

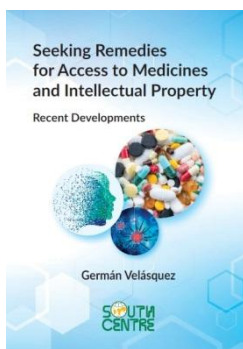
## **South Centre Publications (January 2019 - February 2020)**





## BOOKS

### Seeking Remedies for Access to Medicines and Intellectual Property: Recent Developments (2019)

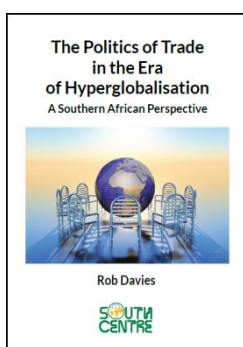


**About the Book:** This book is a collection of research papers by Germán Velásquez published by the South Centre, between 2015 and 2019 on the recent international deliberations and negotiations in the United Nations on access to medicines and their relationship with international trade and intellectual property regimes.

**Author:** Germán Velásquez is the Special Adviser, Policy and Health of the South Centre.

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

### The Politics of Trade in the Era of Hyperglobalisation: A Southern African Perspective (2019)



**About the Book:**

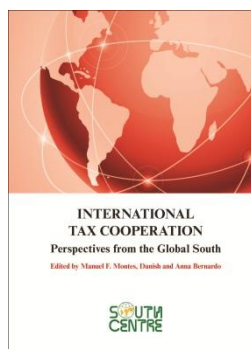
Matters of international trade are increasingly widely recognised as major shapers of global politics. News bulletins are giving more and more coverage to matters like the so-called “trade wars” between the United States and China. These are, indeed, increasingly defining relations between the two largest 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.

**Author:** Rob Davies is former South African Minister of Trade and Industry.

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

### International Tax Cooperation: Perspectives from the Global South (2019)



**About the Book:**

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.

**Editors:** Manuel F. Montes, Danish and Anna Bernardo

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



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## RESEARCH PAPERS

### **Key Issues for BAPA+40: South-South Cooperation and the BAPA+40 Subthemes (Research Paper 91, February 2019)**

*By Vicente Paolo B. Yu III*

Developing countries today face multiple interlinked macroeconomic, financial, climate, and development challenges. South-South cooperation is an important element for developing countries to meet these challenges individually and collectively, and in multilateral North-South dialogue and global governance. The overall theme of the Second High-level United Nations Conference on South-South Cooperation (40 years after the Buenos Aires Plan of Action for Promotion and Implementing Technical Cooperation among Developing Countries/BAPA+40) is the “Role of South-South cooperation and the implementation of the 2030 Agenda for Sustainable Development: challenges and opportunities”, with sub-themes. This research paper will present some concepts relating to South-South cooperation that have been developed by the South and the United Nations system, and looks at some issues that would be relevant to discussions that may be undertaken with respect to Subthemes (i) “Comparative advantages and opportunities of South-South cooperation”; (ii) “Challenges and the strengthening of the institutional framework of South-South cooperation and triangular cooperation”; and (iv) “Scaling up the means of implementation of the 2030 Agenda for Sustainable Development in support of South-South cooperation and triangular cooperation”. It concludes by providing recommendations for the consideration of developing countries in response to the various subthemes, as inputs to support the active engagement by developing countries in the negotiations for the BAPA+40 outcome document.

<https://www.southcentre.int/research-paper-91-february-2019/>

### **Notification and Transparency Issues in the WTO and the US’ November 2018 Communication (Research Paper 92, March 2019)**

*By Aileen Kwa and Peter Lunenborg*

Various WTO Members submitted a Communication to the WTO in November 2018 which, if accepted, would affect the implementation of Members’ transparency and notification obligations at the WTO. It would strengthen the already burdensome notification obligations and introduce new punitive administrative measures should obligations not be complied with. This paper provides information about WTO Members’ current notification obligations and their level of compliance; looks at the history of discussions on notifications, particularly in the Working Group on Notification Obligations and Procedures which took place in 1995 – 1996; and provides an analysis of the Communication. The analysis focuses on the extent to which the elements are consistent with or go beyond the current WTO disciplines. It concludes that non-compliance with notification obligations is real. However, rather than expanding obligations and introducing punitive measures, constructive and effective solutions should be based on nuancing of obligations in the context of a Special and Differential Treatment approach and through the use of incentives. It also acknowledges that countries with a chronic lack of capacities will continue to struggle with the WTO’s complex notification obligations and requirements until they attain higher levels of development and, thus, improved institutional capacities.

<https://www.southcentre.int/research-paper-92-march-2019/>

### **Regulating the Digital Economy: Dilemmas, Trade Offs and Potential Options (Research Paper 93, March 2019)**

*By Padmashree Gehl Sampath*

The digital economy has been growing exponentially in recent years thanks to new technologies that are promoting a global transformation. Key technologies responsible for this transformation have become the subject of intense discussions under the umbrella term ‘fourth industrial revolution’. This

paper offers a discussion on the differentiated impact of digital technologies on unemployment, capabilities building and technological catch-up for developing countries. It articulates some of the key issues and tradeoffs for developing countries that should be considered in policy discussions and deliberations.

Two important conclusions for policy stand out from the analysis in this paper. Firstly, new digital markets introduce a range of market failures throughout the process of knowledge creation, knowledge mediation, value creation, value capture and trade in the digital economy. The new technology-mediated economy is imperfect, riddled with information asymmetries, monopolies, algorithmic intransparencies and 'winner-takes-all' effects. Secondly, these market failures intensify all existing government or institutional failures that have held back development in developing countries. Any pre-existing binding constraint – such as the lack of coordination for innovation, lack of ability to mobilize domestic resources, inability to create linkages, low resilience of the domestic entrepreneurship sector, tax avoidance, and the failure to regulate competition – will have a direct bearing on how the gains of the fourth industrial revolution can be secured. The real challenge for developing country policy makers, therefore, is to be able to articulate their own industrialization and developmental goals as part of the transition to the digital era and to enact policies that enable it. The paper also warns against technological determinism; an approach that simply focuses on widely applying existing digital technologies for the broader good of mankind without a discussion of its public policy implications.

<https://www.southcentre.int/research-paper-93-march-2019/>

#### **Tax Haven Listing in Multiple Hues: Blind, Winking or Conniving? (Research Paper 94, April 2019)**

*By Jahanzeb Akhtar and Verónica Grondona*

Tax havens are among the biggest challenges faced by developing countries in achieving their national development goals. States, international organisations, multilateral agencies and non-governmental organisations have all made several efforts at compiling 'lists' of tax havens at the multilateral and national levels, with varying levels of seriousness and outcomes. This research paper examines these efforts by analysing the objectivity of criteria used and the clarity of the final outcome in a comparative manner. The paper is organized into four sections dealing with the tax haven blacklisting by the Organisation for Economic Co-operation and Development (OECD), the countries of the South, the European Union (EU) and an analysis across lists. The concluding section offers some suggestions.

<https://www.southcentre.int/research-paper-94-april-2019/>

#### **Access to Medicines: Experiences with Compulsory Licenses and Government Use – The case of Hepatitis C (Research Paper 85, April 2019)**

*By Dr. Carlos M. Correa and Dr. Germán Velásquez*

This South Centre research paper discusses first, the limitations of the current research and development (R&D) model and its implications for access to medicines. Second, it considers the tension between intellectual property rights applied to medicines and States' observance of the fundamental right to health. Third, it examines the case of access to medicines for the treatment of Hepatitis C, illustrating the barriers to access created by intellectual property and the high prices normally associated with its exercise. Fourth, it presents the background, main aspects and obstacles to the achievement of the objectives of the Doha Declaration on the TRIPS Agreement and Public Health (2001). To conclude, this paper examines the experiences of compulsory licensing and government use of patents in Latin America (particularly in Ecuador, Peru and Colombia).

This Research Paper was previously published in Spanish.

<https://www.southcentre.int/research-paper-85-april-2019/>

## **Mainstreaming or Dilution? Intellectual Property and Development in WIPO (Research Paper 95, July 2019)**

*By Nirmalya Syam*

In 2007 Member States of the World Intellectual Property Organization (WIPO) unanimously adopted a set of 45 recommendations which constitute the WIPO Development Agenda. Developing countries sought to give new direction to WIPO through the Development Agenda, away from the pursuit of facilitating and strengthening protection, acquisition and enforcement of intellectual property (IP) rights as an end in itself towards an approach that would be sensitive to the impact of IP on development, both in terms of opportunities as well as costs. This paper explores whether development considerations have been adequately addressed by WIPO since its creation as the United International Bureau for the Protection of Intellectual Property (BIRPI) in the nineteenth century. The paper also analyses whether the implementation of the WIPO Development Agenda adopted in 2007 has shaped the current vision of the WIPO Secretariat and its Member States to address the impact of IP on development; and whether implementation of the Development Agenda has facilitated the use of IP law and policy as a tool that responds to advancing innovation, industrial, health, agricultural, education and other development policies in developing countries. The paper finds that the approach towards IP in WIPO continues to be dominated by a perspective that pursues acquisition, protection, management and enforcement of IP rights as an end in itself. Conflicting interpretations of development orientation have adversely impacted the implementation of the Development Agenda in the spirit in which the developing countries had proposed the Development Agenda. The paper recommends developing countries to undertake cross regional coordination to enhance their level of engagement on IP and development, advance specific suggestions for achieving greater impact on addressing development challenges through specific activities including projects in the areas of technical assistance as well as norm-setting, pursue governance reforms in WIPO to ensure greater representation of developing countries in the decision making bodies of WIPO and in the staff composition of the WIPO Secretariat, amend the WIPO Convention to align its mandate on IP promotion to the development needs and challenges of its Member States and the development goals of the United Nations (UN), and also pursue a review of the relationship between the UN and WIPO as a UN specialized agency in the UN Economic and Social Council.

<https://www.southcentre.int/research-paper-95-july-2019/>

## **Antivirales de acción directa para la Hepatitis C: evolución de los criterios de patentabilidad y su impacto en la salud pública en Colombia (Documento de investigación 96, Agosto 2019)**

*Por Francisco A. Rossi B. y Claudia M. Vargas P.*

La hepatitis C en el siglo XXI y el VIH en el final del siglo XX han representado los más relevantes retos de salud pública para la comunidad internacional. No solamente por ser enfermedades infecciosas y transmisibles (razón de ser de la salud pública) sino por su carácter mortal si no se recibe tratamiento de manera oportuna. En Octubre de 2015, la fundación IFARMA solicitó que todos los medicamentos antivirales para la hepatitis C, utilizables para curar una infección crónica transmisible potencialmente mortal, fueran declarados de interés público, dado que su precio amenazaba la sostenibilidad financiera del sistema de salud. Una declaración de interés público para estos medicamentos sería el primer paso para la emisión de licencias obligatorias. Este trabajo se ha llevado a cabo para identificar las patentes existentes en Colombia para estos productos, su alcance y sus consecuencias, en el marco de una discusión sobre la transparencia del sistema de patentes y la evolución del rigor con que se evalúan las solicitudes y se conceden las patentes.

<https://www.southcentre.int/documento-de-investigacion-96-agosto-2019/>

## **Intellectual Property under the Scrutiny of Investor-State Tribunals Legitimacy and New Challenges (Research Paper 97, August 2019)**

*By Clara Ducimetière*

In 2009, C.S. Gibson was suggesting that: “With this early coverage of intellectual property in BITs, it is perhaps surprising that there has yet to be a publicly reported decision concerning an IPR-centered investment dispute. Given the trajectory of the modern economy, however, in which foreign investments reflect an increasing concentration of intellectual capital invested in knowledge goods protected by IPRs, this could soon change”. A couple of years later, the first investment cases dealing with IP issues were made public.

In this context, this paper first addresses the conditions that have to be fulfilled in order to bring intellectual property claims in investment arbitration, by touching upon the question of the definition of an investment in theory and in practice. It also tries to shed light on some of the implications of recent arbitral awards touching upon this interaction between intellectual property and investment protection, from a legal and regulatory perspective.

On the other hand, the specific situation of the European Union is scrutinized, and in particular the project put forward by the European Commission to adapt the dispute settlement system for the protection of investments.

<https://www.southcentre.int/research-paper-97-august-2019/>

## **Developing Country Coalitions in Multilateral Negotiations: Addressing Key Issues and Priorities of the Global South Agenda (Research Paper 98, September 2019)**

*By Adriano José Timossi*

The recent increasing and unprecedented attacks on multilateralism and its institutions as well as the growing dangers of weakening international cooperation are regrettably leading to an enormous setback in the history of the international system. These developments could reverse decades of collective efforts to establish a more stable, equitable and inclusive path of development and social justice for all. An immediate impact is that international negotiations, which have increasingly become important for developing countries over the past decades, are now becoming even more complex. If the resurging path of unilateralism and protectionism adopted by some powerful countries is maintained, the risks of further deterioration grow even larger. The instabilities of the contemporary world pose serious risks to the achievement of the longstanding development goals of the Global South such as poverty eradication, the South's ability to successfully address emerging challenges such as climate change, and to overall global stability, a pattern not seen since the Second World War. In this context, developing countries' negotiating coalitions such as the Group of 77 (G77) + China and the Non-Aligned Movement (NAM), while respecting and adapting to the differences that might emerge within these large groups, need to remain together and ensure that their coalitions are preserved and strengthened. Working collectively will improve negotiating capacity and leverage and increase bargaining power of developing countries in the multilateral negotiations in order to get more balanced outcomes.

<https://www.southcentre.int/research-paper-98-september-2019/>

## **Ensuring an Operational Equity-based Global Stocktake under the Paris Agreement (Research Paper 99, September 2019)**

*By Hesham Al-Zahrani, Chai Qimin, Fu Sha, Yaw Osafo, Adriano Santhiago De Oliveira, Anushree Tripathi, Harald Winkler and Vicente Paolo Yu III*

One of the key provisions of the Paris Agreement that was adopted in December 2015 at the 21<sup>st</sup> session of the Conference of the Parties to the United Nations Framework Convention on Climate Change is Article 14 on the global stocktake (GST). The GST is intended to be the mechanism by

which the Convention Parties that are Parties to the Paris Agreement would be able to periodically take stock of the implementation of the Paris Agreement and to assess collective progress towards achieving the purpose of the Agreement and its long-term goals. This research paper discusses how equity as a principle and a concept played a key role in shaping the modalities for the GST, and looks in detail at the operational modalities for the GST that were agreed upon in Katowice in December 2018 in relation to how equity should be considered and made operational.

<https://www.southcentre.int/research-paper-99-september-2019/>

### **Medicines and Intellectual Property: 10 Years of the WHO Global Strategy (Research Paper 100, December 2019)**

*By Dr. Germán Velásquez*

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.

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

### **Second Medical Use Patents – Legal Treatment and Public Health Issues (Research Paper 101, December 2019)**

*By Clara Ducimetière*

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.

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

### **The Fourth Industrial Revolution in the Developing Nations: Challenges and Road Map (Research Paper 102, February 2020)**

*By Sohail Asghar, Gulmina Rextina, Tanveer Ahmed & Manzoor Illahi Tamimy (COMSATS)*

Technological advancements and the amalgamation of several fields, including Advanced Robotics, Artificial Intelligence (AI), Big Data Analytics, Cyber Security, Cloud Computing, and Internet of Things



(IoT) have brought the world on the cusp of a Fourth Industrial Revolution (FIR). This industrial revolution has the potential to sky rocket economic growth or on the other hand, cause countries to lag behind in terms of economic development if the potential of FIR is not exploited. A number of developed countries such as Germany, the UK and USA have put in place public policies that focus on implementing FIR in their respective countries. It is critical that developing countries also take steps to adapt FIR in order to take advantage of it as well as not be adversely affected by these technologies if not adopted. There are a number of reasons why developing countries are not able to fully implement FIR technologies such as lack of commitment, infrastructure and lack of skilled workers. The objective of this study is to identify the challenges and issues faced by the developing countries in the implementation of the FIR. This study proposes a strategic framework: "Centre for the Fourth Industrial Revolution (CFIR)" for developing countries in order to face the challenges of FIR. Consequently, CFIR will work on establishing research labs for capacity building through collaboration and establishing technology-based incubation centers. CFIR will bring together an international network of governments, leading companies, civil society and experts to co-design and pilot innovative policy and governance frameworks.

<https://www.southcentre.int/research-paper-102-february-2020/>

### **Eighteen Years After Doha: An Analysis of the Use of Public Health TRIPS Flexibilities in Africa (Research Paper 103, February 2020)**

*By Yousuf A Vawda and Bonginkosi Shoji*

As we observe the 18<sup>th</sup> anniversary of the Doha Declaration on the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) and Public Health, it is appropriate to take stock of intellectual property developments and endeavour to present a comprehensive account of the situation in the African continent in respect of the implementation of TRIPS flexibilities, specifically those regarding access to medicines. This research paper provides an overview of the extent to which selected African countries have adopted legal and policy frameworks with regard to TRIPS flexibilities, examines the actual use of these flexibilities in enabling access to medicines in those countries, and suggests some recommendations for optimising the use of the flexibilities in pursuing public health imperatives.

<https://www.southcentre.int/research-paper-103-february-2020/>

## **POLICY BRIEFS**

### **Will the Amendment to the TRIPS Agreement Enhance Access to Medicines? (Policy Brief 57, January 2019)**

*By Dr. Carlos M. Correa*

An amendment to the TRIPS Agreement by incorporation of the text of the decision of the WTO General Council on 30 August 2003 (as article 31*bis*) has been made in response to the problem identified in paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. This paragraph sought a solution to situations where patented pharmaceuticals which are not available in a country with no or insufficient manufacturing capacity can be supplied by a foreign provider. As originally adopted, the TRIPS Agreement did not allow the grant of compulsory licenses for exports only, thereby preventing generic manufacturers from exporting the required products to countries unable to produce them. While the new article 31*bis* is a step forward as it reflects public health concerns, it would be necessary to streamline the procedures to effectively ensure broader access to pharmaceutical products at low cost and in a timely manner.

<https://www.southcentre.int/policy-brief-57-january-2019/>

### **Illicit Financial Flows: Conceptual and Practical Issues (Tax Cooperation Policy Brief 6, January 2019)**

*By Hon. Irene Ovonji-Odida and Algresia Akwi-Ogojo*

The issue of illicit financial flows (IFFs) is of great significance for many countries looking to mobilize domestic resources for achieving their development goals. The High Level Panel on Illicit Financial Flows from Africa, led by H.E. Thabo Mbeki, brought the issue into the global spotlight, notably since the release of exposés like the 'Panama Papers'. This policy brief elaborates on the conceptual underpinnings of IFFs, its sources and the development costs they generate. Building on the report of the High Level Panel, it provides recommendations to stem IFFs from developing countries.

<https://www.southcentre.int/tax-cooperation-policy-brief-6-january-2019/>

### **Developing Countries and the Contemporary International Tax System: BEPS and other issues (Tax Cooperation Policy Brief 7, February 2019)**

*By Marcos Aurélio Pereira Valadão*

This policy brief addresses the design of international taxation and tax cooperation in the context of issues presented in the Organisation of Economic Co-operation and Development (OECD)/Group of Twenty (G20) Base Erosion and Profit Shifting (BEPS) Project. It further considers their significance for developing countries and provides the Brazilian approach to those issues. The brief concludes by exploring the importance of regional cooperation *vis-à-vis* international organizations and highlights relevant considerations for developing countries engaging with the contemporary international tax system.

<https://www.southcentre.int/tax-cooperation-policy-brief-7-february-2019/>

### **Building a Mirage: The Effectiveness of Tax Carve-out Provisions in International Investment Agreements (Investment Policy Brief 14, March 2019)**

*By Daniel Uribe and Manuel F. Montes*

The present policy brief analyses the language of taxation carve-out provisions incorporated in International Investment Agreements (IIAs), and its effectiveness with regards to restricting the

protection and dispute settlement provisions of IIAs only to non-tax-related claims. It illustrates that even in cases where such carve-out provisions have been incorporated into IIAs, the broad language and lack of clarity in the drafting of such provisions have effectively allowed Investor-State Dispute Settlement (ISDS) tribunals to scrutinize tax measures adopted by States, and even determine that such measures resulted in a breach of State's obligations under the agreement. It makes recommendations on how States could effectively implement such carve-outs when negotiating, reforming or drafting new international investment agreements.

<https://www.southcentre.int/investment-policy-brief-14-march-2019/>

### **Why the US Proposals on Development will Affect all Developing Countries and Undermine WTO (Policy Brief 58, March 2019)**

*By Aileen Kwa and Peter Lunenborg*

US submitted two highly problematic proposals to the WTO in January and February 2019, undermining the place of Special and Differential Treatment (S&D) for developing countries at the WTO. In the first paper (WT/GC/757), US criticises the practice of self-declared development status by developing countries arguing that the North-South construct no longer makes sense due to "great development strides". The second paper (WT/GC/764) – a proposed Decision for the General Council – provides a way to operationalise what was in the first paper. It gave criteria that would exclude 34 Members or 53.6 percent of global population from S&D treatment in "current and future WTO negotiations". This fundamentally changes S&D from an unconditional right for all developing countries to a concession that may or may not be provided. Even for those developing countries that are not part of the 34 excluded Members, the US notes that in sector-specific negotiations, other Members could also be "ineligible for special and differential treatment." This paper critiques the US approach on Special and Differential Treatment and concludes that these papers by the US cannot be the basis for any further discussions. All developing countries must be able to decide the pace of their adjustment to trade rules.

<https://www.southcentre.int/policy-brief-58-march-2019/>

### **UNCITRAL Working Group III: Can Reforming Procedures Rebalance Investor Rights and Obligations? (Investment Policy Brief 15, March 2019)**

*By Lorenzo Cotula and Terrence Neal*

The work of the United Nations Commission on International Trade Law (UNCITRAL) provides an opportunity to rebalance the international investment regime – but only if the full gamut of key issues are identified. Requiring investors to uphold standards of responsible business conduct (RBC) is largely a function of substantive rights and obligations, but it also presents procedural dimensions that fall within the purview of the UNCITRAL process. This policy brief explores the issues and discusses possible options for reform.

<https://www.southcentre.int/investment-policy-brief-15-march-2019/>

### **The Future of Investor-State Dispute Settlement Deliberated at UNCITRAL: Unveiling a Dichotomy between Reforming and Consolidating the Current Regime (Investment Policy Brief 16, March 2019)**

*By Kinda Mohamadieh*

Reform of investor-state dispute settlement (ISDS) is being deliberated at the United Nations Commission on International Trade Law (UNCITRAL) Working Group III, which will be meeting in New York between the 1<sup>st</sup> and 5<sup>th</sup> of April 2019. For several years, the ISDS regime has been under scrutiny from voices in both developed and developing countries. ISDS reforms have been addressed in multiple forums, including national, bilateral, regional and multilateral levels, such as the United

Nations Conference on Trade and Development (UNCTAD). Reforms could include moving away from arbitration as the norm for dispute settlement between foreign investors and host states or end up by introducing adaptations that might make arbitration in ISDS cases perform in a more acceptable way. Finding one-size-fits-all solutions in these deliberations is unlikely. Advancing relevant reforms would require full and effective participation of interested countries, equal opportunity for different points of views to be heard and integrated into the design of any potential outcome, and effective mechanisms to address any potential conflicts of interest within this forum.

<https://www.southcentre.int/investment-policy-brief-16-march-2019/>

**The ‘obvious to try’ method of addressing strategic patenting: How developing countries can utilise patent law to facilitate access to medicines (Policy Brief 59, April 2019)**

*By Olga Gurgula*

The current patentability standards for pharmaceutical inventions, as well as strategic patenting used by pharmaceutical companies, have substantially impacted access to affordable medicines. This has been especially detrimental for developing countries, which are under significant pressure to remain compliant with their international and bilateral obligations, while also providing their people with essential drugs. In order to improve access to medicines, developing countries may choose from a range of various mechanisms that may help to facilitate such access, while also allowing them to remain compliant with their international and bilateral obligations. This policy brief suggests that one of such mechanisms is to strengthen the obviousness requirement by applying the ‘obvious to try with a reasonable expectation of success’ test to pharmaceutical follow-on inventions. It is argued that the application of this test may be an effective tool in addressing the negative effect of strategic patenting. It may help to prevent the extension of patent protection and market exclusivity of existing drugs by pharmaceutical companies and, as a result, may open such medicines up to generic competition.

<https://www.southcentre.int/policy-brief-59-april-2019/>

**Challenges of Investment Treaties on Policy Areas of Concern to Developing Countries (Investment Policy Brief 17, April 2019)**

*By Kinda Mohamadieh*

Country experiences have revealed that international investment agreements (IIAs) could have an adverse policy impact on various policy areas that are generally important for developing countries in relation to the achievement of their development objectives. This policy brief gives an overview of challenges resulting from IIAs to major policy areas of concern to developing countries. These policy areas include industrial policy, tax reform, handling debt crisis, the use of capital controls, intellectual property rights, public-private partnerships, and climate change action in relation to investment in clean technologies.

<https://www.southcentre.int/investment-policy-brief-17-april-2019/>

**Exploding Public and Private Debt, Declining ODA and FDI, Lower World GDP and Trade Growth—Developing Countries Facing a Conundrum (Policy Brief 60, May 2019)**

*By Yuefen LI*

Recently international institutions repeatedly cut the projections for world gross domestic product (GDP) growth of 2019, revealed further worsened accumulation of debt, reported declining official development assistance (ODA), highlighted consecutive drops of foreign direct investment (FDI) flows and showed decelerated international trade and intensified trade tension. A closer examination of the performance of developing countries in these datasets shows clearly the economic conundrum that developing countries are facing. The most dangerous sign is the rising levels of public and private debt, and debt sustainability challenges for developing countries. It is worrisome that over 40 percent

of low income countries are facing a high risk of debt distress or are in debt distress. The cloudy patches over the world economy are gathering together and getting darker. It seems a storm is coming soon for those developing countries which are facing a combination of weak economic fundamentals. Yet, there seems to be limited room for policy makers to take actions as downward pressure is coming from different directions at the same time and creating constraints which would make policy measures ineffective or feeble. In some cases, policy tools used to limit negative effects of one problem could trigger negative impact on other problem(s) in hand.

<https://www.southcentre.int/policy-brief-60-may-2019/>

### **The US-Mexico-Canada Agreement: Putting Profits Before Patients (Policy Brief 61, May 2019)**

*By Maria Fabiana Jorge*

In the US-Mexico-Canada Agreement (USMCA, NAFTA 2.0), the U.S. Trade Representative negotiated intellectual property provisions related to pharmaceuticals that would enshrine long and broad monopolies. This policy brief focuses primarily on the negative effects of the USMCA intellectual property provisions on access to medicines in the U.S. Such effects may be even worse for Canada and Mexico. The impact of this trade agreement goes well beyond the three countries involved as this is the first one negotiated by the Trump Administration and is likely to set a precedent for future trade agreements. A careful review of the USMCA text raises very serious concerns about the impact that this agreement would have on the generic/biosimilar industry and therefore on access to more affordable drugs throughout the world.

<https://www.southcentre.int/policy-brief-61-may-2019/>

### **Intellectual Property and Electronic Commerce: Proposals in the WTO and Policy Implications for Developing Countries (Policy Brief 62, June 2019)**

*By Vitor Ido*

This policy brief explains the mandate of the World Trade Organization (WTO) on electronic commerce under the work program on e-commerce, which was adopted by the WTO Ministerial Conference in 1998 and periodically renewed by subsequent Ministerials. It describes what has taken place on intellectual property related issues pertaining to e-commerce in the WTO TRIPS (Agreement on Trade Related Aspects of Intellectual Property Rights) Council. It also summarizes various proposals and suggestions that have been advanced in the Council since the Nairobi Ministerial Conference in December 2015 as well as recent proposals that have been advanced in the General Council until December 2018, some of which contain specific intellectual property (IP) related issues. As part of the recently launched plurilateral negotiations on e-commerce, a forum that is likely to become more prominent for this discussion, proposals have been re-submitted in March 2019, as well as others which have been tabled in April and May 2019. Finally, this brief presents an explanation of how IP issues may also affect other elements of e-commerce and the digital economy. Such issues are not the subject of existing proposals in the WTO, but may feature in future discussions.

<https://www.southcentre.int/policy-brief-62-june-2019/>

### **Legitimacy Concerns of the Proposed Multilateral Investment Court: Is Democracy Possible? (Investment Policy Brief 18, June 2019)**

*By José Manuel Álvarez Zárate*

Growing concerns in Europe about international investment regimes and investor-state dispute settlement systems pushed the European Union into pursuing the creation of an investment court system and a multilateral investment court. The European Union (EU) started this reform through the Comprehensive Economic Trade Agreement, the Vietnam-EU Free Trade Agreement, and by direct persuasion of other countries to start negotiations at the United Nations Commission on International



Trade Law. Visible reasons for the change include concerns over the perception of a lack of transparency, coherence, and arbitrators' partiality, all of which diminish the legitimacy of the multilateral investment court. Other reasons might be laid on the budgetary risks of more than 213 claims against EU countries. To address these legitimacy concerns, the EU wants to replace traditional party-appointed arbitrators with a two-tiered investment tribunal system comprised by a roster of members selected by the state parties on the treaty. This Essay argues that the creation of the multilateral investment court needs to follow democratic principles in order to be legitimate. History has shown us that the EU has abused its power in the past when implementing resolution systems. Foregoing negotiation, comment by member nations, and implementing a tribunal at its own behest has shown this. The EU multilateral investment court proposal has legitimacy deficiencies because the EU has relied on its power to impose its views so far, i.e. its proposal was not previously negotiated multilaterally amongst other member nations. It is thus possible that the appointment of the future judges to this court will likely be subject to the political constraints and veto that the International Court of Justice or World Trade Organization appointments suffer today. This could leave small economies at a disadvantage because they might be subject to permanent, politically biased judges. A superior solution would be to adopt better arbitrator disqualification rules, clear interpretation directives to avoid law creation, and stricter arbitrator qualifications.

<https://www.southcentre.int/investment-policy-brief-18-june-2019/>

### **'Phase 1B' of the African Continental Free Trade Area (AfCFTA) negotiations (Policy Brief 63, June 2019)**

*By Peter Lunenborg*

The African Continental Free Trade Area (AfCFTA), which entered into force on 30 May 2019, represents a unique collaborative effort by African countries to bolster regional and continental economic integration, in a world marked by increasing protectionism and use of unilateral trade measures.

In order to make the agreement operational for trade in goods, negotiations on tariff concessions need to be concluded and negotiating outcomes need to be inserted into the agreement. This policy brief focuses on the expected economic impacts of tariff liberalization under the AfCFTA, the tariff negotiation modalities and discusses some legal and practical issues related to the implementation of these modalities.

<https://www.southcentre.int/policy-brief-63-june-2019/>

### **The USMCA must be amended to ensure access to affordable drugs in Mexico (Policy Brief 64, July 2019)**

*By Maria Fabiana Jorge*

The intellectual property rights (IPRs) chapter of the U.S.-Mexico-Canada-Agreement (USMCA) grants longer and broader monopolies to originator pharmaceutical companies than those currently in force in Mexico, at the expense of patients and taxpayers. Among other things, Mexico would be required to provide patent term extensions both for delays in the granting of patents and for those incurred in the regulatory approval process, broader and longer exclusivity periods, including for expensive biologic drugs, as well as to adopt broader patentability standards, for example by requiring the granting of patents for new uses. Mexico is, without doubt, the country in the USMCA that will be most negatively impacted, but if the Democratic Members of the US House of Representatives are able to renegotiate some of these provisions to restore some balance between the need to foster innovation and competition, the Administration of President López Obrador and the Mexican Congress can still make a difference.

<https://www.southcentre.int/policy-brief-64-july-2019/>

## **Improving Transfer Pricing Audit Challenges in Africa through Modern Legislation and Regulations (Tax Cooperation Policy Brief 8, July 2019)**

*By Thulani Shongwe*

Auditing multinational enterprises often involves a broad range of complex technical issues, and transfer pricing (TP) is often the most important one. This policy brief looks at some of the key aspects of the modern TP legislation and illustrates how different drafting of regulations can assist in additional revenue collection as well as increased compliance. It further provides practical examples from real cases to show where poor legislation has given rise to tax planning and to profit shifting. Lastly, the brief offers practical solutions to some of the transactions illustrated through the African Tax Administration Forum (ATAF) Suggested Approach to Drafting Transfer Pricing Legislation.

<https://www.southcentre.int/tax-cooperation-policy-brief-8-july-2019/>

## **Time for a Collective Response to the United States Special 301 Report on Intellectual Property (Policy Brief 65, July 2019)**

*By Viviana Muñoz-Tellez, Nirmalya Syam and Thamara Romero*

This policy brief discusses the annual Special 301 report issued by the Office of the United States Trade Representative (USTR). The report is a unilateral tool of the US to pursue its foreign intellectual property (IP) policy by exerting pressure on countries to reform their IP laws and practices. Developing countries are particularly susceptible to this threat. The report identifies countries that are considered by the US as not providing adequate and effective protection of IP of rights holders from the US. The selection of countries is biased to the concerns raised by segments of the US industry. The report targets balanced provisions in countries' legislations to ensure that IP rights do not hinder the ability of the government to adopt measures for promoting development priorities, particularly in the area of public health. A uniform and collective international response by the affected countries is long overdue. The way forward is to continue dialogue in appropriate multilateral fora, recognizing the need for all countries to maintain policy space to use IP as a domestic policy tool.

<https://www.southcentre.int/policy-brief-65-july-2019/>

## **Impacts of Unilateral Coercive Measures in Developing Countries: the need to end the US embargo on Cuba (Policy Brief 66, August 2019)**

*By Vicente Paolo Yu and Adriano José Timossi*

On 1 November 2018, the 193 Member States of the United Nations (UN) held the twenty-seventh consecutive annual vote of the General Assembly on a resolution entitled "Necessity of ending the economic, commercial and financial embargo imposed against Cuba." The resolution was adopted with a near unanimous vote of 189 in favor, 2 abstentions (Ukraine and Moldova) and 2 against (United States of America and Israel). Before the vote and for the first time since the resolution was submitted in 1992, the US presented a set of eight proposed amendments to be considered by the 193 Member States, which were all rejected.

The present policy brief is a summary of the input prepared by the South Centre as a contribution to the 2019 report of the Secretary-General with respect to the imposition of unilateral economic, finance and trade measures by one State against another that is prepared pursuant to UN General Assembly Resolution 73/8.

<https://www.southcentre.int/policy-brief-66-august-2019/>

## **USMCA debe ser enmendado para asegurar el acceso a medicamentos en México (Informe sobre políticas 64, Agosto 2019)**

*Por Maria Fabiana Jorge*

El capítulo del *U.S.-Mexico-Canada Agreement (USMCA)*/Tratado entre México, los Estados Unidos y el Canadá (T-MEC) dedicado a los derechos de propiedad intelectual (DPI) otorga monopolios más prolongados y amplios a las empresas de medicamentos originales que los que están actualmente en vigor en México, a costa de los pacientes y los contribuyentes. Entre otras cosas, México tendría que conceder a las ampliaciones de la vigencia de las patentes períodos de exclusividad más amplios y prolongados, también para los medicamentos biológicos costosos, tanto por las demoras en la concesión de patentes como para aquellas que se encuentren en el proceso reglamentario de aprobación, y ampliar las normas de patentabilidad, por ejemplo, exigiendo la concesión de patentes para nuevos usos. México es, sin lugar a dudas, el país del T-MEC que se verá más perjudicado, pero si los miembros del Partido Demócrata de la Cámara de Representantes de los Estados Unidos pueden renegociar algunas de estas disposiciones para restablecer cierto equilibrio entre la necesidad de fomentar la innovación y la competencia, el Gobierno del presidente López Obrador y el Congreso de México todavía pueden cambiar la situación.

<https://www.southcentre.int/informe-sobre-politicas-64-agosto-2019/>

## **Gender, Tax Reform and Taxation Cooperation Issues: Navigating Equity and Efficiency under Policy Constraints (Tax Cooperation Policy Brief 9, September 2019)**

*By Dr. Mariama Williams*

This policy brief has sought to present a review of the state of thinking and research on a pressing issue of the day: tax reform and tax cooperation and its gendered impacts. There is undeniably widespread agreement amongst all the entities of global governance with responsibility for a role in macroeconomic, financial and trade policies that gender equality and women's empowerment are important to sustained growth and development. Increasingly, these same voices are articulating and researching on how fiscal policy both on the budgetary and on the revenue side can be made more efficient, gender sensitive and gender responsive. Taxation is the latest area of focused attention in this regard. There is now a quite strong body of work, including case studies, that demonstrates how the tax system can work to the disadvantage of socio-economic development and social goals including gender equality and women's empowerment.

<https://www.southcentre.int/tax-cooperation-policy-brief-9-september-2019/>

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

*By Danish*

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.

<https://www.southcentre.int/policy-brief-67-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 (Policy Brief 68, October 2019)**

*By Daniel Uribe Terán*

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 5<sup>th</sup> Session of the OEIGWG.

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

## **Addressing Developing Countries' Tax Challenges of the Digitalization of the Economy (Tax Cooperation Policy Brief 10, November 2019)**

*By Monica Victor*

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.

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

## **Crisis at the WTO's Appellate Body (AB): Why the AB is Important for Developing Members (Policy Brief 69, December 2019)**

*By Danish and Aileen Kwa*

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.

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

## **The State of Play of Climate Finance – UNFCCC Funds and the \$100 Billion Question (Climate Policy Brief 21, December 2019)**

*By Mariama Williams; editing support and data by Rajesh Eralil*

Climate finance is key to achieving the ambitions set out in the Paris Agreement as well as in fulfilling the climate actions that developing countries have proposed to implement in their Nationally Determined Contributions (NDCs), the key vehicles for implementing the agreement reached in Paris in 2015. However, there is much concern that the current flow of finance is inadequate to meet the expectations surrounding both the NDCs and the Paris Agreement. This brief presents quick snapshots of the state of play of climate finance of one dimension of the broad, complex and increasingly fragmented universe of climate finance. It focuses on the flow of climate finance that can be monitored and tracked under the United Nations Framework Convention on Climate Change (UNFCCC) in the context of the developed countries' collective goal of mobilizing US \$100 billion annually to support developing countries' climate actions. The issues on both the demand and supply side of climate finance flows are explored, with specific attention to the ebb and flows and achievements of the multilateral public funds. After highlighting some of the more serious challenges with the flow of climate finance, the brief ends with an overview of the key negotiating issues around future climate finance flows.

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

## **Lights Go Out at the WTO's Appellate Body Despite Concessions Offered to US (Policy Brief 70, December 2019)**

*By Danish and Aileen Kwa*

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'.

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

## **Major Outcomes of the 2019 World Health Assembly (Policy Brief 71, January 2020)**

*By Mirza Alas and Nirmalya Syam*

This policy brief provides an overview of the outcomes of selected agenda items that were discussed at the 72nd session of the World Health Assembly (WHA) of the World Health Organization (WHO), held from 21 to 26 May 2019 in Geneva. These items reflect some of the health priorities of developing countries.

<https://www.southcentre.int/policy-brief-71-january-2020/>



## **US-China trade deal: preliminary analysis of the text from WTO perspective (Policy Brief 72, February 2020)**

*By Peter Lunenborg*

The long-awaited 'Phase 1' trade deal between the United States and China, officially termed the 'Economic and Trade Agreement between the Government of the United States of America and the Government of the People's Republic of China', was signed on 15 January 2020. It will enter into force on Valentine's Day, on Friday, 14 February 2020. This deal is a result of US exercise of political power and unilateral World Trade Organization (WTO)-inconsistent tariffs in order to extract trade concessions, an expression of the most pure protectionism that the WTO is supposed to prevent. Nevertheless, the WTO was unhelpful in addressing the US economic aggression against China. This failure to protect a Member from illegitimate unilateral measures is, perhaps, one of the most significant manifestations of the often-mentioned 'crisis' of the WTO, and actually is one of the subjects on which the proposed 'reform' of the organization should focus.

<https://www.southcentre.int/policy-brief-72-february-2020/>

## **The Role of South-South Cooperation in Combatting Illicit Financial Flows (Tax Cooperation Policy Brief 11, February 2020)**

*By Manuel F Montes*

Developing countries bear the brunt of costs from illicit financial flows (IFFs). These losses are the result of the facilities that the global system provides transnational companies, operating in multiple tax jurisdictions, to move their profits to favorable locations. International cooperation has been seen to be a key ingredient in restricting IFFs. However, a difference in interests in the treatment of many types of transactions between developed and developing countries is an obstacle to a fast solution of the problem. Developing countries must seek to seize the initiative to restrict their losses from IFFs. They can deploy various joint and concerted actions, within the umbrella of the principles of South-South cooperation for this purpose.

<https://www.southcentre.int/tax-cooperation-policy-brief-11-february-2020/>

## **The Africa Energy Transition Program (AFRETRAP) (Climate Policy Brief 22, February 2020)**

*By Rajesh Eralil and Youba Sokona*

In a more and more climate change threatened world, Africa's energy vision should be premised on moving from an energy landscape based on underdeveloped and carbon intense pathways to a modern, clean and decentralized energy system. This transition is a critical enabler of meaningful and endogenous socio-economic development. While the continent may face a broad set of challenges in achieving this vision, it has at the same time the opportunity to avoid the fossil fuel lock-in that many industrialized countries face and to take advantage of vast supplies of untapped energy resources and/or any stranded asset problem. The Africa Energy Transition Program in the making under the auspices of the African Energy Commission forms a continent-wide and coordinated approach in facilitating the required transformation for the realization of Africa's development aspiration.

<https://www.southcentre.int/climate-policy-brief-22-february-2020/>

## TRAINING PAPERS

### **Intellectual Property and Access to Medicines: An Introduction to Key Issues – Some Basic Terms and Concepts (Training Paper 1, December 2019)**

*By Dr. Germán Velásquez*

Intellectual property and patents in particular, have become one of the most debated issues on access to medicines, since the creation of the World Trade Organization (WTO) and the coming into force of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Patents are by no means the only barriers to access to life-saving medicines, but they can play a significant, or even determinant, role. During the term of patent protection, the patent holder's ability to determine prices, in the absence of competition, can result in the medicine being unaffordable to the majority of people living in developing countries. This first issue of the "South Centre Training Materials" aims, in its first part, to provide an introduction to key issues in the field of access to medicines and intellectual property. The second part describes and defines some basic terms and concepts of this relatively new area of pharmaceuticals policies which are the trade related aspects of intellectual property rights that regulate the research, development and supply of medicines and health technologies in general.

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

## OTHER PUBLICATIONS

### **Climate Finance Readiness Brief E-Book by the South Centre (February 2019)**

In the last years, governments around the world have set collective climate and sustainable development goals that go far beyond previous agreements and commitments in terms of scope and ambition. There are clear synergies between the three independently adopted but deeply inter-related milestones of 2015: the 2030 Development Agenda including the SDGs, the Addis Ababa Action Agenda and the Paris Agreement.

The global landscape of climate finance is highly fragmented and complex involving multiple pathways, actors, institutions and instruments. Funds provided by developed countries to developing countries for climate adaptation and mitigation actions, are channeled through various multilateral funds – both within and outside the scope of the operating entities of the UNFCCC's financial mechanism.

Developing countries indisputably need climate finance to flow at sufficient scale and in a timely manner. While the options and possibilities for countries to access climate finance are expected to increase, with a multitude of funding channels; this can also make the process even more complicated and confusing. Which funds to turn to? For which activities? At what costs? These are a few of the many questions that climate change decision-makers must contend with. Each fund is administered with complicated rules and procedures, which makes it very challenging for developing countries to navigate in seeking to fund their domestic climate actions. There is currently no 'one-stop-shop' to provide useful and quick answers.

The Climate Finance Readiness E-book is a series of short briefs prepared by the South Centre to provide developing countries with a «help desk» to access and to more effectively and efficiently utilize the complex web of climate finance information available to them. This brief will be updated periodically and will have different geographical focus, with the current edition on Africa. The South Centre welcomes questions, comments and suggestions for this series of briefs to continuously improve its help desk function on Climate finance.

<https://www.southcentre.int/climate-finance-readiness-e-book-february-2019/>

### **Developing National Ecosystems for South-South and Triangular Cooperation to Achieve Agenda 2030 for Sustainable Development (South Centre and IsDB Joint Publication, September 2019)**

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.

<https://www.southcentre.int/sc-and-isdb-joint-publication-september-2019/>

### **Collection of Resources on Climate Finance by the South Centre (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.

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

## **SOUTHVIEWS**

### **Appeal in ISDS: Appealing for the Host State? (SouthViews No. 190, 26 February 2020)**

*By Grace L. Estrada*

Reforms to Investor-State Dispute Settlement (ISDS) are being discussed in the United Nations Commission on International Trade Law (UNCITRAL) Working Group III. One possible reform is the development of an appellate mechanism, either as part of the proposed two-tier standing investment court, or as a stand-alone appellate mechanism. From the perspective of developing countries as host states that face possible claims from investors, how appealing is an appellate mechanism in ISDS?

<https://www.southcentre.int/southviews-no-190-26-february-2020/>



## PREVIOUS SOUTHVIEWS

17/01/2020 - SouthViews: Enabling and Benefitting from Tax Avoidance: The Case of Canada in Africa's Extractive Sector  
24/12/2019 - SouthViews: Intellectual Property and Plant Protection: Developments and Challenges in Asia  
11/10/2019 - SouthViews: Importance of Developing National Ecosystems for South-South & Triangular Cooperation to Achieve Agenda 2030 for Sustainable Development  
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20/05/2019 - SouthViews: Colombia's Biogenerics Regulation. A Preliminary Court Decision in favour of Public Health  
03/05/2019 - SouthViews: 2030 Sustainable Development Agenda with Focus on Education Goal - SDG 4  
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