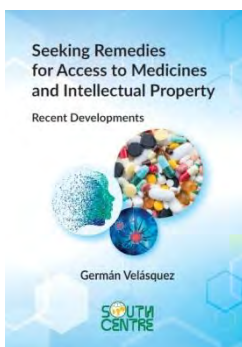


South Centre Publications (January 2019 - October 2020)



BOOKS

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



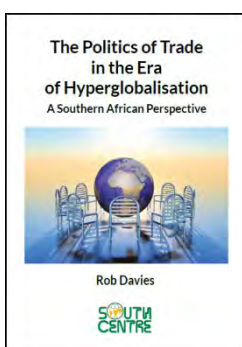
About the Book:

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:

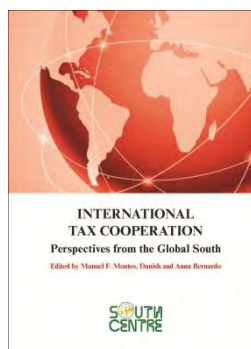
Matters of international trade are increasingly widely recognised as major shapers of global politics. News bulletins are giving more and more coverage to matters like the so-called “trade wars” between the United States and China. These are, indeed, increasingly defining relations between the two largest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

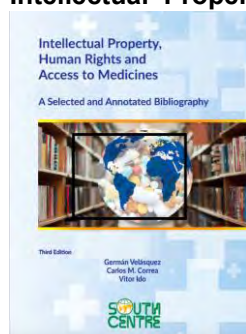
Editors: Manuel F. Montes, Danish and Anna Bernardo

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



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Intellectual Property, Human Rights and Access To Medicines: A Selected and Annotated Bibliography (3rd Edition, 2020)



About the Book:

The South Centre seeks to provide appropriate technical assistance and country support to developing countries, within comprehensive and coherent national IP strategies to promote implementation of the TRIPS Agreement that is consistent with the protection of public health and the promotion of access to medicines. This selected and annotated bibliography has been prepared to assist developing countries to implement IP policies and regulations consistent with development goals and public health principles. The growing volume of literature on the issue of IP, R&D, human rights and access to medicines can

help developing countries to find the opportunities and room for manoeuvre to protect their citizens from the unhealthy environment created by international trade rules. This bibliography is not an exhaustive list but it highlights some of the most pertinent works from the South views and perspectives. The selected references are a valuable instrument for those interested in promoting universal access to medical innovation.

Authors: Germán Velásquez, Carlos M. Correa and Vitor Ido

<https://www.southcentre.int/book-by-the-south-centre-2020/>

Modulos de Introduccion a la Propiedad Intelectual y Salud Pública (2020)



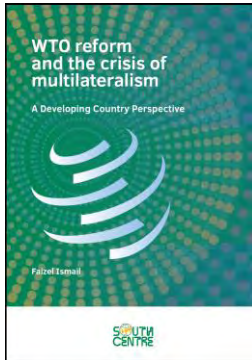
Descripción:

Este libro contiene cuatro módulos para la capacitación en materia de propiedad intelectual y salud pública. Su objetivo es presentar una introducción a las diversas categorías de derechos de propiedad intelectual y, en particular, ilustrar sobre los derechos aplicables a la producción y comercialización de medicamentos en el marco de las llamadas ‘flexibilidades’ contenidas en el Acuerdo sobre los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio de la Organización Mundial del Comercio. Los módulos proporcionan elementos para comprender el alcance y las implicaciones de los derechos de propiedad intelectual, especialmente las patentes de invención, en el acceso a los medicamentos. Ellos brindan asimismo pautas para el diseño y la aplicación

de esos derechos en una manera consistente con dicho Acuerdo y con políticas de protección de la salud pública. Los módulos contienen información general y enfoques prácticos para orientar a los encargados de formular y aplicar políticas públicas en el tratamiento del tema, tanto en el campo administrativo como judicial.

<https://www.southcentre.int/book-by-the-south-centre-2020-2/>

WTO reform and the crisis of multilateralism – A Developing Country Perspective (2020)



About the Book:

The WTO has not been able to recover since the collapse of the Doha Round in July 2008. Several ministerial conferences including the Buenos Aires meeting in December 2017 failed to reach agreement. The US Trump Administration launched a campaign to reform the WTO in 2018 and 2019. This book argues that the Trump Administration reform proposals have been much more aggressive and far-reaching than the Obama Administration before it, threatening to erode hard-won special and differential treatment rights of developing countries. By blocking the appointment of new Appellate Body members, the US has effectively paralysed the Appellate Body and deepened the crisis of the multilateral trading system. Developing countries have responded to the proposals and called for the WTO to be development-oriented and inclusive. This book provides a critical analysis of the US-led reform proposals and seeks to build a discourse around an alternative set of concepts or principles to guide the multilateral trading system based on fairness, solidarity, social justice, inclusiveness and sustainability.

Author: Faizel Ismail served as the Ambassador Permanent Representative of South Africa to the WTO (2010-2014).

This book is published with support from [Trade & Industrial Policy Strategies](#).

<https://www.southcentre.int/book-by-the-south-centre-2020-3/>

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 21st 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 18th 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/>

Antimicrobial Resistance: Examining the Environment as Part of the One Health Approach (Research Paper 104, March 2020)

By Mirza Alas

Antimicrobial Resistance (AMR) is a serious issue that is threatening the medical and agricultural advances of today. The connections that exist among human health, food production and the environment necessitate a One Health approach to address the challenge of AMR. Recent research points to the environment as an essential factor in the spread of AMR, as well as a possible reservoir of antimicrobial resistant bacteria and genes. The process, however, of the environmental transmission of resistance genes, along with their effects and how to mitigate them, is still being examined. As new research emerges, so to have new challenges regarding the selective pressure of antibiotics on the environment. AMR in the environment is not new, with resistance genes found even in isolated places (e.g. in permafrost or volcanoes) but understanding this natural process and its implications for tackling AMR continue to pose many questions. This paper aims to examine some of the emerging research on AMR from a One Health perspective and in particular to highlight the role of the environment. It will explore the use of antibiotics and their effects in different ecosystems, as well as the challenges they pose for developing countries: in particular, in designing policies to address antimicrobial resistance that take into account the connections among humans, animals and the environment.

<https://www.southcentre.int/research-paper-104-march-2020/>

Intersección entre Competencia y Patentes: Hacia un Ejercicio Pro-Competitivo de los Derechos de Patente en el Sector Farmacéutico (Documento de Investigación 105, Marzo de 2020)

Por María Juliana Rodríguez Gómez

La interacción entre propiedad industrial, particularmente patentes farmacéuticas, y el derecho de la competencia, tiene un impacto en asuntos de interés general como los derechos a la salud, al acceso a los beneficios de la tecnología y a la libre competencia. La cuestión es cómo hacer compatible un mercado farmacéutico competitivo y dinámico, con el sistema de patentes, que otorga monopolios legales significativamente amplios sobre productos considerados innovaciones. A partir de un análisis legislativo y casuístico, se concluye que son necesarias mejores políticas pro competitivas -en especial en países en desarrollo- para enfrentar prácticas como el reverdecimiento ('evergreening') de patentes, los acuerdos para demorar la entrada de competidores y la negativa a licenciar, entre otras usadas en el sector farmacéutico para bloquear la entrada de la competencia. Los competidores, los consumidores y los sistemas de salud son vulnerables al creciente número de patentes y a esas prácticas. Diversas medidas pueden adoptarse, sin embargo, para lograr un balance entre la protección de la innovación y la competencia.

<https://www.southcentre.int/documento-de-investigacion-105-marzo-2020/>

The Comprehensive and Progressive Agreement for the Trans-Pacific Partnership: Data Exclusivity and Access to Biologics (Research Paper 106, March 2020)

By Zeleke Temesgen Boru

The test data rule concerning biological medicines (hereafter biologics) has been suspended from the scope of application of the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP). While the suspension is commendable from the general standpoint of access to medicines and biologics in particular, the suspended provision may not provide assurance for the Parties to the CPTPP that they can rely on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) flexibilities to promote access to biologics. In part this is because the Parties may end the suspension if and when they choose to do so. Simply put, the agreement does not promise that the suspended provision will remain suspended; rather, the Parties may revive the provision as originally negotiated under the Trans-Pacific Partnership (TPP) Agreement. The provision, if revived, may inhibit the Parties from implementing an obligation to ensure access to biologics, medicines that target chronic and rare ailments like cancer, clotting factors and several others.

Against this backdrop, this research paper focuses on the test data rule relating to biologics as negotiated under the TPP. In particular, it explores whether the CPTPP Parties would be able to use TRIPS flexibilities effectively to promote access to biologics, as advanced by international human rights instruments, in particular the International Covenant on Economic, Social and Cultural Rights (ICESCR). The paper also provides potential responses to the question of whether the test data rule deters the realization of access to biologics. In response, the author has determined that the rule on test data can limit access to biologics, as it would delay the entry of affordable biologics (biosimilars) into markets.

<https://www.southcentre.int/research-paper-106-march-2020/>

Guide for the Granting of Compulsory Licenses and Government Use of Pharmaceutical Patents (Research Paper 107, April 2020)

By Dr. Carlos M. Correa

Like other rights, patent rights are not absolute. There are situations in which their exercise can be limited to protect public interests. Such situations may arise, for instance, when access to needed pharmaceutical products must be ensured. Compulsory licenses and government use for non-

commercial purposes are tools, provided for under most laws worldwide, that can specifically be used to address public health needs. This document is intended to provide legal guidance for the effective use of such tools, consistently with the international law.

<https://www.southcentre.int/research-paper-107-april-2020/>

Public Health and Plain Packaging of Tobacco: An Intellectual Property Perspective (Research Paper 108, April 2020)

By Tamara Romero

In 2018, a World Trade Organization (WTO) Panel ruled that plain packaging of tobacco products was consistent with Australia's obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and was in the interest of public health. Plain packaging restricts the use of logos, colours and brand images to reduce the demand for and consumption of tobacco products by diminishing their advertising appeal. This paper discusses the intellectual property aspects triggered by the implementation of plain packaging, examines the best practices for its implementation and provides analysis of Australia's case from the public health perspective. It also highlights the main arguments used in the dispute against Australia and provides practical guidance for WTO Members on implementing measures to protect public health.

<https://www.southcentre.int/research-paper-108-april-2020/>

Non-Violation and Situation Complaints under the TRIPS Agreement: Implications for Developing Countries (Research Paper 109, May 2020)

By Nirmalya Syam

While the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provided for the applicability of non-violation and situation complaints to the settlement of disputes in the area of intellectual property (IP), when the World Trade Organization (WTO) agreements were adopted in 1994, a moratorium was put in place until WTO Members could agree on the scope and modalities for the application of such complaints. However, for more than two decades, discussions in the TRIPS Council on the subject have remained inconclusive. The biannual WTO Ministerial Conference has granted extensions of the moratorium with regularity. This paper reviews the debate on the applicability of non-violation and situation complaints under the TRIPS Agreement, including the arguments consistently held by two WTO Members that if the moratorium is not extended by consensus, non-violation and situation complaints would become automatically applicable. This paper argues that a consensus decision by the WTO Ministerial Conference is required to determine the scope and modalities and, hence, the applicability of such complaints under the TRIPS Agreement. Even if the moratorium was not extended, the WTO Ministerial Conference should still adopt a decision calling on the TRIPS Council to continue examination of the scope and modalities of such complaints. It also argues that in the absence of an extension of the moratorium on initiating such complaints—and although they would not be applicable—a situation of uncertainty would be created that may lead to a de facto limitation in the use of flexibilities allowed under the TRIPS Agreement.

<https://www.southcentre.int/research-paper-109-may-2020/>

Estudio Preliminar del Capítulo Sobre Propiedad Intelectual del Acuerdo MERCOSUR – UE (Documento de Investigación 110, Mayo de 2020)

Por Alejandra Aoun, Alejo Barrenechea, Roxana Blasetti, Martín Cortese, Gabriel Gette, Nicolás Hermida, Jorge Kors, Vanesa Lowenstein, Guillermo Vidaurreta

El presente documento realiza un estudio preliminar del capítulo XX relativo a propiedad intelectual del Acuerdo MERCOSUR – UE de libre comercio, MERCOSUR logró en este capítulo que la UE

hiciera tabla rasa respecto de los anteriores acuerdos de libre comercio. Se arribó a un resultado equilibrado, que refleja las concesiones de ambas partes.

<https://www.southcentre.int/documento-de-investigacion-110-mayo-2020/>

National Measures on Taxing the Digital Economy (Research Paper 111, May 2020)

By Veronica Grondona, Abdul Muheet Chowdhary, Daniel Uribe

The Organisation for Economic Co-operation and Development (OECD)'s Inclusive Framework is considering a two-pillar approach on taxing the digital economy. Preliminary estimates about the impact of its recommendations show a modest increase in corporate income tax collection, the benefits of which are expected to go mostly to the developed countries. At the same time, there is a rise in national measures on taxing the digital economy, a move spurred by the onset of the COVID-19 pandemic. This is also fully within the rights of countries under international law, despite labels of 'unilateralism'. This research paper highlights the direct tax measures being taken by various countries and finds three key approaches to tax the digital economy: (1) digital service taxes; (2) nexus rules based on significant economic presence ;(3) withholding tax on digital transactions.

<https://www.southcentre.int/research-paper-111-may-2020/>

La Judicialización del Derecho a la Salud (Documento de Investigación 112, Junio de 2020)

Por Silvana Andrea Bracamonte y José Luis Cassinerio

Este trabajo examina el incremento de los conflictos judiciales en materia de salud en América Latina. La judicialización en materia de salud se ha convertido en uno de los medios habituales por los que se reclama la protección del derecho de fundamental a la salud. La intervención de la justicia produce efectos individuales positivos ya que efectivizan el reconocimiento del derecho a la salud y a la vida. También puede tener incidencia en el uso de los recursos del sistema de salud sin planificación, determinando que se atiendan demandas no prioritarias. La judicialización en materia de salud representa un aspecto más de un problema estructural y complejo relacionado con la inequidad y desfinanciamiento de los sistemas de salud en Latinoamérica. El trabajo analiza el proyecto de creación de una Agencia de Evaluación de Tecnologías (AGNET) y sostiene que una adecuada regulación debería establecer principios que los jueces puedan utilizar a fin de que se reconozca aquel derecho fundamental dentro de una hermenéutica constitucional razonable, que a su vez resulte más equitativa y financieramente sostenible.

<https://www.southcentre.int/documento-de-investigacion-112-junio-2020/>

La Evolución de la Jurisprudencia en Materia de Salud en Argentina (Documento de Investigación 113, Junio de 2020)

Por Silvana Andrea Bracamonte y José Luis Cassinerio

El derecho humano a la salud es una construcción social que se redefine constantemente, cuya característica de progresividad determina que los Estados deban establecer políticas públicas con el objeto de lograr mayor eficiencia, en la medida de los recursos disponibles, para su satisfacción respecto de toda la población. Por distintas razones sociales, económicas y de avance en el conocimiento, transitamos en las últimas décadas el fenómeno de la judicialización de la salud, que provoca que el Poder Judicial es quien finalmente establece ciertas reglas en las decisiones sanitarias, a través de la resolución de conflictos donde solo se reivindica la protección individual de ese derecho, sin debate acerca de la equidad y eficacia del sistema. Este hecho hace necesario que los pronunciamientos de los tribunales deban adaptarse, incluyendo en su análisis, además de la aplicación de las leyes que amparan este derecho al caso en particular, los factores sociales y económicos concomitantes, y un examen más estricto respecto de la evidencia científica de los tratamientos reclamados. La evolución de los casos de salud se ve reflejada en la jurisprudencia

actual que, dentro de las funciones que competen a los jueces, además de amparar el derecho individual vulnerado, muestra una tendencia orientada a ponderar también el interés público asociado especialmente en estos casos. El propósito del presente trabajo es identificar, analizar y sistematizar la transformación de los casos judiciales de salud y los cambios que se producen en la jurisprudencia en Argentina como consecuencia de la nueva realidad en materia sanitaria que la conduce.

<https://www.southcentre.int/documento-de-investigacion-113-junio-2020/>

Equitable Access to COVID-19 Related Health Technologies: A Global Priority (Research Paper 114, June 2020)

By Dr. Zeleke Temesgen Boru

Since COVID-19 was first identified, infections from the virus and the death toll have spiked abysmally. The pandemic has also paralyzed the economies (particularly, global trade, tourism and transport) of many countries. The dire social and psychological ramifications associated with the pandemic are also immense. The threat posed by COVID-19 on global health and the economic downturn resulting thereof necessitates the development of health technologies (such as medicines and vaccines). A global effort to invent new health technologies or the likely application of existing technologies is also underway since the outbreak of the pandemic. Even though the race to develop these technologies can be hailed as a pivotal undertaking, the development of health technologies alone may not expedite equitable access to the outcome of such development. Particularly, the lack of access to health technologies may befall if the conventional model of health technology pricing, which is derived from monopoly rights created by IP protection, is set. However, legal as well as policy tools can be used to overcome such hurdles and ensure global access to health technologies. In this sense, this paper discusses plausible legal and policy options that can help to accelerate access to health technologies targeting COVID-19.

<https://www.southcentre.int/research-paper-114-june-2020/>

Special Section 301:US Interference with the Design and Implementation of National Patent Laws (Research Paper 115, July 2020)

By Dr. Carlos M. Correa

The continuous application of Special Section 301 by the Office of the United States Trade Representative (USTR) undermines the rule of law as a fundamental principle of a multilateral system based on the sovereign equality of states and the respect for international law. Interference with foreign countries' national intellectual property (IP) policies—which have significant socio-economic effects—negates their right to determine independently the level and modalities of protection of such property within the framework and policy space allowed by the international law. This paper examines the patent-related claims made by the USTR in relation to the developing countries on the USTR Priority Watch List. It argues that the regulations and practices identified by the USTR show a legitimate use of the flexibilities provided for by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and that the ignorance of the public interests of the countries concerned (for instance, with regard to access to affordable medicines) has contributed to the discredit (and ineffectiveness) of the Special Section 301.

<https://www.southcentre.int/research-paper-115-july-2020/>

The TRIPS Agreement Article 73 Security Exceptions and the COVID-19 Pandemic (Research Paper 116, August 2020)

By Frederick Abbott

The COVID-19 pandemic has caused Governments to contemplate measures to override patents and other intellectual property rights (IPRs) in order to facilitate production and distribution of vaccines,

treatments, diagnostics and medical devices. This paper discusses whether the COVID-19 pandemic may be considered an “emergency in international relations” and how WTO Member States may invoke Article 73 (“Security Exceptions”) of the TRIPS Agreement as the legal basis for overriding IPRs otherwise required to be made available or enforced. It concludes that the pandemic constitutes an emergency in international relations within the meaning of Article 73(b)(iii) and that this provision allows Governments to take actions necessary to protect their essential security interests.

<https://www.southcentre.int/research-paper-116-august-2020/>

Data in Legal Limbo: Ownership, sovereignty, or a digital public goods regime? (Research Paper 117, September 2020)

By Dr. Carlos M. Correa

The legal characterization and design of a legal regime for data poses one of the most important contemporary challenges to law professionals and policy makers. How such a framework is designed matters for what kind of insertion a society will have in the digital economy, and the extent to which a country will be able to benefit from the opportunities opened by big data. The current policy space to devise legal regimes adapted to national circumstances allows countries to seek for new solutions that take into account differences in legal systems, levels of economic and technological development, and national objectives and priorities.

<https://www.southcentre.int/research-paper-117-september-2020/>

Mesures nationales sur l'imposition de l'économie numérique (Document de Recherche 111, Septembre 2020)

Par Veronica Grondona, Abdul Muheet Chowdhary, Daniel Uribe

Le Cadre inclusif sur le BEPS de l'Organisation de coopération et de développement économiques (OCDE) envisage une approche fondée sur deux piliers en matière de taxation de l'économie numérique. Les premières estimations concernant l'impact de ses recommandations montrent une modeste augmentation de la collecte de l'impôt sur les sociétés, dont les bénéficiaires devraient revenir principalement aux pays développés. Dans le même temps, les mesures nationales de taxation de l'économie numérique se multiplient, en conséquence de la pandémie de COVID-19. Le droit international reconnaît pleinement ce droit aux pays, bien que cette approche soit considérée comme une forme d'unilatéralisme. Ce document de recherche met en lumière les mesures de fiscalité directe prises par différents pays et présente les trois approches clés retenues pour taxer l'économie numérique : (1) l'imposition de taxes sur les services numériques ; (2) l'élaboration de règles permettant d'établir un lien fiscal pour les entreprises numériques qui opèrent par l'intermédiaire d'une présence numérique significative ; (3) des retenues à la source sur les transactions numériques.

<https://www.southcentre.int/document-de-recherche-111-septembre-2020/>

Medidas Tributarias Nacionales sobre la Economía Digital (Documento de Investigación 111, Septiembre 2020)

Por Veronica Grondona, Abdul Muheet Chowdhary, Daniel Uribe

El Marco Inclusivo de la Organización de Cooperación y Desarrollo Económicos (OCDE) está considerando un enfoque de dos pilares en relación con el cobro de impuestos sobre la economía digital. Las estimaciones preliminares acerca de la repercusión de sus recomendaciones indican un modesto incremento en la recaudación de impuestos sobre la renta de las sociedades, cuyos beneficios se prevén que se dirijan principalmente a los países desarrollados. Al mismo tiempo, están proliferando las medidas nacionales en materia de cobro de impuestos sobre la economía digital, un cambio estimulado por el comienzo de la pandemia de COVID-19. Los países también tienen plenos derechos a aplicarlas en virtud del derecho internacional, pese a las etiquetas de “unilateralismo”. En

este documento de investigación se ponen de relieve las medidas en materia de impuestos directos que están adoptando diversos países y se exponen tres enfoques fundamentales con respecto al cobro de impuestos sobre la economía digital: 1) impuestos sobre los servicios digitales; 2) normas sobre un nexo en base a una presencia digital significativa; y 3) retenciones en origen sobre las transacciones digitales.

<https://www.southcentre.int/documento-de-investigacion-111-septiembre-2020/>

Médicaments et propriété intellectuelle: 10 ans de la stratégie mondiale de l'OMS (Document de Recherche 100, Septembre 2020)

Par Dr. Germán Velásquez

Les négociations du Groupe de travail intergouvernemental sur la santé publique, l'innovation et la propriété intellectuelle connu sous le nom de "IGWG" (2006-2008), menées par les Etats Membres de l'OMS, sont le résultat d'une impasse à l'Assemblée mondiale de la santé du 6 décembre 2006 où les Etats Membres n'ont pu parvenir à un accord sur les 60 recommandations du rapport "Santé publique, innovation et propriété intellectuelle" soumis la même année par un groupe d'experts désigné par le Directeur général de l'OMS. Le résultat de ces négociations devint la "Stratégie mondiale et Plan d'action pour la santé publique, l'innovation et la propriété intellectuelle" (GSPOA), approuvé par l'Assemblée mondiale de la santé en 2008. Un des objectifs de la Stratégie mondiale élaboré par l'IGWG était de réformer en profondeur le système d'innovation pharmaceutique, en raison de son incapacité à produire des médicaments abordables contre les maladies qui affligent une grande partie de la population du monde vivant dans les pays en développement. Les droits de propriété intellectuelle (PI) imposés par l'Accord sur les aspects des droits de propriété intellectuelle liés au commerce (ADPIC) et les accords commerciaux pourraient devenir des principaux obstacles à l'accès aux médicaments. Le GSPOA a fait une analyse critique de cette réalité et a mené à la recherche de nouvelles solutions à ce problème. Dix ans après l'approbation du GSPOA, les résultats restent incertains et médiocres.

<https://www.southcentre.int/document-de-recherche-100-septembre-2020/>

Re-thinking Global and Local Manufacturing of Medical Products After COVID-19 (Research Paper 118, September 2020)

By Dr. Germán Velásquez

The unprecedented global health crisis caused by the coronavirus (COVID-19) pandemic since the first quarter of 2020 has reopened the now-urgent discussion about the role of local pharmaceutical production in addressing the health needs in developing countries. The COVID-19 crisis has highlighted the interdependencies in the global production of pharmaceuticals—no country is self-sufficient. Many industrialized countries are making the decision to repatriate or initiate the production of active pharmaceutical ingredients (APIs) and medicines. Governments are beginning to talk about 'pharmaceutical sovereignty' or 'health security'. If this becomes a reality and the production of pharmaceuticals is led by nationalistic policies, developing countries that still lack manufacturing capacity will have to start or expand the local production of pharmaceuticals, whether at the national or regional level. The war to get access to the future vaccine for COVID-19 does not look easy with these new developments.

<https://www.southcentre.int/research-paper-118-september-2020/>

TRIPS Flexibilities on Patent Enforcement: Lessons from Some Developed Countries Relating to Pharmaceutical Patent Protection (Research Paper 119, October 2020)

By Joshua D. Sarnoff

Authority for national judiciaries to issue permanent and preliminary injunctions is required by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Articles 44 and 50. But the TRIPS Agreement does not require the issuance of injunctions in any particular circumstances, and does not harmonize the laws on which national jurisdictions derive their injunctive relief authorities. Thus, countries remain free to refuse prohibitory injunctive relief for adjudicated or likely patent infringement, particularly if “reasonable compensation” is offered in the form of an “ongoing royalty” or an “interim royalty” payment, which acts similarly to a compulsory license. This paper explains the existing legal standards for permanent and preliminary injunctions in the United States and Canada and discusses trends regarding the issuance or denial of injunctions for pharmaceutical patents in those jurisdictions (with occasional reference to other common-law jurisdictions). Although judges in these jurisdictions more routinely deny preliminary prohibitory injunctions, legislation linking generic pharmaceutical regulatory approvals to the patent system and imposing stays of such approvals normally avoid the need for such preliminary injunctions. Consistent with the TRIPS Agreement, developing country judges may make different choices, based on the ability to provide reasonable compensation for harms or based on a different weighing of the importance of assuring affordable access to medicines relative to providing innovation incentives.

<https://www.southcentre.int/research-paper-119-october-2020/>

Patent Analysis for Medicines and Biotherapeutics in Trials to Treat COVID-19 (Research Paper 120, October 2020)

By Srividya Ravi

This report provides an analysis of patents covering medicines in trials to treat COVID-19. The aim of the report is to support national patent offices and interested parties in developing countries with information that can serve as guidance for the examination of the claims contained in relevant patents or patent applications.

The medicines considered for the patent analysis in this report are remdesivir, ruxolitinib and favipiravir, and the biotherapeutics tocilizumab, siltuximab and sarilumab.

<https://www.southcentre.int/research-paper-120-october-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 1st and 5th 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 Alvarez 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 5th 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 Erail

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 Erail 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/>

The ISDS Reform Process: The missing development agenda (Investment Policy Brief 19, March 2020)

By Nicolás M. Perrone

The foreign direct investment (FDI) governance agenda is centred on the reform of international investment agreements (IIAs) and investor-state dispute settlement (ISDS). The proliferation of IIAs

and ISDS has contributed to narrowing the FDI agenda. A key policy question is whether this fragmented approach remains consistent with the 2030 Sustainable Development Goals (SDGs). Current FDI discussions point at the need for a holistic approach in this policy area, quite the opposite of a regime primarily aimed to protect foreign investors through treaty standards and international arbitration. The realisation of the SDGs depends on multi-stakeholder partnerships to combat poverty and provide clean water and energy to the world population. Crucially, these partnerships will require more cooperation and coordination than IIAs and ISDS can promote and nurture.

<https://www.southcentre.int/investment-policy-brief-19-march-2020/>

Flirting with the Private Sector: The GCF Private Sector Facility — achievements, challenges and constraints in engaging the private sector (Climate Policy Brief 23, March 2020)

By Rajesh Erail, Mariama Williams and Dianyi Li

The Green Climate Fund (GCF) is committed to include the private sector as both driver and beneficiary of climate action. It envisions in particular the inclusion of not only large enterprises, but puts much emphasis on the cooperation with micro, small and medium-sized enterprises (MSMEs) in developing countries. This paper evaluates the state of play of the GCF work with the private sector and its MSMEs. It finds that the fund's success in stimulating private sector engagement has been underwhelming and imbalanced. To begin with, only a minority of GCF projects are in fact private and a considerable amount of these projects operate through multilateral and other public institutions. GCF's private sector projects show on top of that a strong bias towards energy access and generation, while only little funding goes to adaptation. Attempts to include MSMEs in developing countries have moreover been largely unsuccessful, although MSMEs constitute an important pillar of developing countries' economies. It is suggested that there is a need for a bottom-up approach when dealing with the private sector in developing countries, including a more sustained and sustainable focus on MSMEs, including capacity building of MSME networks.

<https://www.southcentre.int/climate-policy-brief-23-march-2020/>

The COVID-19 Pandemic: R&D and Intellectual Property Management for Access to Diagnostics, Medicines and Vaccines (Policy Brief 73, April 2020)

By Viviana Muñoz Tellez

The ongoing rapid spread of COVID-19 is challenging the capacity of governments and of the World Health Organization (WHO) to timely put in place a global coordinated response to the pandemic. Developing countries and Least Developed Countries (LDCs) in particular in Africa are especially vulnerable to the unfolding effects of the public health crisis. A priority area for global collaboration is to advance research and development (R&D) for vaccines and medicines that are made available, affordable and accessible worldwide.

There is currently no vaccine and no proven safe and effective direct therapy for COVID-19. There is also the need to accelerate testing capacity and tools in developing countries and LDCs with increased access to low-cost diagnostics. The approach to the management of intellectual property rights by research institutions, pharmaceutical and biotech companies and R&D funders will decisively affect availability and access, as well as the transfer of technology and know-how. Governments must ensure that they have legislative and procedural frameworks in place to enable them to overcome any patent, data exclusivity and trade secret barriers to procure and produce COVID-19 diagnostics, vaccines, medicines and other therapeutics.

<https://www.southcentre.int/policy-brief-73-april-2020/>

Challenges and Opportunities for Implementing the Declaration of the Right to Development (Policy Brief 74, April 2020)

By Yuefen Li, Daniel Uribe and Danish

The 1986 Declaration on the Right to Development was a milestone for both human rights and development. The Declaration recognizes that the right to development (RTD) is an inalienable human right and introduced an alternative and holistic approach to development that goes beyond the economic field to include social, cultural and political development. Although there are current concerns about the pace of progress in fulfilling the RTD, this Policy Brief examines the linkages of the right to development and different global initiatives tackling current challenges for different aspects of the RTD. This brief shows that there has been broader support by countries and people since 1986 to fulfill the RTD although much still needs to be done for addressing income and other inequalities while empowering people in the processes of formulating and implementing people-centered development policies. Despite challenges, the brief also examines some promising opportunities for the RTD.

<https://www.southcentre.int/policy-brief-74-april-2020/>

Rethinking R&D for Pharmaceutical Products After the Novel Coronavirus COVID-19 Shock (Policy Brief 75, April 2020)

By Dr. Germán Velásquez

The unprecedented global health crisis caused by the coronavirus –COVID-19– pandemic, during the first quarter of 2020, brings back with particular urgency the discussion about the research and development (R&D) model for pharmaceuticals and other health technologies. The COVID-19 crisis shows that there is an urgent need to re-design the global public health governance for health R&D. The adoption of a binding instrument –as allowed by Article 19 of the WHO Constitution– on this matter was proposed many years ago. This brief argues that it is time to revive and materialize this initiative.

<https://www.southcentre.int/policy-brief-75-april-2020/>

Evolution of Data Exclusivity for Pharmaceuticals in Free Trade Agreements (Policy Brief 76, April 2020)

By Wael Armouti

Free trade agreements (FTAs) introduce higher intellectual property (IP) protection than those established in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS-plus provisions) that deprive the parties from benefits of the use of flexibilities found in the TRIPS Agreement to protect public health. One such TRIPS-plus requirement is that of data exclusivity. It establishes that the government should provide an exclusivity period for the test data developed by the originator company, on the grounds of an incentive rationale and considerations of fairness. The negative impact of the data exclusivity approach in developing countries means that the entry of cheap generic products is delayed, even under a compulsory license, which will affect access to affordable medicines. Countries that have already signed the FTAs can mitigate its effects on public health by limiting the scope of and providing exceptions to data exclusivity in national legislation.

<https://www.southcentre.int/policy-brief-76-april-2020/>

Repensando la I+D para productos farmacéuticos después del choque de la Coronavirus COVID-19 (Informe sobre políticas 75, Mayo 2020)

Por Germán Velásquez

La crisis sanitaria mundial sin precedentes provocada por la pandemia de coronavirus –COVID-19–, durante el primer trimestre de 2020, hace que vuelva a ser especialmente urgente el debate sobre el modelo de investigación y desarrollo (I+D) de productos farmacéuticos y otras tecnologías sanitarias. La crisis de COVID-19 muestra que existe una necesidad urgente de rediseñar la gobernanza mundial de la salud pública para la I+D en materia de salud. La adopción de un instrumento vinculante –como permite el artículo 19 de la Constitución de la OMS– en esta materia fue propuesta hace muchos años. Este documento sostiene que es hora de revivir y materializar esta iniciativa.

<https://www.southcentre.int/informe-sobre-politicas-75-mayo-2020/>

COVID-19 and WTO: Debunking Developed Countries' Narratives on Trade Measures (Policy Brief 77, May 2020)

By Aileen Kwa, Fernando Rosales and Peter Lunenborg

In response to the COVID-19 pandemic, developing countries at the World Trade Organization (WTO) are faced with demands to i) permanently liberalize their markets in health products, and also in agriculture; ii) ban export restrictions in agriculture; and iii) conclude new digital trade rules including liberalizing online payment systems, and agreeing to free data flows. There seems to be a confusion between short-term and long-term responses. For the short-term, governments must take measures needed to address the crisis, including liberalizing needed health products. However, permanently bringing tariffs to zero for the health and agricultural sectors will not support developing countries to build domestic industries. Export restrictions in agriculture cannot be given up. They can be a very important tool for stabilizing domestic prices and for food security. New digital trade rules at the WTO would foreclose the possibility for countries to impose data sovereignty regulations, including data localization requirements that can support their infant digital platforms and industries.

<https://www.southcentre.int/policy-brief-77-may-2020/>

La pandémie de COVID-19 : R&D et gestion de la propriété intellectuelle pour l'accès aux tests diagnostiques, aux médicaments et aux vaccins (Rapport sur les politiques 73, Mai 2020)

Par Viviana Muñoz Tellez

La propagation rapide actuelle du COVID-19 met à l'épreuve la capacité des gouvernements et celle de l'Organisation mondiale de la santé (OMS) à apporter une réponse mondiale coordonnée à la pandémie. Les pays en développement et les pays les moins avancés (PMA), en particulier en Afrique, sont particulièrement vulnérables aux effets de la crise de santé publique. Un domaine prioritaire de collaboration mondiale consiste à faire progresser la recherche et le développement (R&D) de vaccins et de médicaments qui soient disponibles, abordables et accessibles dans le monde entier. Il n'existe actuellement aucun vaccin et aucune thérapie directe pour COVID-19 dont l'innocuité et l'efficacité ont été prouvées. Il est également nécessaire d'accélérer les capacités et les outils d'essai dans les pays en développement et les PMA en leur donnant un accès accru à des diagnostics peu coûteux. L'approche de la gestion des droits de propriété intellectuelle par les institutions de recherche, les entreprises pharmaceutiques et biotechnologiques et les organismes de financement de la R&D aura une incidence décisive sur la disponibilité et l'accès, ainsi que sur le transfert de technologie et de savoir-faire. Les gouvernements doivent s'assurer qu'ils disposent de cadres législatifs et procéduraux leur permettant de surmonter les obstacles liés aux brevets, à l'exclusivité des données et aux secrets commerciaux afin de se procurer et de produire des diagnostics, des vaccins, des médicaments et d'autres produits thérapeutiques pour le COVID-19.

<https://www.southcentre.int/rapport-sur-les-politiques-73-mai-2020/>

La pandemia de COVID-19: el fomento de la I+D y la gestión de la propiedad intelectual para acceder a diagnósticos, medicamentos y vacunas (Informe sobre políticas 73, Mayo 2020)

Por Viviana Muñoz Tellez

La rápida difusión actual de COVID-19 está poniendo a prueba la capacidad de los gobiernos y de la Organización Mundial de la Salud (OMS) para poner en marcha una respuesta mundial coordinada a la pandemia. Los países en desarrollo y los países menos adelantados (PMA), en particular los de África, son particularmente vulnerables a los efectos de la crisis de salud pública. Una esfera prioritaria para la colaboración mundial es el fomento de la investigación y el desarrollo de vacunas y medicamentos que estén disponibles, sean asequibles y accesibles en todo el mundo. En la actualidad no existe una vacuna ni una terapia directa segura y eficaz probada para COVID-19. También es necesario acelerar la capacidad y los instrumentos de ensayo en los países en desarrollo y los países menos adelantados con un mayor acceso a diagnósticos de bajo costo. El enfoque de la gestión de los derechos de propiedad intelectual por parte de las instituciones de investigación, las empresas farmacéuticas y biotecnológicas y las entidades de financiación de la investigación y el desarrollo afectará de manera decisiva a la disponibilidad y el acceso, así como a la transferencia de tecnología y conocimientos técnicos. Los gobiernos deben asegurarse de que disponen de marcos legislativos y de procedimiento que les permitan superar cualquier barrera de patentes, de exclusividad de datos y de secretos comerciales para adquirir y producir diagnósticos, vacunas, medicamentos y otros productos terapéuticos de COVID-19.

<https://www.southcentre.int/informe-sobre-politicas-73-mayo-2020/>

The 73rd World Health Assembly and Resolution on COVID-19: Quest of Global Solidarity for Equitable Access to Health Products (Policy Brief 78, May 2020)

By Nirmalya Syam, Mirza Alas and Vitor Ido

The annual meeting of the World Health Assembly (WHA) of the World Health Organization (WHO) held virtually on 18-19 May 2020 discussed the global response to COVID-19 and adopted Resolution WHA73.1 on “COVID-19 Response”. The Resolution reaffirms the role of WHO as the directing and coordinating authority on international health work and it recognizes that all countries should have timely and affordable access to diagnostics, therapeutics, medicines and vaccines as well as to essential health technologies and equipment to respond to COVID-19. However, the Resolution does not define concrete actions to address the pandemic. Though the Resolution makes a commitment of ensuring access to medical products, vaccines and equipment for all countries in a timely manner, there are no concrete actions defined. In order to ensure global equitable access, WHO Members should make full use of the flexibilities of the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPS) and also enhance transparency of costs of research and development (R&D), openness and sharing of data, tools and technologies, and build more capacity through technology transfer.

<https://www.southcentre.int/policy-brief-78-may-2020/>

Articles 7 and 8 as the basis for interpretation of the TRIPS Agreement (Policy Brief 79, June 2020)

By Tamara Romero

Articles 7 and 8 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) play a central role in assuring the members of the World Trade Organization (WTO) the right to implement public health measures. The Doha Declaration on the TRIPS Agreement and Public Health is also an important element for the interpretation of any provision of the TRIPS Agreement that may have public health implications. The most recent and prominent example of the use of articles 7 and 8 for interpretation in WTO law can be found in the WTO Panel decision of 2018 on the *Australia – Tobacco Plain Packaging* dispute.

<https://www.southcentre.int/policy-brief-79-june-2020/>

Intellectual Property, Innovation and Access to Health Products for COVID-19: A Review of Measures Taken by Different Countries (Policy Brief 80, June 2020)

By Nirmalya Syam

The rising incidence of COVID-19 will require all countries, particularly developing and least developed countries, to be able to procure and manufacture the products required for the diagnosis, prevention and treatment of COVID-19. Intellectual property (IP) rights over such products can constrain the ability of countries to rapidly procure and produce and supply the products required at a mass scale. This Policy Brief describes the measures and actions taken by different countries to address potential IP barriers to access to the products required for COVID-19. A number of countries, both developed and developing, have adopted measures to enable governments to take action to overcome IP barriers in case they constrain access to the products required for COVID-19. In addition to these measures, the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) also allows considerable flexibility to adopt a number of other possible measures which can be considered by developing countries where necessary.

<https://www.southcentre.int/policy-brief-80-june-2020/>

The UN General Assembly Resolutions on COVID-19: Solemn Assurances for Access to Health Technologies without an Action Plan (Policy Brief 81, July 2020)

By Nirmalya Syam

The United Nations (UN) has the mandate under the Charter of the United Nations to promote solutions to international health problems, such as the global COVID-19 pandemic. While the UN secretariat, led by the Secretary-General, has undertaken a number of initiatives in response to COVID-19, member State initiatives in the UN has so far been limited to two resolutions adopted by the UN General Assembly. Member States are currently negotiating an omnibus resolution of the General Assembly on COVID-19. This policy brief analyzes the extent to which the General Assembly addresses the issue of timely, equitable and affordable access to health technologies, particularly for developing countries who have greater vulnerability to COVID-19. The adopted resolutions make very broad pledges for global solidarity but lack specific commitments to guide actions by member States. The omnibus resolution currently under negotiation should provide specific guidance to member States on actions to be taken based on the principles of solidarity and multilateral cooperation in diverse aspects impacted by COVID-19.

<https://www.southcentre.int/policy-brief-81-july-2020/>

Examining antimicrobial resistance in the light of the COVID-19 pandemic (Policy Brief 82, July 2020)

By Mirfin Mpundu, Caline Mattar and Mirza Alas

The COVID-19 pandemic provides an opportunity to strengthen the capacity of health systems not only to be better prepared for the next pandemic but also to address ongoing crises such as antimicrobial resistance. The unfolding crisis due to antimicrobial resistance is, unfortunately, similar to the current health crisis due to the COVID-19 pandemic, albeit at a slower pace. As countries address the pandemic, there is a need to identify interlinkages between the pandemic and antimicrobial resistance and to continue strengthening the actions needed to slow down the emergence of antimicrobial resistance.

<https://www.southcentre.int/policy-brief-82-july-2020/>

Pathways for leapfrogging to reconcile development and climate change imperatives in Africa (Climate Policy Brief 24, July 2020)

By Smail Khennas and Youba Sokona

A just energy transition toward low carbon emissions pathways is increasingly a priority not only to cope with the adverse impacts of climate change but also for achieving more sustainable economic and social development of the African continent. Fortunately, to optimize its energy mix for development according to sustainability criteria, Africa can take advantage of a rapid energy transition, thanks to its huge and largely untapped renewable energy potential and its abundance of a less polluting fossil fuel, namely, natural gas. Moreover, the fact that most of the infrastructure for energy systems in Africa is not yet built, particularly in sub-Saharan countries, offers these countries a good opportunity for leapfrogging. This Policy Brief explores guiding principles and pathways for a low carbon energy transition, including leapfrogging opportunities, energy system design and social innovation.

<https://www.southcentre.int/climate-policy-brief-24-july-2020/>

United States: An Obsolete Trade Practice Undermines Access to the Most Expensive Drugs at More Affordable Prices (Policy Brief 83, August 2020)

By Maria Fabiana Jorge

Access to affordable drugs is a top policy priority for the United States with real bipartisan support but it increasingly seems to be an unreachable goal, in part, due to conflicting government policies. While the Administration's Blueprint to Lower Drug Prices and Reduce Out-of-Pocket Costs highlighted the importance of competition to ensure lower drug prices, U.S. trade policy in general, and the Special 301 Annual Review in particular, do exactly the opposite: broaden and lengthen the monopolies granted to pharmaceutical companies thus delaying or deterring the launch of generic and biosimilar drugs and with that, the chances of lowering drug prices. The pharmaceutical industry has changed a great deal in the past 30 years, among other things by developing complex biotechnology drugs that while critical for the treatment of illnesses such as cancer, are out of reach for many patients. While some parts of the government are trying to increase access to medicines through competition provided by generic and biosimilar drugs, their efforts are being undermined by a trade policy that was defined 30 years ago. It is time to adjust U.S. trade policy to the realities of 2020 and stop acting as if it was still 1989.

<https://www.southcentre.int/policy-brief-83-august-2020/>

A New Trend in Trade Agreements: Ensuring Access to Cancer Drugs (Policy Brief 84, September 2020)

By Maria Fabiana Jorge

A World Health Organization (WHO) report on cancer indicates that the cancer burden will increase at least by 60% over the next two decades, straining health systems and communities. Companies develop cancer drugs in part because payers are less resistant to paying high drug prices for these drugs. As Barbara Rimer, Dean of the University of North Carolina and Chair of the U.S. President's Cancer Panel stated, "[m]ost cancer drugs launched in the United States between 2009 and 2014 were priced at more than \$100,000 per patient for one year of treatment." Many of the new cancer drugs are biologics. Such prices are clearly out of reach for most patients who will need them increasingly more to stay alive. While competition is critical to ensure lower drug prices, we have seen a number of strategies, including through trade agreements, to prevent competition and extend monopolies over these drugs and their very high drug prices. It is no accident that the exclusivity granted to biologic drugs has been one of the most conflictive provisions in recent trade agreements such as the United States-Mexico-Canada Agreement (USMCA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Nevertheless a new trend in trade agreements started in 2007 when U.S. Members of Congress pushed back against the interests of

powerful economic groups seeking longer monopolies for drugs. These Members of the U.S. Congress prevailed then in restoring some balance in the trade agreements with Peru, Colombia and Panama and further consolidated this new trend in 2019 in the USMCA. Moreover, following the U.S. withdrawal from the original Trans-Pacific Partnership (TPP), the negotiators of the remaining 11 countries also pushed back to ensure a better balance between innovation and access in the CPTPP. People around the world need to be aware of these precedents and ensure that they also work for access to medicines for their own citizens.

<https://www.southcentre.int/policy-brief-84-september-2020/>

Base Erosion and Profit Shifting in the Extractive Industries (Tax Cooperation Policy Brief 12, September 2020)

By Danish and Daniel Uribe

Developing countries with significant natural resources have not fully utilised them for financing their development aspirations. Extractive industries and the revenue generated from their extractive activities need to constitute a larger share of domestic resource mobilisation. However, the sector remains beset with massive tax base erosion and profit shifting by large multinational companies. This policy brief therefore looks at the extractive industries, and the potential impact of their practices on the national policies and regulations in developing countries. It further also considers some current initiatives at the international level for enabling countries to obtain more revenue from natural resource extraction, and offers some observations on the policy options available to developing countries.

<https://www.southcentre.int/tax-cooperation-policy-brief-12-september-2020/>

Política de industrialización de litio, el caso boliviano (Informe sobre políticas 85, Octubre 2020)

Por Hortensia Jimenez Rivera

El litio es un mineral de gran importancia en la industria tecnológica mundial, lo que lo convierte en un recurso estratégico para un país. Por ello, es responsabilidad del Estado asegurar que su explotación sea una oportunidad para el desarrollo y el bienestar, protegiendo los intereses de su población y maximizando sus beneficios de manera que la gestión de su riqueza no lleve a más pobreza y dependencia.

Las políticas que se adopten para el aprovechamiento de los recursos naturales pasan por definir el régimen de propiedad sobre los recursos y el grado de industrialización en el país, lo que implica –de manera directa– ingresos y desarrollo, para luego resolver aspectos de orden tecnológico, financiero, institucional, legal y de mercado.

Este informe describe la experiencia boliviana de la industrialización del litio, las características de su industrialización bajo una política de desarrollo nacional y revela cómo el tipo de política implementada es determinante para la explotación de un recurso natural.

<https://www.southcentre.int/informe-sobre-politicas-85-octubre-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/>

Propriété Intellectuelle et Accès aux Médicaments : Une Introduction aux Grandes Problématiques – Quelques Termes et Concepts de Base (Documents de Formation 1, Août 2020)

Par Germán Velásquez

La propriété intellectuelle et les brevets en particulier sont devenus l'une des questions les plus débattues sur l'accès aux médicaments, depuis la création de l'Organisation mondiale du commerce (OMC) et l'entrée en vigueur de l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce (ADPIC). Les brevets ne sont nullement les seuls obstacles à l'accès aux médicaments qui sauvent des vies, mais ils peuvent jouer un rôle important, voire déterminant. Pendant la durée de protection d'un brevet, la capacité du titulaire du brevet à déterminer les prix, en l'absence de concurrence, peut faire en sorte que le médicament soit inabordable pour la majorité des personnes vivant dans les pays en développement. Ce premier numéro du "South Centre Training Papers" vise, dans sa première partie, à fournir une introduction aux questions clés dans le domaine de l'accès aux médicaments et de la propriété intellectuelle. La deuxième partie décrit et définit certains termes et concepts de base de ce domaine relativement nouveau des politiques pharmaceutiques, qui sont les aspects liés au commerce des droits de propriété intellectuelle qui régissent la recherche, le développement et la fourniture de médicaments et les technologies de la santé en général.

<https://www.southcentre.int/documents-de-formation-1-aout-2020/>

BEIJING+25 UPDATE SERIES

Political Declaration on the occasion of the twenty-fifth anniversary of the Fourth World Conference on Women (Beijing+25 Update Series 1, 13 March 2020)

Ministers and representatives of governments of the Member States of the United Nations met at a special one-day session of the 64th meeting of the Commission on the Status of Women (CSW64) and adopted a Political Declaration commemorating the 25th anniversary of the Fourth World Conference on Women, held in Beijing in 1995, and its major seminal output, the Beijing Declaration and Platform for Action (BD & BPfA).

<https://www.southcentre.int/beijing25-update-series-1-13-march-2020/>

Spotlight: Africa and the Implementation of the Beijing Platform for Action (Beijing+25 Update Series 2, 30 March 2020)

Regional Round-up on progress in implementing the Beijing Platform for Action in light of the upcoming 25th Anniversary of the platform. Spotlight: Africa

<https://www.southcentre.int/beijing25-update-series-2-30-march-2020/>

Spotlight: Asia-Pacific and the Implementation of the Beijing Platform for Action (Beijing+25 Update Series 3, 21 April 2020)

Regional Round-up on progress in implementing the Beijing Platform for Action in light of the upcoming 25th anniversary of the platform. Spotlight: Asia-Pacific

<https://www.southcentre.int/beijing25-update-series-3-21-april-2020/>

Spotlight: Arab region and the Implementation of the Beijing Platform for Action (Beijing+25 Update Series 4, 20 May 2020)

Regional Round-up on progress in implementing the Beijing Platform for Action in light of the upcoming 25th anniversary of the platform Spotlight: Arab region

<https://www.southcentre.int/beijing25-update-series-4-20-may-2020/>

Spotlight: Latin America and the Caribbean and the Implementation of the Beijing Platform for Action (Beijing+25 Update Series 5, 30 July 2020)

Regional Round-up on progress in implementing the Beijing Platform for Action in light of the upcoming 25th anniversary of the platform Spotlight: Latin America and the Caribbean

<https://www.southcentre.int/beijing25-update-series-5-30-july-2020/>

Spotlight: Europe and the Implementation of the Beijing Platform for Action (Beijing+25 Update Series 6, 30 September 2020)

Regional Round-up on progress in implementing the Beijing Platform for Action in light of the 25th anniversary of the platform Spotlight: Europe

<https://www.southcentre.int/beijing25-update-series-6-30-september-2020/>

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 74th 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/>

Third Annual Developing Country Forum on South-South Cooperation in International Tax Matters (South Centre Tax Initiative Report, January 2020)

The South Centre organized, in cooperation with the Research and Information System for Developing Countries (RIS), the Ministry of External Affairs and the Ministry of Finance of India, the Third Annual Developing Country Forum on South-South Cooperation in International Tax Matters (the Forum). The Forum is an activity of the South Centre Tax Initiative (SCTI) which serves as a platform owned by developing countries to facilitate the networking and access to their officials to technical and academic resources, as well as to provide a venue for discussion among developing countries to identify collective efforts towards their participation in international tax fora and negotiations on matters of global economic governance. Discussions during the forum addressed the most relevant tax issues that may impact developing countries currently being discussed at the international level, especially in the OECD. The Forum also allowed the exchange of expertise among developing countries coming from Asia and the Pacific, Latin America and the Caribbean, and Africa, which consolidated this space as a necessary mechanism to identify coordinated positions among developing countries towards the consolidation of a network of tax officials from developing countries and strengthening their voice in the international fora.

<https://www.southcentre.int/scti-report-january-2020/>

Intellectual Property and Trade Measures to Address the Covid-19 Crisis by the South Centre (Call for Action, 2020)

The South Centre views with concern the attempts by some governments and industry players to monopolize the availability of treatments, diagnostics, medicines, medical supplies and devices needed for their own nationalist agenda or to maximize profit, ahead of societal interest in tackling the Covid-19 pandemic. The private enforcement of patents and government trade restrictions may pose a dire threat to the containment of this global public health emergency. Governments should act swiftly to put in place legislation and plans to ensure that patents and trade measures do not become barriers for access to those products.

<https://www.southcentre.int/call-for-action-ip-and-trade-measures-to-address-the-covid-19-crisis/>

<https://www.southcentre.int/wp-content/uploads/2020/04/Covid19-CL-Table-FINAL.pdf>

<https://www.southcentre.int/compilation-by-sc-trade-measures-adopted-by-countries-in-response-to-covid-19/>

COVID-19 PANDEMIC: ACCESS TO PREVENTION AND TREATMENT IS A MATTER OF NATIONAL AND INTERNATIONAL SECURITY (Open Letter, 2020)

Open letter from Carlos Correa, Executive Director of the South Centre, to the Director-Generals of the World Health Organization, World Intellectual Property Organization and the World Trade Organization

<https://www.southcentre.int/covid-19-open-letter/>

Designing an International Legally Binding Instrument on Business and Human Rights

By Daniel Uribe and Danish

The present document is substantially based on the background materials prepared by the South Centre (authored by Daniel Uribe, Danish and Kinda Mohamadieh) for various sessions of the Open-Ended Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights (OEIGWG), established by Resolution 26/9 of the Human Rights Council, held since 2015. The objective of this document is to provide support material for State delegations and other stakeholders for the negotiation of a binding international instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. The document considers a number of issues and technical details that have been addressed during the different sessions of the OEIGWG.

<https://www.southcentre.int/sc-publication-july-2020/>

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/>

India and recent updates on the OECD/G20 Inclusive Framework's Two-Pillar Approach (SouthViews No. 191, 13 March 2020)

By Subhash Jangala

The Organisation for Economic Co-operation and Development (OECD)/Group of Twenty (G20) Inclusive Framework in its January 2020 Statement has affirmed the commitment to arrive at a consensus-based solution to the tax challenges arising out of digitalization of the economy by the end of 2020 and take forward the on-going discussion on the two-pillar approach. This article examines some of the key issues in the Statement for developing countries, such as the scope, new nexus rules, role of accounting standards and proposed source rules. India's proposal on profit attribution through a two-factor apportionment using employees and assets is mentioned as a potential option for country-wise thresholds in the new nexus.

<https://www.southcentre.int/southviews-no-191-13-march-2020/>

The adverse human rights impact of economic inequality (SouthViews No. 192, 6 April 2020)

By Blerim Mustafa

Increasing economic inequality is a defining challenge of our time. Economic growth can often be disproportionate and unequal, adversely affecting marginalized and disadvantaged groups in society. Economic inequality has had adverse economic, social and political impacts for social stability and cohesion, political participation, poverty reduction, as well as the enjoyment of human rights. The realization of human rights cannot be separated from broader questions of economic and social justice.

<https://www.southcentre.int/southviews-no-192-6-april-2020/>

Reforming Responsibly: Why Governments Should Assess the Human Rights Impacts of Economic Reforms (SouthViews No. 193, 30 April 2020)

By Daniel Bradlow

The purpose of economic reforms is to change the structure and overall direction of an economy. They therefore will affect the amount and allocation of resources available to a country. This means that the reforms will also affect the human rights situation in the country. This requires impact assessments of each reform option before it is implemented.

<https://www.southcentre.int/southviews-no-193-30-april-2020/>

Will post COVID-19 pandemic lead to a climate compatible, more just, resilient and sustainable society? (SouthViews No. 194, 7 May 2020)

By Youba Sokona

As a result of the economic shutdown and physical lockdown triggered by the COVID-19 pandemic, greenhouse gas emissions, in particular CO₂, have decreased and air pollution levels have seriously dropped. However, the temporary reduction of greenhouse gas emissions resulting from the pandemic is not to be celebrated as it is not a result of deliberate climate and sustainable development policy. People who are the most vulnerable, most marginalized, and least empowered are the hardest hit by both COVID-19 and climate change. Both crises require robust scientific, evidence-based, accurate information in order to inform adequate policies and actions. They are global in nature and as such need global participation at all levels as well as strong international cooperation and transparency for their resolution.

<https://www.southcentre.int/southviews-no-194-7-may-2020/>

COVID-19: An Opportunity to Fix Dysfunctional Biomedical R&D System (SouthViews No. 195, 14 May 2020)

By Sreenath Namboodiri

Failures of the patent system to meet the public health priorities demand a new approach in research and development (R&D) financing and incentive to pharmaceutical innovations. An R&D model delinking the cost of R&D from the price of the product is the way forward.

<https://www.southcentre.int/southviews-no-195-14-may-2020/>

Taxing the Digital Economy to Fund the COVID-19 Response (SouthViews No. 196, 22 May 2020)

By Abdul Muheet Chowdhary and Daniel Uribe Teran

The COVID-19 pandemic has weakened global economic growth, raising pressures on revenue authorities to fund the fiscal stimulus necessary to contain the spread of the virus and provide income support to affected households. Accordingly, countries are taking national measures to tax the digital economy as highly digitalized businesses are seeing a rise in sales, subscribers and profits owing to the work from home lockdown measures. The three main policy responses undertaken are digital service taxes, nexus rules based on significant economic presence and withholding taxes on digital transactions. These are briefly summarized here and elaborated in detail in a forthcoming research paper by the South Centre Tax Initiative (SCTI).

<https://www.southcentre.int/southviews-no-196-22-may-2020/>

The post-Covid world needs a new social contract (SouthViews No. 197, 22 May 2020)

By Alfred de Zayas

The post-Covid world requires a new social contract. The United Nations Secretary-General should convene a World Conference on Post-Covid Recovery based on multilateralism and international solidarity. This entails a paradigm shift in the prevailing economic, trade and social models. Governments bear responsibility for their unwise and inequitable budgetary allocations, which prioritized military expenditures over investment in health, education and people-centered infrastructures. A new functional paradigm on human rights should discard the skewed and artificial division of rights into those of the first, second and third generations and impose new categories of enabling rights, inherent rights, procedural rights and end rights so as to ensure human dignity and development for all.

<https://www.southcentre.int/southviews-no-197-22-may-2020/>

COVID-19 Crisis and Developing Countries: Digital Health Perspective (SouthViews No. 198, 8 June 2020)

*By Ambassador Fauzia Nasreen, Dr. Azeema Fareed, Ms. Huma Balouch
Commission on Science and Technology for Sustainable Development in the South (COMSATS)*

Technology and Innovation are quintessentially relevant especially in dealing with the multiple threats posed by COVID-19. Most developing countries are already under tremendous stress because of financial constraints, enormous development challenges and technology innovation and knowledge deficiencies. COVID-19 which has disrupted every walk of life is having a multiplier effect on many countries, posing difficult governance choices. Reform and reorientation of the health system and structure is fundamentally important in dealing with the public health issues in the post COVID-19 period, and digital health could help in providing solutions.

<https://www.southcentre.int/southviews-no-198-8-june-2020/>

COVID-19 Economy vs. Human Rights: A Misleading Dichotomy (SouthViews No. 199, 12 June 2020)

By Juan Pablo Bohoslavsky

While COVID-19 is a threat to the rights to life and health, the human rights impact of the crisis goes well beyond medical and public health concerns. The health crisis itself and a number of state measures to contain it—mainly isolation and quarantine—are leading the world into an economic recession. States and others need to take preventive and mitigating measures urgently to contain the pandemic and these must entail global cooperation and coordination. Just as the health crisis response must be rooted in human rights law, so too must national and international responses to the drastic economic downturn.

<https://www.southcentre.int/southviews-no-199-12-june-2020/>

Making Covid-19 Medical Products Affordable: Voluntary Patent Pool and TRIPS Flexibilities (SouthViews No. 200, 16 June 2020)

By Sudip Chaudhuri

The proposal of Costa Rica to create a voluntary pool mechanism for medical products and technologies for COVID-19 has evoked huge interest and optimism. The World Health Organization (WHO) and Costa Rica have followed it up through a Solidarity Call emphasizing the need for voluntary licensing on non-exclusive basis to the Medicines Patent Pool (MPP). The success of a voluntary pool critically depends on the willingness of the patentees to join the pool. In a public health crisis, boundaries of public policy must not be determined by the patentees. MPP will work much better if the patentees are compelled or induced to join the pool. International cooperation is important in this regard. Highlighting the virtues of voluntary measures and promoting MPP without adequate emphasis on the use of compulsory licensing and other TRIPS flexibilities, actually weakens the MPP. In the light of the experience of MPP, the basic objective of this paper is to analyze to what extent voluntary pool mechanisms can be relied upon to make COVID-19 medical products affordable and accessible. It is important to appreciate the achievements of MPP. But the constraints under which it operates, and its limitations must also be kept in mind.

<https://www.southcentre.int/southviews-no-200-16-june-2020/>

The Weakness of Economic Multilateralism/La debilidad del multilateralismo económico (SouthViews No. 201, 23 June 2020)

By/Por José Antonio Ocampo

The weakness of multilateral cooperation was evident at the meetings of the Group of 20 and the Bretton Woods institutions in Washington. The limited international cooperation contrasts with the ambitious domestic policies adopted by some developed countries, and in particular the United States, to manage their crisis. The big losers will be the emerging countries, for whom cooperation has so far been minimal.

La debilidad de la cooperación multilateral fue evidente en las reuniones del Grupo de los 20 y las instituciones de Bretton Woods que tuvieron lugar en Washington. La limitada cooperación internacional contrasta con las ambiciosas políticas internas que han adoptado algunos países desarrollados, y en particular los Estados Unidos, para manejar su crisis. Los grandes perdedores serán los países emergentes, para quienes la cooperación ha sido, hasta ahora, mínima.

<https://www.southcentre.int/southviews-no-201-23-june-2020/>

Lessons from COVID-19: Pharmaceutical Production as a Strategic Goal (SouthViews No. 202, 17 July 2020)

By Dr. Carlos M. Correa

As often said, major crises bring about challenges but also opportunities. The strategic importance of a local pharmaceutical industry has been growingly recognized as a result of the COVID-19 crisis. Developing countries should take advantage of this opportunity to strengthen their pharmaceutical industry, including biological medicines. Industrial policies would need to be reformulated under an integrated approach so as to expand value added & create jobs while addressing public health needs. South-South cooperation may also play an important role in increasing the contribution of developing countries to the global production of pharmaceuticals.

<https://www.southcentre.int/southviews-no-202-17-july-2020/>

**Coronavirus pandemic: the vaccine as exit strategy
A GLOBAL HURDLE RACE AGAINST TIME WITH A SPLIT JURY (SouthViews No. 203, 24 July 2020)**

By Francisco Colman Sercovich

Sars-CoV-2, a novel pathogen, submits a stern warning, a clarion call, on the huge human costs of shortsightedness, inaction and lessons lost in the face of common predicaments at the global level. Yet, a number of key actors remain oblivious, including ethically-challenged politicians seeking to elbow their way to the front of the queue at the expense of the poorest and most vulnerable nations and communities. Contrary to expectations being formed, a safe and effective vaccine for the Covid-19 strain once, if ever, attained, is the best way out but unlikely to do as a silver bullet in the midst of the complexities and unknowns at play.

As a result of the harmful impact of the pandemic and ensuing policy aftermath, the world runs the risk of squandering the gains barely made in the fight against poverty over the last few decades – a looming scenario of egregious global governance failure, in view of the eight close calls recently received (three flu epidemics or near-flu epidemics, two Sars episodes, one Mers episode, Zika & Ebola). A promptly and universally distributed vaccine promises to prevent future disease outbreaks. However, many scientific, economic and distributional hurdles stand in the way. Whilst each day counts, the survival of hundreds of millions of lives hangs in the balance as health issues and those pertaining to livelihoods, nutrition, schooling and deprivation are so closely interdependent. Can we rule out the need to resort to internationally sanctioned legal remedies as an inescapable response?

<https://www.southcentre.int/southviews-no-203-24-july-2020/>

The Covid-19 Pandemic and Liability under Investment Treaties (SouthViews No. 204, 11 August 2020)

By Muthucumaraswamy Sornarajah

COVID-19 can increase liability for countries under international investment treaties. Professor M. Sornarajah, Emeritus Professor at the National University of Singapore, discusses in this *SouthViews* the imminent challenges faced under such treaties by developing countries. The text is based on his presentation at the South Centre webinar on “Responsible Investment for Development and Human Rights: Assessing Different Mechanisms to Face Possible Investor-State Disputes from COVID-19 Related Measures” held on 30th July 2020. The recording of the webinar is available here: <https://www.youtube.com/watch?v=yXPswKuywvA>

<https://www.southcentre.int/southviews-no-204-11-august-2020/>

Digital Sequence Information (DSI) and national measures: approaches and perspectives (SouthViews No. 205, 31 August 2020)

By Jorge Cabrera Medaglia

Digital sequence information (DSI, or genetic sequence data) is an emerging aspect of synthetic biology which involves certain functional genetic sequences being shared by different means. The genetic sequences from plants, animals or micro-organisms could be used to support conservation and sustainable use of biological diversity, to develop and commercialize new products and processes, or for other purposes. The regulation of the use of DSI for both commercial and non-commercial entities may have huge implications for the access and benefit-sharing (ABS) regimen established in the international instruments, ongoing processes and regional and national legislation that implement these conventions. International guidance is needed to promote a coordinated approach to secure fair and equitable sharing of benefits while avoiding a negative impact on the non-commercial benefits arising from the genetic data.

<https://www.southcentre.int/southviews-no-205-31-august-2020/>

Digital Transformation: Prioritizing Data Localization (SouthViews No. 206, 25 September 2020)

By Bilal Zaka

After years of rather stable and predictable growth of telecommunications and software systems, the last decade has witnessed a tremendous shift towards unpredictable and disruptive innovations in every field of life. Today, we are experiencing the true social, political, financial and cultural effects of what is termed as globalization, deregulation, liberalization and convergence. Some major factors influencing this change are proliferation of mobile devices, ubiquitous wireless access to internet and increasing interventions of online or internet-driven technologies. While this digital transformation is inevitable, it is imperative that we equip ourselves to handle the negative implications of external influence caused by foreign dependencies and the non-regulatory nature of the new information ecosystem.

<https://www.southcentre.int/southviews-no-206-25-september-2020/>

Is the right to exclusivity a Hamlet question? (SouthViews No. 207, 28 September 2020)

By Justice Prabha Sridevan

Today the judicial authority may be faced with balancing patent rights and patients' rights or right to life. It shall use all the tools at its command and innovate if necessary, but shall rule in favour of life.

<https://www.southcentre.int/southviews-no-207-28-september-2020/>

Access to medical supplies and devices — the lesser known story of COVID-19 and medical monopoly (SouthViews No. 208, 19 October 2020)

By Salimah Valiani

Discussions around access to potential vaccines for COVID-19 are widespread, particularly in the global South. Much less discussed is the lack of access to already existing medical technology crucial to stemming the spread of the novel coronavirus and assisting its most severely affected victims. The latter is the outcome of the monopoly control of medical technology — a phenomenon stretching at least as long as the monopoly of Big PHARMA — though much less understood.

<https://www.southcentre.int/southviews-no-208-19-october-2020/>

Creative imitation at the front of pharma biotechnology opportunities: some lessons from late late industrialization countries (SouthViews No. 209, 30 October 2020)

By Pablo Lavarello and Sebastián Sztulwark

Given that high-cost biopharmaceutical drug patents have started to expire since the early 2000s, biotechnology opens up opportunities for developing countries to pursue an upgrading process by entering the sector as early imitators. Developing these opportunities was transformed on priority needs of health systems since the outbreak of COVID-19. Certain developing countries have advanced in a strategy of imitating biotechnological reference drugs once their patents have expired, opening a possibility for a catching up process.

<https://www.southcentre.int/southviews-no-209-30-october-2020/>

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