity to exchange views and share experiences among tax officials and experts from India and other developing countries. It also allowed them to discuss on tax cooperation modalities and standards suitable to enhance developing countries' capacity to mobilize domestic resources to support their development efforts.



## **D. Participation in External Conferences and Meetings**

**11 December 2019, Virtual Conference** - Where Next for Global Taxing Rights? Technical and Political Analyses of the OECD Tax Reform. South Centre staff spoke on the revenue impacts of redistributing taxing rights under the OECD's "Unified Approach" to Pillar One, which mostly deals with the taxation of the digital economy. They highlighted the critical importance of including employment and users in the apportionment formula so as to ensure that developing countries receive an appropriate share of taxable revenue.

## **8. Sustainable Investment and Business and Human Rights**

### **A. Recent Developments**

Foreign direct investment may be a valuable tool to support the sustainable development goals, but the international community has now realized the need to reform the current investment regime both in respect of its substantive rules and standards and of the much questioned system of investor-state dispute resolution embedded in international investment agreements. Some significant efforts to achieve such objectives have been carried out at the national, regional and international levels. While some progress has been achieved through the United Nations Conference on Trade and Development (UNCTAD)'s reform package (currently in phase 2), other forums have also engaged in this endeavor, principally the United Nations Commission on International Trade Law (UNCITRAL, Working Group III), the International Centre for Settlement of Investment Disputes (ICSID), and the Energy Charter Treaty (ECT) Secretariat. The approaches considered by each initiative vary substantially, some of them considering only cosmetic or marginal changes. There is growing interest in placing the discussion on the existing asymmetry between investors and States at the forefront of these debates, including the obligations that investors should have with respect to the achievement of the 2030 Sustainable Development Agenda and Sustainable Development Goals.

These considerations have also been brought up during the discussions on the issue of business and human rights. The negotiations of a legally binding instrument on business and human rights in the United Nations Human Rights Council reached its fifth year with the 5th Session of the Open Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises, where a revised draft of the legally binding instrument, published by the Chairmanship on 16 July 2019, was the basis for negotiations. Its outcome provides direction for

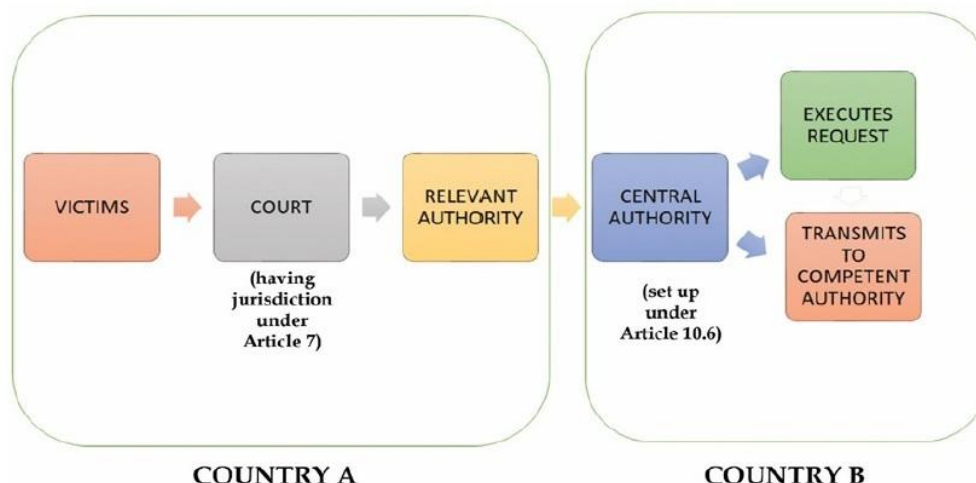
the process to move ahead towards more substantive negotiations during the 6th Session in October 2020.

## B. Publications

### **Policy Brief 67, October 2019: Enhancing Access to Remedy through International Cooperation: Considerations from the Legally Binding Instrument on Transnational Corporations and Other Business Enterprises by Danish**

Available at: <https://www.southcentre.int/policy-brief-67-october-2019/>

**Figure 2 – Request Process for Mutual Legal Assistance under the LBI**



Note: The process to obtain remedies is initiated by victims approaching a court with competent jurisdiction. Depending on the nature of mutual legal assistance sought, the court will order the relevant authority under its own domestic law to transmit the request to the central authority in the other country (receiving state). Depending on the nature of assistance sought, the central authority may execute the request or transmit it to another body with the competence to execute it.

*The shortcomings in international cooperation between regulatory authorities in different countries can open up a gap in their legal regimes which could be exploited by transnational corporations and allow them to elude responsibilities for the violation or abuse of human rights. The Revised Draft of the Legally Binding Instrument on Transnational Corporations and Other Business Enterprises seeks to bridge this gap and works towards increasing collaboration among countries for ensuring access to effective remedies for victims of human rights violations or abuses due to business activities. This brief looks at some of its salient features and how they can be utilized by countries for the protection and promotion of human rights in their territories.*

### **Policy Brief 68, October 2019: The Core Elements of a Legally Binding Instrument: Highlights of the Revised Draft of the Legally Binding Instrument on Business and Human Rights by Daniel Uribe Teran**

Available at: <https://www.southcentre.int/policy-brief-68-october-2019/>

*Discussions towards the adoption of a legally binding instrument on business and human rights have reached its fifth year. The Chairperson-rapporteur submitted the Revised Draft of the legally binding instrument on 16 July 2019, having in view the comments and proposals received until the end of February 2019. The present policy brief reviews the core elements of the legally binding instrument as they are proposed in the revised draft, with the aim to provide analytical support to States' delegations and other stakeholders during the negotiations on the binding instrument. This brief examines a number of issues, concerns and legal aspects that have been addressed during the previous sessions of the Open-ended Intergovernmental Working Group (OEIGWG) on transnational corporations and other business enterprises with respect to human rights and how they have evolved going towards the 5th Session of the OEIGWG.*

**SOUTHNEWS No. 292, 29 October 2019: Another Step Forward in Elaborating the Legally Binding Instrument on Business Activities and Human Rights by Danish**  
Available at: <https://mailchi.mp/southcentre/southnews-another-step-forward-in-elaborating-the-legally-binding-instrument-on-business-activities-and-human-rights?e=0ba6f79724>



*The 5th Session of the Open Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises was held from 14 to 18 October 2019 at the United Nations in Geneva. Its outcome provides direction for the process to move ahead towards more substantive negotiations.*

#### ***Other SOUTHNEWS:***

**SOUTHNEWS No. 299, 19 November 2019: [UN General Assembly adopts resolution calling for end to US embargo against Cuba](#)**

**SOUTHVIEWS No. 186, 10 October 2019: Last chance for the Global South? Pursuing the South's interests in reforming the Investor-State Dispute Settlement system in the multilateral arena**  
by Jose Manuel Alvarez Zarate and Maciej Żenkiewicz  
Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=ed5eb5a761>

*The current Investor-State Dispute Settlement (ISDS) system is mainly criticized for its lack of transparency, unbalanced rights and obligations between State and investors, and the expansive interpretation of arbitrators of the investment protection treaties' vague rules. Any reform of the ISDS should benefit developing countries that are facing most of the ISDS claims. The decisions taken at the thirty-seventh session of the United Nations Commission for International Trade Law (UNCITRAL) Working Group III (WGIII) on ISDS Reform (New York, 1-5 April 2019) are likely to influence the way in which the discussions about the reform of ISDS at the multilateral level will go. The developing countries should shape their agenda in such a way to facilitate consensus in the context of advancing their collective interests and perspectives.*

#### **C. Participation in Other External Conferences and Meetings**

**3 October 2019, Geneva** - Informal Policy Dialogue on the United Nations Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with respect to Human Rights (OEIGWG) organized by Corporate Accountability International (CAI), Centre Europe-Tiers Monde (CETIM), Food First Information and Action Network (FIAN) International, Friends of the Earth International (FOEI), International

Association of Democratic Lawyers (IADL), La Via Campesina (LVC), Transnational Institute (TNI), Trade Union Confederation of the Americas (TUCA), members of the Global Campaign

**4 October 2019, Geneva** - Briefing for African diplomats on the 5th session of the OEIGWG/revised draft of the legally binding instrument on Business and Human Rights organized by the Centre for Applied Legal Studies, International Federation for Human Rights (FIDH), Lawyers for Human Rights and the Rosa Luxemburg Foundation

**14-18 October 2019, Vienna** - Thirty-Eighth Session of Working Group III: Investor-State Dispute Settlement Reform of the United Nations Commission on International Trade Law

**13 November 2019, Geneva** - Presentation during Break-out session: Multilateral processes related to investment policymaking and their contribution to Phases 1 and 2 of Sustainable Development-oriented IIA reform, of the UNCTAD High-level International Investment Agreement (IIA) Conference held in conjunction with the 11th session of the UNCTAD Investment, Enterprise and Development Commission

**25 – 27 November 2019, Geneva** - Eighth UN Annual Forum on Business and Human Rights "Time to act: Governments as catalysts for business respect for human rights"

**3 December, London** – The South Centre Executive Director attended the Institute for Human Rights and Business' Next Generation Trade event "Building a Principled, People-Centred Global Economy" and spoke at the session on De-weaponising Trade.

## **9. South-South Cooperation and Development Finance**

### **A. Recent Developments**

Various international agencies and think tanks have started to work on the implementation of the Second High-Level United Nations Conference on South-South Cooperation (BAPA+40) outcome document. Strengthening the institutional framework of South-South and Triangular Cooperation (SSTrC) has been a major topic. The national ecosystems advocated by the Islamic Development Bank (IsDB) and the South Centre based on the IsDB concept have been acknowledged widely. "National ecosystems" were the main topic for discussion at international meetings in 2019, including the ones organized by the United Nations Office for South-South Cooperation (UNOSSC), OECD and other institutions. Some institutions have announced work plans to undertake analytical work on the narrative of SSC and also TrC. This kind of theoretical work would have its impact on the future efforts on the code of conduct, rules and regulations relating to SSTrC.

Relating to development finance, the deteriorating debt sustainability situation of developing countries has been a major concern of the international community. The South Centre and the United Nations have been exploring ways to cope with this situation.

## B. Publications

### **SOUTHNEWS No. 289, 17 October 2019: South Centre Statement to the G24 Ministerial**

Available at: <https://mailchi.mp/southcentre/southnews-south-centre-statement-to-the-g24-ministerial?e=0ba6f79724>

*Recent disappointing economic data from major advanced economies and the slowdown in most emerging and developing economies have made the much expected economic pick-up of 2020 become more remote. Coupled with the escalating trade wars, geopolitical tension, exploding debt burden and climate change induced natural disasters, the fear of a potential economic recession has been mounting. In addition to continuing to undertake global governance reform, uniting under the banner of the implementation of the 2030 Agenda could be a way to take effective and timely international collective actions to prevent the world economy from plunging into a dark recession.*

### **SOUTHNEWS No. 291, 28 October 2019: South Centre Statement at the 18th Summit of Heads of State and Government of the Non-Aligned Movement (NAM)**

Available at: <https://mailchi.mp/southcentre/southnews-south-centre-statement-at-the-18th-nam-summit?e=0ba6f79724>



*South-South cooperation serves as an important means to address economic, political, social and environmental global challenges based on solidarity and common development needs and interests, and to strengthen developing countries' position in global governance for the implementation of the 2030 Agenda for Sustainable Development. While the world is facing many challenges, the future also presents a number of opportunities for the Non-Aligned Movement (NAM) to remain strong, cohesive and resilient, and to encourage better coordination and cooperation among its Member States and with other groupings such as the Group of 77 and China so as to strengthen their voices in multilateral fora. This is the South Centre statement at the 18th Summit of Heads of State and Government of the Non-Aligned Movement (NAM) held at Baku, Azerbaijan on 25-26 October 2019.*

### **SOUTHNEWS No. 295, 5 November 2019: Side Event on South-South and Triangular Cooperation during the 18<sup>th</sup> Summit of the Heads of State and Government of the Non-Aligned Movement - co-organized by the Republic of Azerbaijan, the South Centre and the Islamic Development Bank on 23 October 2019 by Yuefen LI and Daniel Uribe**

Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=43c32c4e8f>



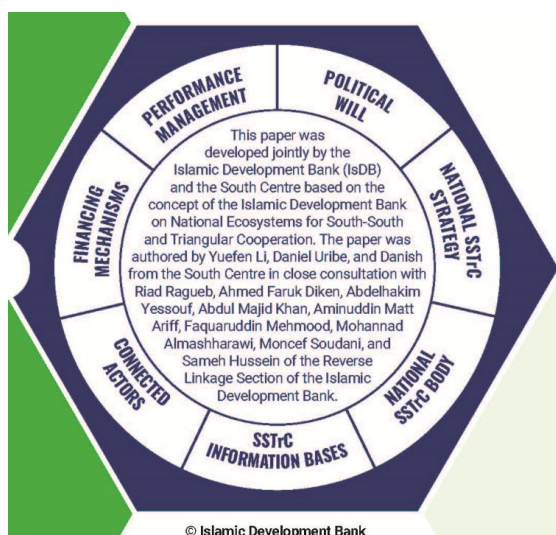
*South-South cooperation should be a priority for the Non-Aligned Movement (NAM). This was one of the main messages from the side-event on South-South and Triangular Cooperation (SSTrC) organized by the Republic of Azerbaijan, the South Centre and the Islamic Development Bank during the Ministerial segment for the 18<sup>th</sup> Summit of the Heads of State and Government of NAM with the participation of ministers of Azerbaijan and Bangladesh and senior officials from NAM members and international organizations. The outcome document of the Summit recognizes the central role of the South Centre as the think-tank of the countries of the South as well as in enhancing South-South Cooperation.*

#### **Other SOUTHNEWS:**

**SOUTHNEWS No. 298, 18 November 2019: [The Baku Declaration of the 18th Summit of Heads of State and Government of the Non-Aligned Movement \(NAM\)](#)**

**SOUTHVIEWS No. 187, 11 October 2019: The Importance of “Developing National Ecosystems for South-South and Triangular Cooperation to Achieve Agenda 2030 for Sustainable Development”**  
- on the occasion of launching the publication by Yuefen LI

Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=55136a3c66>



*To maximize the benefits of South-South and Triangular Cooperation (SSTrC), it would be imperative to have an effective "national ecosystem" - an institutional framework at national level. Over the years, the pace of institutional improvements in conducting SSTrC by Southern countries has lagged far behind the fast expansion of SSTrC in size, making it a constraint for unleashing the full potential of SSTrC. On 26 September 2019, the Islamic Development Bank (IsDB), the South Centre and the United Nations Office for South-South*

*Cooperation (UNOSSC) launched the joint publication entitled “Developing National Ecosystems for South-South and Triangular Cooperation to Achieve Agenda 2030 for Sustainable Development” on the side lines of the 74<sup>th</sup> session of the United Nations General Assembly in New York. It discusses how to strengthen national ecosystems to promote SSTRC. The concept of national ecosystem advocates a bottom-up and incremental approach. It emphasizes that the national ecosystem is not meant to be prescriptive or a one size fits all model. Developing an effective national ecosystem for SSTRC requires understanding of the national realities and objectives and takes time, effort, commitments and financing.*

### **C. Participation in Other External Conferences and Meetings**

**11-12 October 2019, Istanbul** - The South Centre made two presentations at the IsDB 3 2-C dialogue of heads of development agencies of the IsDB members and had bilateral meetings with some agencies.

**17-18 October 2019, Lisbon** – South Centre Senior Advisor on South-South Cooperation and Development Finance spoke at the OECD conference on triangular cooperation.

**30-31 October 2019, Turin** - The South Centre made presentations during the training on SSTRC for the officials of the UN agencies and developing countries on the implementation of BAPA+40 outcome and national ecosystems. This was organized by the United Nations Research Institute for Social Development (UNRISD) and UNOSSC.

**18 November 2019, Geneva** - South Centre Senior Advisor on South-South Cooperation and Development Finance spoke at the UNCTAD Debt Conference. The topic was on debt transparency and debt crisis prevention and resolution.

**13 December 2019, Istanbul** – The South Centre Executive Director attended the High-level Forum of Directors General for Development Cooperation 2019 (DG Forum 2019) co-organized by the United Nations Office for South-South Cooperation (UNOSSC), the Japan International Cooperation Agency (JICA), and the Islamic Development Bank (IsDB), in coordination with the Turkish Cooperation and Coordination Agency (TIKA). The overall theme of the High-level Forum was “Charting the Post-BAPA+40 Roadmap for South-South and Triangular Cooperation: Towards Effective Institutionalization of South-South and Triangular Cooperation for Sustainable Development”.

The Forum sought to bring together leaders from cooperation agencies of national governments to provide an opportunity for them to exchange views on South-South and triangular cooperation approaches and methodologies, as well as to serve as a match-making platform for further strengthening partnerships. This year’s DG Forum was the first one to take place after the BAPA+40 Conference and offers practitioners of South-South and triangular cooperation an opportunity to discuss mainstreaming and institutionalizing South-South and triangular cooperation at the national level as a key enabling factor to catalyze the achievement of the recommendations highlighted in the BAPA+40 Outcome Document.

The Executive Director spoke at the Session 3 “Connecting learning and progress: Assessing results for continuous improvement of South—South and triangular cooperation (SSTRC) interventions” of the Forum.

## 10. WTO Appellate Body Crisis

### A. Recent Developments

The most significant development at the WTO this quarter was what is effectively a ‘dismantling’ of the Appellate Body (AB) of the WTO due to the US opposition to the appointment of AB members. For the last 2 years, the US has blocked the filling of positions in the Appellate Body on grounds that the AB has not properly applied the rules of the WTO. Despite efforts by Members across the WTO spectrum to agree to a draft General Council text addressing the US concerns so that the US would unblock its objections to relaunching a selection process, the US rebuffed the draft Decision. The AB became dysfunctional on 11 December 2019.

The implication is that a rules-based organisation has now lost its enforcement mechanism, returning the WTO to a situation where power can even more easily prevail. Panel reports may not be adopted if the losing party decides to appeal, even though appeals would be made ‘into the void’. In such situations, as some commentators have noted, we may enter into a situation of ‘mini trade wars’ – where those with power may go ahead and take unilateral actions. Those with no political / economic power would not have this capacity.

Even as the AB went down, there were already discussions about an alternative mechanism - the so-called Article 25 Arbitration. Some Members are agreeing to substitute appeals for an Article 25 Arbitration process instead. In fact, at the time of writing, it seems that efforts are ongoing for developing countries to agree to enter into some kind of plurilateral arbitration arrangement. It would seem that this is an unsatisfactory and problematic arrangement for developing countries. An arbitration between two Members cannot substitute for an appeal done by the AB. It is unclear who the arbitrators will be, how they will be chosen, and whether such bilateral processes could be vulnerable to power politics. It is also unclear whether cases in an arbitration will be settled strictly in accordance with WTO rules. If developing Members agree to be part of the plurilateral arbitration procedure, what incentive would there be for the US to ever reinstate the AB, particularly as an arbitration process could potentially be more advantageous for powerful Members?

Last but not least, there also seems to be some efforts in certain quarters to ensure that panel reports continue to be adopted by negative consensus. During the Uruguay Round, when automatic adoption of panel reports (by negative consensus) was agreed to, unlike what was in the General Agreement on Tariffs and Trade (GATT), the *quid pro quo* was the creation of the AB to allow for appeals in order to protect against what was called ‘rogue’ panels. Now Members’ right to appeal has been taken away. Why should Members now agree to adopt panel reports by negative consensus when the other part of the bargain – their right to appeal has been effectively removed?

As South Africa emphasised in the WTO’s December General Council, ‘it will be important that Members’ rights are preserved during this difficult period and that pressure is not exerted on countries to implement panel ruling and give up the right to appeal’.<sup>1</sup>

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<sup>1</sup> South Africa’s Statement for the General Council, 9-11 December 2019.

## B. Publications

### **Policy Brief No. 69, December 2019: Crisis at the WTO's Appellate Body (AB): Why the AB is Important for Developing Members by Danish and Aileen Kwa**

Available at: <https://www.southcentre.int/policy-brief-69-december-2019/>

*The World Trade Organization (WTO)'s Appellate Body (AB) will be made dysfunctional by 11 December 2019. A disabled AB means that the WTO's dispute settlement system loses its enforcement mechanism. Even though many smaller developing countries are not major users of the dispute settlement system, nevertheless, they are beneficiaries of the rule of law, and a more predictable trading environment. Several stop-gap measures have been suggested. None are satisfactory. The right to appeal is an important right for all Members which was part of the Uruguay Round package. If this right is removed, why should other parts of that package also not be changed? The future is uncertain – between a much weakened multilateral trading system similar to the days of the General Agreement on Tariffs and Trade (GATT); or deep reform of the WTO, in ways that primarily benefit the US and its partners, whilst foreclosing important policy choices for the developing world.*

### **Policy Brief No. 70, December 2019: Lights Go Out at the WTO's Appellate Body Despite Concessions Offered to US by Danish and Aileen Kwa**

Available at: <https://www.southcentre.int/policy-brief-70-december-2019/>

*As of 11 December 2019, the Appellate Body (AB) of the World Trade Organization (WTO) has been rendered non-functional. This policy brief provides a summary of the issues discussed amongst WTO Members in the last two years, in their valiant efforts to address the US' concerns regarding the AB. The issues include: the use of AB Members' services to complete an appeal after their term has officially expired; timelines for issuance of AB reports; the meaning of municipal law; advisory opinions; precedence-setting; and overreach by the AB. After much effort by Members in the 'Walker process' of negotiations, concessions have been proposed to the US in the draft General Council Decision of 28 November 2019. Language was provided limiting the scope of appeals to questions of law, even though there are situations where the boundary between issues of law and fact are difficult to draw. The text also provides that 'precedent' is not created through WTO dispute settlement proceedings. In the area of anti-dumping, the language inserted by the US into the anti-dumping agreement to protect their zeroing practices is confirmed. Nevertheless, the US has rebuffed these offered concessions. It seems determined to amplify its leverage by taking the WTO's Appellate Body hostage, to extract still more from other Members, including in terms of far-reaching 'WTO Reforms'.*

## **11. 'WTO Reform' – Special and Differential Treatment**

### **A. Recent Developments**

On 26 July, President Trump issued a memorandum on 'Reforming Developing-Country Status in the World Trade Organization'. It stated that 'the United States Trade Representative (USTR) shall, as appropriate and consistent with applicable law, use all available means to secure changes at the WTO that would prevent self-declared developing countries from availing themselves of flexibilities in WTO rules and negotiations that are not justified by appropriate economic and other indicators.'

The Memorandum said that 'if, within 90 days...the USTR determines that substantial progress has not been made...' the USTR shall 'no longer treat as a developing country for the purposes of the WTO any WTO Member that in the USTR's judgment is improperly declaring itself a developing country and inappropriately seeking the benefit of flexibilities in WTO rules and negotiations...'

In response, 52 developing countries comprising of the African Group, the Plurinational State of Bolivia, Cambodia, China, Cuba, India, Lao People's Democratic Republic, Oman, Pakistan and the Bolivian Republic of Venezuela submitted a joint WTO document (WT/GC/202) reaffirming developing countries' unconditional rights to special and differential treatment (S&DT) at the WTO. Their paper also noted that developing countries must be allowed to make their own assessments regarding their developing country status.

In its presentation on the paper at the October WTO General Council, India summed the key points as follows:

- (i) S&DT for developing countries, including LDCs, is a right for which we have made payments in the form of obligations in the UR Agreements like Agreement on Agriculture and TRIPS.
- (ii) It is part of the basic structure of the multilateral trading system and abandonment of S&DT would imply abandoning a core principle of the WTO agreement.
- (iii) The US is using arbitrary parameters, many of them unrelated to the development, together with unilateral enforcement to target the Members and to divide developing countries. While some developing Members may have made progress in overall or per capita GDP, huge gaps between developed and developing countries remain, and have in many cases widened, as outlined in our submission to the GC in February, 2019, WT/GC/W/765 Rev.II. A country like India with a per capita income of about US\$ 2000, and home to 35% of the global poor, cannot be placed in the same development category as the US with a per capita GDP of more than US\$ 70,000.
- (iv) 52 developing Members, representing more than 75% of the people of Africa and Asia, across the development spectrum have rejected the US narrative as unacceptable. Their voice cannot be ignored.
- (v) Finally, pursuing the course of action, outlined in the Memo, will result in a complete breakdown of trust in the WTO, raise unilateralism to a new height and jeopardize current and future negotiations, including those on fisheries subsidy disciplines.<sup>2</sup>

The US nevertheless has continued to insist on its position. At the December General Council, the US re-tabled a revised version of its draft General Council decision, which according to its 4 criteria (the same as presented in its February 2019 submission) would exclude 34 countries from S&D treatment in future WTO negotiated outcomes. These criteria are

- Membership of or accession to the OECD
- Membership of the Group of Twenty (G20)
- A country is classified as 'high income' by the World Bank
- A country accounts for 0.5% or more of global merchandise trade in the last 3 years

In response, South Africa's ambassador noted that the revised version did not 'address our fundamental concerns... The Proposal still maintains the arbitrary criteria for determining which WTO Members should continue to access S&D.'<sup>3</sup>

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<sup>2</sup> Statement by India, General Council Meeting, 15-16 October 2019.

<sup>3</sup> South Africa's Statement for the General Council, 9 – 10 December 2019.

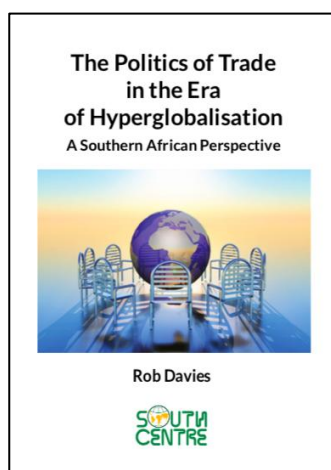
India, which is ranked 102<sup>nd</sup> amongst 117 countries in the 2019 Global Hunger Index, further highlighted that developed countries ‘need to consider foregoing flexibilities available to them under various existing Agreements and Decisions, including AMS (Aggregate Measure of Support) and green-box subsidies, Special Safeguard Mechanism and flexibilities under the Nairobi Decision on Export Competition, which provides reverse S&D treatment, none of which are generally available to developing countries and hurt developing country exports’.<sup>4</sup>

Upon request, the South Centre provided analytical support to the G90 process regarding their Special and Differential Treatment proposals.

## B. Publications

### **Book by the South Centre, November 2019: The Politics of Trade in the Era of Hyperglobalisation: A Southern African Perspective by Rob Davies**

Available at: <https://www.southcentre.int/book-by-the-south-centre-2019-2/>



*Matters of international trade are increasingly widely recognised as major shapers of global politics. News bulletins are giving more and more coverage to matters like the so-called “trade wars” between the United States and China. These are, indeed, increasingly defining relations between the two largest economies in the world and could well underpin a multi-dimensional rivalry that could be a central feature of international relations for many years to come. Brexit is dominating and indeed re-shaping politics in the United Kingdom. By definition a rejection of a regional integration arrangement, Brexit has also revealed under-currents profoundly shaped by the outcome of a broader trade-driven process called “globalisation”. Just as regional integration is weakening in Europe, African countries have taken decisions that could lead to the most profound and ambitious step forward in African regional integration – the establishment of an African Continental Free Trade Area (AfCFTA). This study seeks to present an analysis of the political economy of trade negotiations over the past quarter century on two main fronts: the multi-lateral and those pertaining to regional integration on the African continent.*

### **SOUTHNEWS No. 296, 7 November 2019: Gender and Trade at the WTO Public Forum 2019 by Mariama Williams and Rajesh Eralil**

Available at: <https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=238522f84f>

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<sup>4</sup> Statement by India, General Council Meeting, 9-10 December 2019.



Photo credit: WTO

*This year's World Trade Organization (WTO) Public Forum facilitated discussions on the linkages between gender and trade. The South Centre co-organized a session that shared perspectives on the issue of gender in trade policies and agreements. The panel featured distinguished experts from government, civil society and academia and elaborated, if and how, the WTO's trade framework is affecting women empowerment and gender equality. Digitalization and trade in the service sector were presented as powerful forces in determining the progress of women in developing countries. The panelists agreed that trade policies have the potential to either exacerbate or reduce existing inequalities, including the gender inequalities. It was also debated, however, whether international trade agreements or rather domestic policies may be the right entry points to address barriers in relation to gender equality. The panel demanded that trade agreements need to urgently move towards a development oriented approach as envisioned in the Doha Development Agenda.*

### **C. Other Conferences and Meetings Organized**

Aside from various discussion meetings organised upon request, South Centre also organised the following:

**8 October 2019, Geneva** - South Centre organized an Interactive Session with India's Commerce Secretary, Mr Anup Wadhawan, for WTO Ambassadors and Experts



**7 November 2019, Geneva** - South Centre organized a book launch of Honourable Dr Rob Davies' book entitled *The Politics of Trade in the Era of Hyperglobalisation: A Southern African Perspective*



## **D. Participation in External Conferences and Meetings**

**8 November, Geneva** – The South Centre Executive Director attended an Informal Meeting of WTO Ambassadors and Experts and spoke on “Reflections on the Multilateral Trading System and priorities for developing countries” and also on the TRIPS Non-Violation Complaints (NVC) Moratorium.

**14 December, New Delhi** – The South Centre Executive Director attended the Delhi Dialogue XI “Advancing Partnership in Indo-Pacific” and spoke at the Plenary Session V: Future of Multilateral Trading System.

## **12. E-Commerce**

### **A. Recent Developments**

The E-Commerce moratorium was first agreed to by WTO Ministers for two years in 1998. This moratorium is an agreement according to which Members will not impose customs duties on electronic transmissions. Since then, aside from various lapses, the moratorium has been renewed every two years. The moratorium was to expire in December. WTO Members had to decide whether to renew it or not.

Few Members understood the full implications of the Moratorium when it was first adopted in 1998 as the digital economy was still at its infancy and the agreed wording could be the object of different interpretations. Today, as e-commerce has expanded dramatically the impact of the Moratorium is much more significant, and its impact will only increase with time.

As goods will increasingly be traded electronically, the Moratorium, if continued, may mean a continuation of zero customs duties on goods on a larger and larger category of goods. There will be tariff revenue losses. However, the bigger consequence could be the loss of policy space for those who are trying to catch up to support their domestic industries. Tariffs have always been a policy tool to support industrialisation used by the successful economies. It would not be wise for developing countries to agree to a zero-tariff future trade environment that would deprive them from implementing development-oriented legitimate policies.

At the December WTO General Council, WTO Members decided to renew the moratorium until the next WTO Ministerial (June 2020). Between now and then, Members decided to have ‘structured discussions’ on the moratorium:

Members agree to reinvigorate the work under the Work Programme on Electronic Commerce, based on the existing mandate as set out in WT/L/274. The work will include structured discussions in early 2020 based on all trade-related topics of interest brought forward by Members, including LDCs, including on scope, definition and impact of the moratorium on customs duties on electronic transmissions. Members agree to maintain the current practice of not imposing customs duties on electronic transmissions until the 12th Ministerial Conference.

The General Council shall report to the 12th session of the Ministerial Conference.<sup>5</sup>

In the General Council, India made an appeal that there is a ‘need of providing clarity and arriving at a common understanding of what the moratorium covers. Without such an agreement on the scope of the moratorium and the definition of electronic transmissions, it would be very difficult, to assess the impact of moratorium on the economy, not only in terms of loss of tariff revenue but even the broader impact on our efforts at digital industrialisation. We again reiterate that much more serious and dedicated work is required to examine more deeply the scope of the moratorium, the definition of ET (electronic transmissions) and to identify the categories of products which are covered under the moratorium.’<sup>6</sup>

Indeed, thus far, some Members/ institutions are making the assumption that the moratorium also covers services. There has been no formal agreement at the WTO on what the scope of the moratorium is. Most Members understand it to cover physical goods that have been digitised. Notably, the WTO Secretariat in their 2016 study on the moratorium also looked at the fiscal implications of the moratorium from this angle.<sup>7</sup>

## **13. Domestic Regulation (Services)**

### **A. Recent Developments**

This last quarter saw near completion of the plurilateral negotiations on domestic regulation in the informal Joint Statement Initiative (JSI) on domestic regulation (DR). Some Members in the JSI – DR negotiations have also submitted draft schedules, which would be the basis for appending the negotiated outcomes into their WTO General Agreement on Trade in Services (GATS) schedules.

This issue raises several questions. The JSI process is not a formal multilaterally mandated set of negotiations. If a group of WTO Members negotiate new rules amongst themselves, they can formalise this in the form of a free trade agreement. However, to bring these negotiated outcomes into the WTO will require alignment with the WTO’s amendment provision (Art X of the Marrakesh Agreement). There are areas in the nearly completed JSI-DR text which detract from developing Members’ rights under the GATS, provide JSI Members with more rights or simply amend existing GATS provisions.

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<sup>5</sup> WT/L/1079 2019 ‘Work Programme on E-Commerce: General Council Decision’, adopted on 10 December.

<sup>6</sup> Statement by India, General Council Meeting, 9-10 December 2019.

<sup>7</sup> See JOB/GC/114 2016 ‘Fiscal Implications of the Customs Moratorium on Electronic Transmissions: The Case of Digitisable Goods’.

In order to address these issues, five countries (India, South Africa, Sri Lanka, Tunisia and Zimbabwe) called for a multilateral meeting on Domestic Regulation in November (the Working Party on Domestic Regulation), in order to raise these questions about the interface between the JSI 'Reference Paper' on Domestic Regulation and the provisions of the GATS, as well as the implications of the negotiated outcomes for the DR multilateral mandate under GATS Art VI.4.

## **14. Agriculture**

### **A. Recent Developments**

In the 4<sup>th</sup> quarter, two WTO Committee on Agriculture Special Session meetings were held as well as Dedicated Sessions on Public Stockholding for Food Security Purposes (PSH) and the Special Safeguard Mechanism (SSM).

In the important but difficult area of Domestic Supports, positions remain very far apart. The Cairns Group and developed Members are asking for all Members to contribute to domestic support cuts, including developing countries who had bound themselves at 0 trade distorting domestic supports in the Uruguay Round (i.e. they would cut into their already minimal 'de minimis' support entitlement). This would only aggravate the imbalances in the rules of the Agreement on Agriculture. India, China, the Africa Group and others continue to insist that this cannot be the starting point for domestic support negotiations.

The African Group submitted its elements paper setting out possible 12<sup>th</sup> WTO Ministerial (MC12) outcomes (JOB/AG/173 dated 25 November 2019). In December, some new submissions on domestic supports were made; most of these were conceptual papers or were tentative in nature rather than textual proposals.

During this quarter, South Centre examined some of the new proposals and provided the analytical support requested by its Members and developing country groupings including the Group of Thirty-three (G-33) and the African Group.

## **15. Fisheries Subsidies**

### **A. Recent Developments**

During this quarter, there were three meetings of the Negotiating Group on Rules. A new chair was appointed. Most of the technical work has been conducted under the auspices of (now) 7 facilitators, respectively covering Illegal, Unreported and Unregulated (IUU) fishing; overfished stocks; overfishing and overcapacity; Special and Differential Treatment; institutional arrangements; definitions, scope, notifications and transparency; dispute settlement, remedies and territoriality.

In relative terms, most 'progress' has been recorded with respect to IUU (subsidy prohibitions after IUU fishing has been determined) and overfished stocks, even though positions are apart in these pillars. Concerns in the area of IUU include: 1) possible (implied) obligation to have a system in place to make IUU determinations; 2) implications for small scale fisheries who might be engaged in IUU fishing (depending on who defines IUU and provisions in national law); 3) whether the disciplines can be used to block exports of fish from developing countries; 4) making

non-binding non-WTO instruments binding through a WTO instrument. In the area of overfished stocks, concerns include 1) the concept that subsidies can't continue unless it can be backed up by science that there is no negative effect; this would imply that developed Members who have scientific capacities and more resources in the area of management would benefit from such disciplines whilst developing countries may be targeted; 2) whether third parties can declare fish stocks 'overfished' for the purposes of triggering the subsidy prohibition, or force Members to make such declarations.

As per the Ministerial Declaration in Buenos Aires, the initial deadline for a fisheries subsidies outcome was December 2019, which has now been extended to MC12 in June 2020. Six months before this deadline the situation looks bleak:

- Developed Members have been questioning the mandate on Special and Differential Treatment.
- Developed Members have put proposals which imply huge flexibilities for them, including excluding fuel subsidies, non-specific subsidies, aquaculture from scope; huge exemptions for subsidies that relate to fisheries management and environment etc.
- The most important part of the mandate, 'to prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing' is lagging behind. The current proposals by developed countries are likely to mean that there will be no change in overcapacity and overfishing on their part.

The so-called capping approach, most forcefully advocated by US and Australia, is an approach in the 'overfishing and overcapacity' pillar, competing with the approach many developing countries are supporting, which is to prohibit the most harmful subsidies provided to large scale fisheries. The effectiveness of a capping approach is questionable and it would lock in existing inequalities in terms of who has access to fisheries resources. There are also practical issues, such as how to monitor a violation of prohibition and how to bring subsidies into compliance.

South Centre has been working and meeting with its Members in the fisheries subsidies negotiations and has provided inputs, at the request of its Members, on issues such as Special and Differential Treatment, Distant water fishing Members, IUU fishing, references to large scale in international fisheries instruments, initial estimates of US fuel subsidies based on its notification of fisheries subsidies, among others.

## **B. Participation in External Conferences and Meetings**

**October 2019, Geneva** - Session on fisheries subsidies at the WTO Public Forum

**21-23 October 2019, Oslo** - Our People's Ocean Conference



**22-24 October 2019, Oslo** - Our Ocean 2019 conference



**2-3 December 2019, Mombasa** - High Level Panel for a Sustainable Ocean Economy - Western Indian Ocean (WIO) Regional Meeting



## **16. Investment Facilitation**

### **A. Recent Developments**

Work in the Joint Statement Initiative on Investment Facilitation has been progressing, including the development of a working text. With this working text, there is more clarity as to what kinds of possible disciplines may emerge in these negotiations.

Upon request by some Members, South Centre organised a Working Lunch meeting on Investment Facilitation (IF). The meeting discussed the implications of Domestic Regulation (DR) type disciplines on Members' policy space (as many DR disciplines have been incorporated into the IF text).

The meeting also discussed the interface between IF disciplines if adopted at the WTO, and WTO Members' Bilateral Investment Treaties (BITs), particularly whether WTO Members party to BITs could find themselves taken to Investor State Dispute Settlement (ISDS) for commitments they may have made on IF at the WTO.

## 17. African Continental Free Trade Area (AfCFTA) and other FTAs

### A. Recent Developments

The operational phase of the AfCFTA was launched at the Niamey Summit in July 2019. Leaders *inter alia* agreed to a standstill clause, as an interim measure until tariff concessions have been concluded. This implies that the tariff applicable at the entry into force of the AfCFTA (30 May 2019) would be the maximum tariff for imports from other African countries. On-going work includes rules of origin, implementation and negotiation of tariff concessions and further work on services (concessions and regulatory frameworks).

South Centre continues to provide, upon request, technical support to the negotiations and implementation of the AfCFTA, working with the African Union (AU) secretariat, AU Member States and the Pan African Chamber of Commerce and Industry (PACCI).

Several African states continue to be engaged in negotiations of the Economic Partnership Agreement (EPA). Upon request of Members, South Centre analysed several draft chapters of the Eastern and Southern Africa (ESA) EPA.

### B. Participation in External Conferences and Meetings

**26-29 November 2019, Addis Ababa** - 7th Meeting of the African Continental Free Trade Area Technical Working Group on Trade in Services



**3-5 December 2019, Djibouti** - Africa Prosperity Conference 2019, organized by PACCI and Djibouti Chamber of Commerce

## Publication Metrics

### *Most downloaded publication for the month of October:*

Policy Brief 68: “The Core Elements of a Legally Binding Instrument: Highlights of the Revised Draft of the Legally Binding Instrument on Business and Human Rights”

### *Most downloaded publication for the month of November:*

Book: *The Politics of Trade in the Era of Hyperglobalisation: A Southern African Perspective*

### *Most downloaded publication for the month of December:*

Policy Brief 69: “Crisis at the WTO’s Appellate Body (AB): Why the AB is Important for Developing Members”

## News Metrics

### *Most opened SOUTHNEWS for the quarter:*

SOUTHNEWS No. 283, 1 October 2019: Gro Harlem Brundtland addresses the UN High-Level Meeting on Universal Health Coverage

### *Most opened SOUTHVIEWS for the quarter:*

SOUTHVIEWS No. 188, 24 December 2019: Intellectual Property and Plant Protection: Developments and Challenges in Asia

### *Most opened SOUTH CENTRE NEWS ON AMR for the quarter:*

SOUTH CENTRE NEWS ON AMR No. 33, 14 October 2019: WHO opens consultation on One Health Global Leaders Group on Antimicrobial Resistance until 8 November

## Websites Metrics



The cumulative number of page visits across the three websites of the South Centre i.e. ‘A Public Health Approach to Intellectual Property Rights’ - <https://ipaccessmeds.southcentre.int/>; ‘South Centre Tax Initiative’ - <https://taxinitiative.southcentre.int/> and the main website <https://www.southcentre.int/> is **27367** (from 01 October to 31 December 2019).

## Social Media Metrics

### Twitter Highlights and Top Facebook Engagements (October)

#### OCT 2019 SUMMARY

Tweets  
79

Tweet impressions  
90.9K

Profile visits  
1,290

Mentions  
262

New followers  
66

#### Top Tweet earned 3,764 impressions

The @South\_Centre is currently accepting applications for the Internship with the #Health, #IntellectualProperty & #Biodiversity (HIPB) Programme. Deadline 15 November 2019. See [southcentre.int/work-opportuni...](https://southcentre.int/work-opportuni...) @UNjobs pic.twitter.com/5dGAUglFqL



#### Top media Tweet earned 3,146 impressions

Session on #biosimilars: Evidence from #latinamerica that access to biotechnological products increases with capacity to produce biosimilars (i.e. Argentina, Brazil, Cuba, Venezuela) supportive of #intellectualproperty and #publichealth systems. [ipaccessmeds.southcentre.int/event/upcoming...](https://ipaccessmeds.southcentre.int/event/upcoming...) pic.twitter.com/vV7lbOquGD



#### Top mention earned 255 engagements

India at UN, Geneva  
@IndiaUNGeneva · Oct 4

India IN in Geneva #wipoga

Side Event on "Public Health and IP: Substantive Examination of Pharmaceutical Patents" organised by @South\_Centre @IndiaUNGeneva & Egyptian Patent Office| Contribution by Mr O.P. Gupta @cgpdtm\_india as a panellist in @WIPO pic.twitter.com/GPz1NJOCY



South Centre  
16 October 2019 ·

The #WTO TRIPS Council will discuss #TRIPSflexibilities, #transparency in R&D and prices for #accessmedicines to achieve #SDGs. See our #SouthNews on #SouthAfrica's communication: [https://us5.campaign-archive.com/...](https://us5.campaign-archive.com/)



South Centre  
11 October 2019 ·

The #nationalecosystem has identified 7 pillars for constituting an effective institutional framework to maximize the benefits of #SouthSouthCooperation #TriangularCooperation #SSTrC. See NEW South Centre, ISDB and UNOSSC publication. #SouthViews [https://us5.campaign-archive.com/...](https://us5.campaign-archive.com/)



## Twitter Highlights and Top Facebook Engagements (November)

### NOV 2019 SUMMARY

Tweets	Tweet impressions
48	65.1K
Profile visits	Mentions
856	193
New followers	
58	

**Top Tweet** earned 3,362 impressions

.@South\_Centre, @ICTDTax & #BEPS Monitoring Group organized expert-level peer exchange discussion for #developingcountries experts & tax officials addressing challenges on #digitaltaxation & modifications of @UN #ModelTaxConvention #TaxReforms #SouthNews us5.campaign-archive.com/?u=fa9cf387991... pic.twitter.com/X9B0zyv5XW



**Top media Tweet** earned 1,621 impressions

.@South\_Centre #TaxInitiative, comments on @OECD Unified Approach under Pillar I, calls for taxing #digitaleconomy in balanced way tht allocates revs to #developingcountries line w/ contributions to MNCprofits #TaxReforms #TaxReforms4Development #SouthNews bit.ly/2qx9LwZ pic.twitter.com/io691Zd2sj



**Top mention** earned 1,519 engagements

Frank E. Arabi  
@ArabiFrank · Nov 20

We have been selected as the finalists in the GLOBAL Competition (@Innovate4AMR) hosted by @reactgroup, John Hopkins @IDEAinitiativ, @IFMSA, and supported by @WHO & @South\_Centre.

We are in Geneva, Switzerland for the Finals! pic.twitter.com/gyk9AvhDg0



South Centre, the International Centre for Tax and Development (@ICTD) and #BEPS Monitoring Group organized an expert-level peer exchange discussion for #developingcountries' experts and tax officials addressing the challenges on #digitaltaxation and the modifications of the #UN #ModelTaxConvention. #TaxReforms #development #SouthNews https://us5.campaign-archive.com/...



South Centre  
27 November 2019

#SouthNews https://us5.campaign-archive.com/...  
#Patent grants on #plants and plant materials may have significant implications for #accessseeds and use of #seeds. They may create a barrier for further research & breeding, curtail an essential #RighttoFarmers and put #foodsecurity at risk. #FoodForAll  
🌱🌱🌱  
Oxfam Novib  
Tagged: Oxfam

**SIDE EVENT**  
Tuesday 12 November, 18:15-19:30, Ethiopia

This side event will present trends in the patenting of genetic material and digital sequence information (DSI) and the impact of these on the availability of PGRFA to research, breeding and use by farmers around the world.

The side event will feature three presentations:  
-Prof. Correa (South Centre) will present the research into the extent to which plants and material are being patented in the Global South.  
-Mrs. Catigui (GeneSeed) will present current and the legal landscape regarding the patenting of plants and essentially biological processes.  
-Prof. Sagie (Emory University) will describe the patenting of products and processes involving digital sequence information focusing on the impact of these on the availability of PGRFA to research, breeding and use by farmers around the world.

The side event is organized by Oxfam Novib as part of the ITPGRFA A Reflection on Trends and Impacts.

OXFAM SOUTH CENTRE

SouthNews: Patents, Digital Sequence Information and the ITPGRFA: A Reflection on Trends and Impacts

## Twitter Highlights and Top Facebook Engagements (December)

### DEC 2019 SUMMARY

Tweets	Tweet impressions
61	98.7K
Profile visits	Mentions
1,239	113
New followers	
89	

### Top mention earned 676 engagements



India at UN, Geneva

@IndiaUNGeneva · Dec 10

India in Geneva [#Retracing2019](#)

Elections: wins for IN

Amb.(Retd.)Ajit Kr. elected Convenor of the Council of Representatives of Member States [@South\\_Centre](#)|CAG of IN elected External Auditor of [@WHO](#) for 2020-23|Dr M. Mohapatra of [@Indiametdept](#) elected Member [@WMO](#) EC for 2019-23  
[pic.twitter.com/cFWcikrdMI](https://pic.twitter.com/cFWcikrdMI)



### Top Tweet earned 5,868 impressions

The [@South\\_Centre](#) [#TaxInitiative](#) launched its latest publication "International Tax Cooperation: Perspectives From the Global South" during the [#2019TaxForum](#) on [#SouthSouthCooperation](#) in International [#TaxMatters](#).  
[@RIS\\_NewDelhi](#) [#FairTax](#)  
[#SouthSolidarity](#) [southcentre.int/book-by-the-so...](https://southcentre.int/book-by-the-so...) [pic.twitter.com/jBFHceV8m](https://pic.twitter.com/jBFHceV8m)



### Top media Tweet earned 4,576 impressions

The [@South\\_Centre](#) was invited to talk about the 'Future of [#Multilateral](#) [#TradingSystem](#)' at the Delhi Dialogue XI - Advancing Partnership in Indo-Pacific.  
[@MEAIndia](#) [@RIS\\_NewDelhi](#) [@ASEAN](#)  
[pic.twitter.com/Aa3n3FncFY](https://pic.twitter.com/Aa3n3FncFY)



**South Centre**  
11 December 2019 · 🌐

The South Centre welcomed Ambassador of [#SriLanka](#) to the [#UnitedNations](#) Office & other international organizations in Geneva, H.E. Mr. Aliyar Lebbe Abdul Azeez to discuss current developments in international fora and further cooperation with the Centre. We are thankful for his support and inspiring ideas to better perform the Centre's mandate.



**South Centre**  
16 December 2019 · 🌐

Lights Go Out at the [#WTO's](#) Appellate Body Despite Concessions Offered to [#US](#) Read NEW South Centre Policy Brief  
<https://www.southcentre.int/policy-brief-70-december-2019/>

#### Abstract

As of 11 December 2019, the Appellate Body (AB) of the World Trade Organization (WTO) has been rendered non-functional. This policy brief provides a summary of the issues discussed amongst WTO Members in the last two years, in their valiant efforts to address the US' concerns regarding the AB. The issues include: the use of AB Members' services to complete an appeal after their term has officially expired; timelines for issuance of AB reports; the meaning of municipal law; advisory opinions; precedence-setting; and overreach by the AB. After much effort by Members in the 'Walker process' of negotiations, concessions have been proposed to the US in the draft General Council Decision of 28 November 2019. Language was provided limiting the scope of appeals to questions of law, even though there are situations where the boundary between issues of law and fact are difficult to draw. The text also provides that 'precedent' is not created through WTO dispute settlement proceedings. In the area of anti-dumping, the language inserted by the US into the anti-dumping agreement to protect their zeroing practices is confirmed. Nevertheless, the US has rebuffed these offered concessions. It seems determined to amplify its leverage by taking the WTO's Appellate Body hostage, to extract still more from other Members, including in terms of far-reaching 'WTO Reforms'.



## Third Annual Developing Country Forum

# South South Cooperation in International Tax Matters

