

Semester Report

January - June 2022



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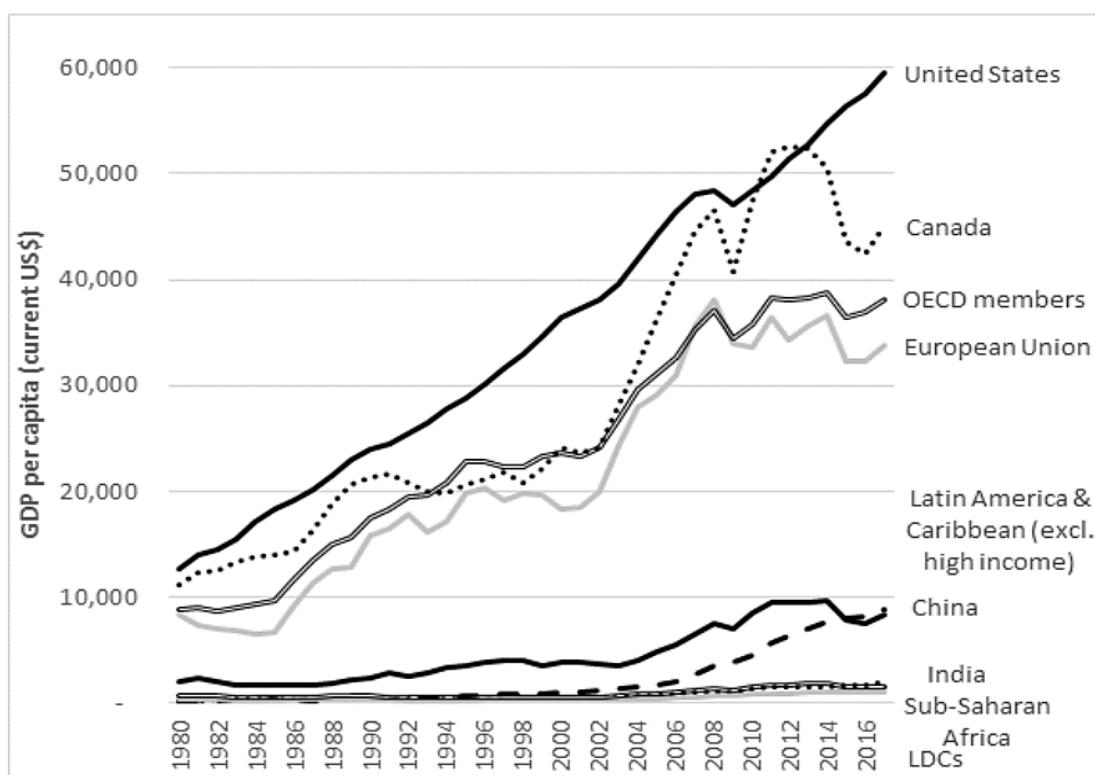
South Centre's continuous support to developing countries amid multiple global crises

While global inequality continues to grow, developing and least developed countries face multiple crises in the context of a weak recovery from COVID-19, massive outflows of capital, decline of Official Development Assistance, monetary policy tightening, increase in food and energy prices and the impact of climate change. This document presents a brief analysis of the situation faced by South Centre's members and other developing and least developed countries and provides a summary of the activities undertaken by the Centre in the period January – June 2022.

I. Introduction

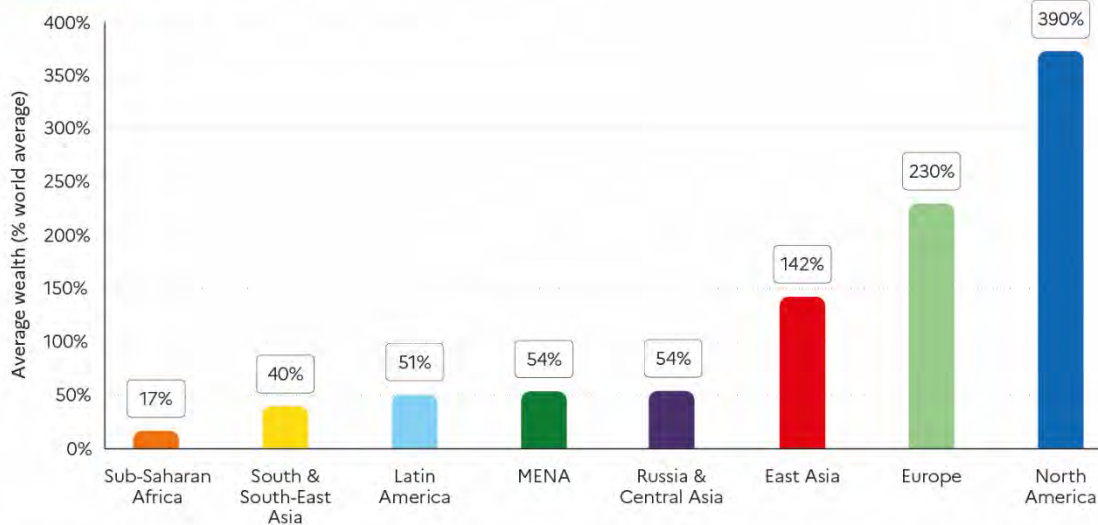
1. As shown in the figures below, the gross domestic product (GDP) per capita gap between (selected) developed and developing countries has remained high and continued to grow since the 1980s despite the progress that some developing countries have made to achieve the Sustainable Development Goals (SDGs). The inequality in the global wealth distribution is profound and has only grown with the COVID-19 pandemic, which exposed how unprepared countries were for unexpected shocks and how deeply divided the global economy has become.

GDP Per Capita in Current US\$ of Selected Countries and Country Groups 1980-2017



Source: World Bank, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>

Figure 1.2b Average wealth across world regions, 2021



Interpretation: In 2021, the average wealth of North America is 390% of world average wealth (at Purchasing Power Parity). Net household wealth is equal to the sum of financial assets (e.g. equity or bonds) and non-financial assets (e.g. housing or land) owned by individuals, net of their debts. **Sources and series:** [wir2022.wid.world/methodology](https://www.wid.world/methodology).

Source: World Inequality Report 2021

2. The recovery from the pandemic has been weaker in the developing economies, as reflected in larger output losses in comparison with pre-pandemic projections. In accordance with recent estimates by the United Nations Development Programme (UNDP) (July 2022), the GDP per capita will remain below 2019 levels in one in five developing countries, pushing 71 million people into extreme poverty in the poor countries.
3. The response to the COVID-19 pandemic has depleted the fiscal revenue of many poor countries. The great finance divide has left most developing countries unable to respond to the health and economic crises and invest in sustainable development.
4. Monetary policy tightening has had broad ramifications, including reversing the direction of capital flows to developing countries. The flight to safety mood has resulted in persistent and massive outflows of capital from emerging markets. The interest rate hikes and the appreciation of the US dollar have been accompanied with portfolio outflows from emerging markets since March 2022, the longest such run in seven years. Higher cost of debt servicing owing to monetary tightening, capital outflows and currency depreciation in many developing countries and their very feeble fiscal position are the most dangerous cocktail for debt crisis.
5. Many countries have had no option but to resort to more borrowing. As a result, debt to GDP ratio of developing countries, which already reached a historic level in 2021, is getting higher in 2022. More countries are facing debt distress or already in debt distress. On average, developed countries use 3.5 per cent of revenue to pay interest on their debt, versus 14 per cent of revenue for the least developed countries.¹ The International Monetary Fund (IMF) reports that 60 per cent of low-income countries are in debt distress or facing a high risk of debt distress, but so also are 30 per cent of middle-income countries.

¹ See <https://unctad.org/webflyer/financing-sustainable-development-report-2022>.

6. Hence, it is not surprising that an increasing number of developing countries have requested for IMF programs. It is the least they want to do but it is the only resort at this moment. The Group of Twenty (G20) put in place the Debt Service Suspension Initiative (DSSI) to temporarily suspend debt service payments **from** the poorest countries, followed by the Common Framework which is meant to help countries in debt distress to restructure their unsustainable debt. The international community also scaled-up its financial support, including record IMF emergency lending and a \$650 billion allocation of special drawing rights, or SDRs—\$21 billion of which was allocated directly to low-income countries. The G20 leaders committed to support low-income countries with onlending \$100 billion of their SDRs to significantly magnify this impact. None of these mitigating measures, however, can solve the financial constraints faced by most developing countries.

7. To make things worse, climate change has caused extreme weather conditions in some countries including floods and draughts. Faced with hunger, malnutrition and various kinds of deprivation like health care and education, many governments in poor countries are not in a position to provide marginalized communities with access to affordable food, energy and essential services.

8. Despite a rebound of the global economy in 2021, the economic situation in 2022 is getting gloomier. Global GDP growth is nose diving, much lower than the forecast at the beginning of the year. Inflation is rampant, especially for some developing countries. COVID-19 is still lingering. Service industry, including tourism, has been having a much slower recovery than anticipated. Increased geo-political tension has intensified the spiking of commodity prices.

9. Many developing countries are facing major food security challenges, aggravated by the increase in the prices of cereals (by over 60% since the beginning of 2020)² and fertilizer shortages. Moreover, the world is in the grip of a major energy crisis as a result of the war in Europe, with countries worldwide affected by extremely high and volatile prices, particularly of fossil fuels, as noted by the United Nations (UN) Secretary-General's Global Crisis Response Group (GCRG) on Food, Energy and Finance.

10. The outlook for 2023 seems to be bleaker. The strong headwinds against the developing economies do not seem to be abating.

11. In view of the limited capacities of developing countries to cope with the human suffering and economic fallout caused by the multiple crises, immediate international financial support, debt relief and other actions to assist these countries are urgently called for. In July 2021 the Secretary-General's report on progress towards the Sustainable Development Goals had already noted that in 'truly transformative areas' such as reducing inequality, lowering carbon emissions and tackling hunger, progress had either stalled or reversed before the pandemic. Already then, the world was not on track to meet the SDGs by 2030. The pandemic has further undermined decades of development efforts.³

II. The South Centre's role

12. This section summarizes some of the issues the Centre has worked on and describes the main challenges faced in the scenario described above by the countries of the South on

² In the 62 most vulnerable countries, food import bills have increased by \$24.6 billion since the start of the war in Europe in February 2022 (see <https://www.fao.org/newsroom/detail/g20-fao-urges-finance-ministers-and-central-bank-governors-to-support-the-food-import-financing-facility/en>).

³ UN Economic and Social Council, Progress towards the Sustainable Development Goals, Report of the Secretary-General, 30 April 2021, E/2021/58.

which the Centre will continue to focus. Abstracts of the publications made in the first semester of 2022 are presented in the Annex.

- ***South-South Cooperation***

13. In the international development cooperation landscape, the decline of Official Development Assistance (ODA) in real terms is bound to be furthered in the coming years. One reason for this is the recently announced intention by the Group of Seven (G7) to divert their ODA commitments towards providing humanitarian assistance for refugees within their own territories. Another reason for the decline is that more developing countries have graduated from low-income or least developed country categories and have moved or are aiming to move to a higher category of classification of country development, which can also lead to less access to ODA, concessional financing and development assistance projects.

14. In contrast to the trend regarding ODA, the past few decades have seen a trend in developing countries towards greater formalization of their institutional structures for South-South and Triangular Cooperation (SSTrC). This is largely due to the changing landscape of international development cooperation, including North-South, South-South, and Triangular cooperation. The growing importance in magnitude and modalities of SSTrC activities, in particular South-South cooperation (SSC), and the diversion of ODA from Global South countries, have constituted the push and pull factors for the growing institutionalization of SSTrC.

15. Past decades of efforts in economic and technological catching-up with developed countries have allowed some developing countries to become vibrant emerging economies, offering growing markets and more opportunities for economic cooperation. Many other developing countries have also made significant progress in their economic and social development. Therefore, sharing of development experiences and good practices with other countries has become an important component of SSTrC. Naturally, the desire to strengthen solidarity among developing countries and reforming the governance structure of international cooperation to reflect the rising economic importance of developing countries have contributed to the increasing relevance of SSC, though it is not a substitute for North-South cooperation.

16. In this context, to leverage fully the potential of SSTrC has become an imperative for developing countries to realize their developmental and foreign policy objectives and the 2030 Agenda. It is also vital for their efforts towards increasing their international standing and strengthening solidarity with other developing countries. Most of the developing countries have governmental entities managing inward international development cooperation, especially for traditional large ODA recipient countries.

17. Work has continued at the Centre under the concept of 'national ecosystems for SSTrC', primarily with the objective of enhancing the institutional capacity of developing countries to further engage in such cooperation (as both providers and recipients).

- ***Global Health***

18. In relation to what might be called "the state of global health", the COVID-19 crisis has prompted the international community to reflect on how to respond to this and similar crises in the future. As widely documented, international cooperation and solidarity have dramatically failed in terms of access to vaccines, diagnostics and treatment against COVID-19.

19. At the World Health Organisation (WHO), the idea of a binding international treaty to

address the pandemic has been agreed upon and is moving slowly. It has taken two years to agree to start negotiations. In parallel, negotiations will begin in the second half of 2022 on revisions to the existing International Health Regulations on public health emergencies. The South Centre's supportive role in these negotiations will continue to be crucial - these parallel processes will require deep coordination among developing countries and are highly technical.

20. At the last World Health Assembly (May 2022) the member countries took the historic decision to recover the regular public budget of the Organization to reach at least 50% of regular contributions in the next 7 years. Paradoxically, in parallel a Financial Intermediary Fund for Pandemic Prevention, Preparedness and Response (FIF) with an allocation of 50 billion dollars was established in the World Bank and not in the WHO. While the pandemic is still not over, the war in Europe and a growing arms race risk diverting resources needed to address urgent needs in health, notably to ensure an Universal Health Coverage.

21. The South Centre has supported developing countries in WHO negotiations, identified approaches to incorporate equity into the pandemic treaty and the eventual review of the International Health Regulations and, *inter alia*, provided specialized advice regarding the freedom-to-operate for vaccine manufacturing in developing countries. The Centre has been the sole intergovernmental organization providing technical inputs and policy advice in many of these areas.

- ***Intellectual Property and Biodiversity***

22. The Centre has continued to provide expert advice on the use of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) flexibilities, notably the implementation of patentability standards that prevent 'evergreening' practices by pharmaceutical companies. The very specialized nature of this work and its impact have been recognized by Unitaid, currently a major funder of the Centre.

23. Biodiversity negotiations have been a priority for developing countries and will continue to do so in the remainder of 2022. Negotiations are expected to conclude in October in the governing body of the Convention on Biological Diversity (CBD) for a post 2020 Biodiversity Framework, including establishing rules governing access to genetic sequence information that comply with the objective of benefit sharing.

24. Negotiations restarted on establishing regulations of marine genetic resources in areas beyond national jurisdictions in the context of the United Nations Convention on the Law of the Sea (UNCLOS). Priorities are to establish a framework that provides for sharing benefits from exploitation of genetic resources found in the high seas including through a multilateral fund to support capacity building and technology transfer.

25. The World Intellectual Property Organization (WIPO) Assemblies in July 2022 have also given new impetus to negotiations on the protection of genetic resources and traditional knowledge. The date for a Diplomatic Conference to finalize a treaty on this matter is set to 2024, setting the stage for intense negotiations in the next two years.

26. The Centre was active prior to and during the World Trade Organization (WTO) 12th Ministerial Conference in providing arguments for and textual options for the 'TRIPS waiver' requested by India and South Africa and supported by the majority of developing countries to increase the supply of COVID-19 related products. Nearly two years of debate and negotiations over the proposed suspension of intellectual property for vaccines, treatments and diagnostics for COVID-19 ended in a modest decision that fell short of the requested solution. However, the WTO Conference decided to facilitate compulsory licensing of patents for vaccines during the COVID-19 pandemic. Developing countries were also able to obtain a mandate to negotiate the extension of the mechanism to cover COVID-19 medicines and

diagnostics. Further supporting these negotiations is a priority for the Centre in the second half of 2022.

27. To support education and harnessing new digital technologies for the creation of value and new jobs, copyright rules need to be clear and supportive. The South Centre expertise in the area will be essential to boost efforts to expand copyright limitations and exceptions in developing country copyright laws, in particular for the digital environment and new technologies such as text mining, and negotiate common understanding on these rules at WIPO. Work has started in this area and will continue in the coming months.

28. The South Centre has closely followed the processes mentioned above, undertook policy-oriented research and provided analyses and advice to developing countries. The Centre is called upon, continuing its historical trajectory, to provide core technical support to developing countries to advance their negotiation objectives in those areas including through the Group of 77+China and the Non-Aligned Movement.

- ***Responsible Investment and Human Rights***

29. The current international challenges mentioned above (COVID-19, inflation, food insecurity, the war in Europe) and the financial constraints affecting almost all developing countries make foreign direct investment (FDI) a priority to them. While the interest in promoting FDI remains high, there is a new wave of reforms with many developing countries and regions reviewing their international investment agreements. Developing countries continue to be pioneers in the design and modernization of these agreements and some of those reforms have positively impacted the development of an international investment framework that promotes environmentally sound and human rights respectful investments.

30. The South Centre will continue examining trends concerning bilateral investment treaties (BITs) and other international investment agreements (IIA), particularly protection standards, investors' responsibilities, preservation of national policy space to implement public policies, and changes to the current system for dispute settlement between states and investors. Notably, the Centre has been and will continue to be active in providing analyses and supporting developing countries in the ongoing negotiations in Working Group III (WGIII) of the United Nations Commission on International Trade Law (UNCITRAL).

31. The Centre will also increase its efforts towards providing technical support and training on responsible investment and human rights issues. These activities will contribute to the inclusion of international standards in IIAs to promote fair and just environmental, economic, and human rights practices through capacity building exercises and exchange of experiences at national and regional levels. The South Centre will continue to engage with developing countries, intergovernmental organizations, and United Nations Special procedures to provide technical inputs on this matter.

- ***International Tax Reform***

32. The South Centre through its Tax Initiative (SCTI) has been strongly engaged in the negotiations on the taxation of the digitalized economy. The last two years some solutions have been produced by both the United Nations Tax Committee and the Organisation for Economic Co-operation and Development (OECD) Inclusive Framework. The SCTI has been working to affect both processes, with the final details of the latter pending. It is expected that by early 2023, the OECD solution, known as 'Amount A of Pillar One', will be incorporated into a Multilateral Convention (MLC) and placed before the membership of the Inclusive Framework for signature. Many of the South Centre's Member States are part of the Inclusive Framework and will have to take a historic decision on whether to accept it or not. To assist countries in decision-making, the SCTI has been producing analyses of the proposals and revenue estimates from the different policy options. Work on this line will continue given the high importance of the topic at the level of the G20 and the OECD.

33. There are several other issues which the developing countries are trying to raise through the UN Tax Committee. These include the taxation of computer software, the global minimum tax, international shipping, and others. The SCTI will continue to support these negotiations on the reform of the international tax system. The revenue requirements of the developing countries are expected to significantly increase in the wake of the global economic downturn. The SCTI stands ready to provide technical assistance and capacity building programs to its Member States on topics of their interest to support them in raising tax revenues.

- ***Climate Change***

34. Climate change is a key challenge of our time, not only because it is a real threat to human life itself but also because its effects permeate almost all domestic and international activities and the development of policies to face it. Many climate change related issues are growing in relevance in international negotiations, such as human rights, trade and environment, water scarcity, health, biodiversity loss and environmental degradation. The South Centre will continue to follow the evolution of the international response to these challenges in different forums, particularly in the negotiations under the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement.

35. Given the growing impact of climate change in multiple areas, the Centre has focused on the analysis of its relationship with other policy areas that are critical to achieve the SDGs, notably the relationship of climate change with the realization of human rights, including through a legally binding instrument on businesses and human rights, and with policies aimed at promoting sustainable investment.

36. On this matter, the South Centre continued to implement in the first semester of 2022 the readiness project with the Green Climate Fund and the government of Lebanon. This project, in its last stage of implementation, has been successfully executed. It has contributed to the design of a Lebanese Country Program, a Non-Objection procedure, and a comprehensive gaps assessment for the government of Lebanon, among other outcomes. The project provided the South Centre with an important experience in its relationship with climate finance.

- ***Human Rights and Vulnerable Groups***

37. The South Centre is also committed to the promotion of the implementation of the UN Declaration on Peasants and other people working in rural areas. This is an important tool to promote the rights of one of the more vulnerable groups worldwide. In that regard, the South Centre has been working with civil society organizations, academia, and the Permanent Mission of Bolivia aiming at creating a UN special procedure to help implement the declaration.

- ***Trade and Development***

38. The outcomes of the WTO 12th Ministerial Conference (MC12) in June 2022 signify a political shift towards unlocking the seemingly intractable positions of Member States that overshadowed progress in WTO negotiations for more than two decades. However, they have opened the door to new approaches to trade rules on the treatment of developing countries and least developed countries (LDCs), and how their policy space to address development needs may potentially be curtailed by new trade rules. This will become increasingly challenging for the Global South as the United States, the European Union (EU) and their partners seek to introduce 'differentiation' by compelling emerging developing countries to undertake the same level of commitments as developed countries (such as in

the Fisheries Subsidies Agreement-FSA) and undermine the unconditional right for all developing countries to claim Special and Differential Treatment.

39. New trade rules are being pursued to curtail the policy space of developing countries while developed countries seek to regain industrial sovereignty and reshoring through trade policy instruments including increasing or creating new industrial subsidies, such as in the case of semiconductors. This increased protectionism and unilateral measures will negatively impact the economic, financial and trade recovery of developing countries in the post-COVID context.

40. A big disappointment was the lack of any substantial outcome for the world's poorest countries, the LDCs, at MC12. Since 1971, only six countries have left the category of LDC. In 2022, only ten WTO LDC Members are on a firm path to graduation but with no special flexibilities for an additional period for their smooth transition after graduation from the LDC category. The South Centre has worked with developing countries and LDCs to provide support in the negotiations to craft rules that will promote their increased participation and fair integration in the global economy.

41. The 'sustainability' agenda has entered the WTO work stream through the adoption of the FSA. As WTO Members commence work on the ratification of the FSA, only time will tell whether the provisions in the agreement will have 'positive effects on the sustainability of marine fish stocks and fisheries'. Based on a plain reading of the FSA, the provisions fall substantially short of meeting the UN SDG target in 14.6 as it may unfairly discriminate against Member States who do not have the capacity and resources to rebuild fish stocks, thus giving developed countries -who are large vessel holders- the policy space to continue granting capacity enhancing subsidies to their domestic fishing fleet. The South Centre will provide technical assistance and capacity building to developing countries to facilitate a greater understanding of the reforms Members will have to undertake to implement the FSA, comply with their notification obligations, and prepare them for the next stage of the WTO negotiations to develop comprehensive disciplines on fisheries subsidies.

42. MC12 outcomes on the TRIPS Decision, Pandemic Response and Food Insecurity are nothing short of *too little too late*. These outcomes are mere clarifications or verbose, exhortative statements reaffirming existing WTO commitments. One of the major upsets was the lack of substantive outcomes on Agriculture – there were no concrete steps taken to increase the flow of food, except for a commitment not to maintain export restrictions on food purchased by the World Food Programme for humanitarian purposes and a promise to ensure that any emergency food security measures would be minimally trade distortive, temporary, targeted, and transparent. There were no outcomes on a work programme for future negotiations in agriculture notably reforming trade distorting agricultural subsidies, a longstanding issue of offensive negotiating interest to the Global South.

43. One of the major challenges for the Global South emerging from the MC12 was the mandate to "commit to work towards necessary reform of the WTO." While the WTO reform agenda remains elusive, there are several systemic changes to the functioning of the WTO that developed countries are advocating. These include revitalizing the negotiating function of the WTO by expanding rules to new areas such as Digital Trade, Environmental Goods and Services, and Plastics Pollution; targeting developing countries by tightening rules on industrial subsidies, State Owned Enterprises, and technology transfer; amending consensus decision-making requirements and procedures in the constitutive agreement of the WTO to facilitate flexible negotiating approaches and eliminate the requirement for a two-tier dispute settlement system; increase the monitoring functions of the WTO through enhanced transparency and notification obligations, and establishing a bigger role for the WTO Secretariat. Together with the sustainability objectives through discussions and potentially new rules on trade and environment, fossil fuel subsidies reform, and carbon pricing, the Global South is entering a new realm of negotiations in the WTO under the guise of 'sustainable development'.

44. The South Centre will continue to be fully engaged in providing advice on this complex agenda. As the Global South prepare to define their interests in the WTO post-MC12, the South Centre will continue to build and strengthen coalitions to promote South-South solidarity which is imperative for carving out the much-needed policy space and providing technical support to developing countries to mainstream development in the WTO.

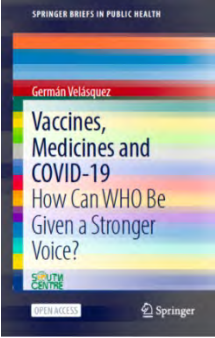
- ***Conclusion***

45. In summary, the South Centre has continued in this period to actively support developing countries in their response to the current crises and in their recovery and development efforts in the areas defined by its Work Program. This has been done through its three pillars of work: policy-oriented research, support to negotiations and technical assistance & training.

46. The activities conducted by the Centre wouldn't have been possible without the guidance of the Board and its Chairperson, the support of its Member States and of the organizations that fund various projects and, of course, a competent and committed staff. It wouldn't have been possible either without the cooperation of a large number of institutions and experts (from both the South and the North) who have contributed with research inputs or collaborated in the numerous trainings and seminars/webinars organized or co-organized by the Centre.



Annex: South Centre Major Research Outputs (January – June 2022)

Books

Title/Author	Abstract/Link
 <p style="text-align: center;"><i>By Germán Velásquez</i></p>	<p>The considerable health, economic and social challenge that the world faced in early 2020 with COVID-19 continued and worsened in many parts of the world in the second half of 2020 and into 2021.</p> <p>How can an agency like WHO be given a stronger voice to exercise authority and leadership?</p> <p>This book is a collection of research papers produced by the author between 2020 and early 2021 that helps answer this question. The topics address the state of thinking and debate – particularly with regard to medicines and vaccines – that would enable a response to this pandemic or subsequent crises that may emerge.</p> <p>This book presents the South Centre’s reflections and studies to provide policymakers, researchers and other stakeholders with information and analysis on issues related to public health and access to medicines and vaccines in the context of COVID-19.</p> <p>https://www.southcentre.int/book-by-the-south-centre-2022/</p>

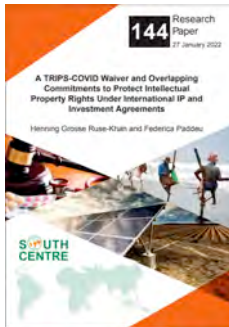
Research Papers

Title/Author/Date	Abstract/Link
<p>Competition Law and Access to Medicines: Lessons from Brazilian Regulation and Practice (Research Paper 142, 4 January 2022)</p> <p><i>By Matheus Z. Falcão, Mariana Gondo and Ana Carolina Navarrete</i></p>	<p>Competition law may play an important role in drug pricing control by containing high prices derived from economic violations. Since the use of competition tools is not limited by the TRIPS Agreement or other international binding disciplines, there is ample policy room to explore how countries, especially in the Global South, can benefit from strengthening their jurisdiction on that matter. This article briefly explains the Brazilian Competition System by describing the structure of the Brazilian competition authority (CADE – Administrative Council for Economic Defense) and the main economic violations set forth by Brazilian law. It describes the convergence of competition with the consumer protection system. It also discusses three relevant pharmaceutical market cases examined</p>

	<p>by the competition authority (sham litigation, overpricing and economic abuse, buy-and-raise and exclusionary practices). Finally, it presents some lessons from the Brazilian case on the challenges of using competition law to confront abuse or misuse of intellectual property rights in the pharmaceutical market, with lessons to other developing countries.</p> <p>https://www.southcentre.int/research-paper-142-4-january-2022/</p>
<p>Direito Brasileiro da Concorrência e Acesso à Saúde no Brasil: Preços Exploratórios no Setor de Medicamentos (Research Paper 143, 11 de janeiro de 2022)</p> <p><i>Por Bruno Braz de Castro</i></p> 	<p>O presente trabalho tem por objeto analisar interfaces entre o Direito da Concorrência brasileiro e o tema do acesso a medicamentos, com especial atenção aos abusos de direitos de propriedade industrial em seus efeitos exclusionários e exploratórios. O trabalho analisa a jurisprudência do Conselho Administrativo de Defesa Econômica (CADE) no setor de medicamentos e discute os abusos visando à imposição ilegítima de direitos de propriedade intelectual inexistentes ou inválidos com finalidade anticompetitiva. Em seguida, aborda os abusos no exercício de direitos de propriedade industrial que sejam, por si, válidos: práticas exclusionárias, voltadas à elevação artificial de barreiras à entrada, e práticas exploratórias, traduzidas diretamente no exercício de poder de mercado em detrimento ao consumidor. Estas últimas são manifestadas na forma de preços excessivos exploratórios, degradações contratuais, de qualidade ou de privacidade, bem como restrições na oferta como o açambarcamento/impedimento de exploração de direitos de propriedade industrial. O artigo conclui pela validade e eficácia jurídica da proibição a preços exploratórios pela Lei de Defesa da Concorrência vigente, com certas preocupações metodológicas a fim de minorar o risco de condenações errôneas (como a construção de testes “screening” de mercados-candidatos a intervenção). Em atenção a tais diretrizes, o setor de medicamentos comparece como candidato importante à atenção antitruste, haja vista a magnitude dos prejuízos potencialmente derivados da não-intervenção sobre a prática. Remédios nessa seara, de modo importante, devem focar na identificação e solução dos problemas competitivos estruturais do setor. Em caso de medicamentos sujeitos à regulação de preços pela Câmara de Regulação do Mercado de Medicamentos (CMED), a expertise técnica da autoridade concorrencial poderá ser de grande valia em sede de advocacia da concorrência, o que é demonstrado à luz das discussões recentes acerca do reajuste extraordinário de preços em virtude de problemas concorrenciais de determinado mercado.</p> <p>https://www.southcentre.int/research-paper-143-11-de-janeiro-de-2022/</p>
<p>A TRIPS-COVID Waiver and Overlapping</p>	<p>This paper considers legal implications that are likely to emerge from the implementation of a TRIPS Waiver decision. Assuming that a Waiver is adopted in the form presented in the May 2021 proposal by</p>

Commitments to Protect Intellectual Property Rights Under International IP and Investment Agreements (Research Paper 144, 27 January 2022)

By Henning Grosse Ruse-Khan and Federica Paddeu



South Africa and India et al, we review the interaction between the Waiver and other commitments to protect IP rights under international IP and investment treaties. Our principal research question is to analyze whether domestic measures implementing the Waiver are compatible with the implementing State's other obligations to protect IP rights established under multilateral IP treaties, IP and Investment Chapters of FTAs as well as BITs. In light of typical examples for such overlapping commitments, we first focus on (1) defences directly affecting compatibility with these treaty commitments (here referred to as 'internal' defences). In a second part, we review (2) potential defences under general international law that may serve to justify (in other words, to preclude the wrongfulness of) such measures. We conclude that often internal and/or general defences will operate to support the implementation of the Waiver despite overlapping commitments in international IP and investment law. This conclusion is reinforced by a purpose-oriented understanding of the TRIPS Waiver as authorizing measures necessary to achieve the goal of "unimpeded, timely and secure access" for all to covered medical technologies "for the prevention, treatment or containment of COVID-19".

<https://www.southcentre.int/research-paper-144-27-january-2022/>

The Right to Health in Pharmaceutical Patent Disputes (Research Paper 145, 9 February 2022)

By Emmanuel Kolawole Oke



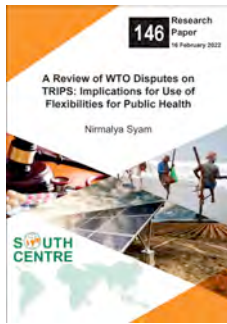
This paper examines how the courts in three developing countries (Kenya, South Africa, and India) have addressed the tension between patent rights on pharmaceutical products and the right to health. The paper begins by examining the nature of the relationship between patent rights and the right to health. It thereafter explores the justiciability of the right to health in Kenya, South Africa, and India. Furthermore, the paper provides an analysis of how the courts in these three developing countries have adjudicated some of the pharmaceutical patent cases involving tensions between the right to health and patent rights. The paper contends that by incorporating the right to health into the adjudication of patent disputes, courts in developing countries can play a crucial role in improving access to medicines at affordable prices.

<https://www.southcentre.int/research-paper-145-9-february-2022/>

A Review of WTO Disputes on TRIPS: Implications for Use of Flexibilities for Public Health (Research Paper 146, 16 February 2022)

The use of TRIPS flexibilities by WTO members involves interpretation of the obligations under TRIPS which can be challenged under the WTO dispute settlement system. Mutually agreed solutions, panel or Appellate Body decisions adopted in such disputes can thus impact the scope of TRIPS flexibilities to address, among others, public health objectives. This paper explores how the WTO dispute settlement system applies to disputes under TRIPS, and reviews the outcomes of the disputes relating to the implementation of TRIPS obligations in the context of pharmaceutical products. The paper points to both systemic and

By *Nirmalya Syam*



substantive concerns arising from the application of the dispute settlement system to disputes under TRIPS. It finds that the dispute settlement system is not aligned to the unique nature of the TRIPS Agreement in the WTO as an agreement that creates positive obligations, and consequently how jurisprudence arising under disputes concerning other covered agreements having negative obligations, have led panels and Appellate Bodies to adopt narrow interpretations of the scope of TRIPS flexibilities in some of the few disputes arising under the TRIPS Agreement. Moreover, mutually agreed settlements adopted in the context of some of the disputes arising under TRIPS have also led to the adoption of TRIPS plus standards, limiting the scope of TRIPS flexibilities. However, in a recent decision, the WTO panel has also relied on the Doha Declaration on TRIPS and Public Health as a subsequent agreement to guide the interpretation of its provisions. In this context, the paper advances some suggestions to address the systemic and substantive issues arising from the application of the dispute settlement system to the TRIPS Agreement.

<https://www.southcentre.int/research-paper-146-16-february-2022/>

Can Negotiations at the World Health Organization Lead to a Just Framework for the Prevention, Preparedness and Response to Pandemics as Global Public Goods? (Research Paper 147, 28 February 2022)¹

By *Viviana Muñoz Tellez*



This paper advances that WHO Member States, having agreed to the objectives of advancing equity and solidarity for future pandemic prevention, preparedness and response, now must operationalize these. The paper offers suggestions for the ongoing WHO processes of: 1) review of recommendations under examination by the Working Group on Strengthening WHO Preparedness and Response to Health Emergencies, 2) consideration of potential amendments to the International Health Regulations (IHR) 2005, and 3) elaboration of a draft text for an international instrument on pandemic preparedness and response.

<https://www.southcentre.int/research-paper-147-28-february-2022/>

Marine Genetic Resources Beyond National Jurisdictions: Negotiating Options on Intellectual Property (Research Paper 148, 7 March 2022)

By *Siva Thambisetty*

Negotiations on marine biological diversity of areas beyond national jurisdiction (BBNJ) convene after a significant hiatus during which intellectual property monopolies have come under intense normative and pragmatic scrutiny. This paper historicises developments in legal arrangements over intellectual property and biodiversity to propose several negotiating options on the control, use and circulation of marine genetic resources of areas beyond national jurisdiction. The text-based options presented here operationalise an equitable

¹ The French & Spanish versions of the paper have also been made available in the first semester of 2022.

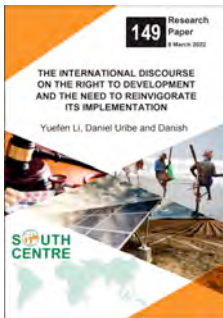


approach taking into account the interests of low power groups, cross-cutting issues and the often ignored question of the ownership and use of marine genetic resources through intellectual property rights.

<https://www.southcentre.int/research-paper-148-7-march-2022/>

The International Discourse on the Right to Development and the Need to Reinvigorate its Implementation (Research Paper 149, 8 March 2022)

By Yuefen Li, Daniel Uribe and Danish



The world is currently at an ebb for realizing the Right to Development (RtD). Weakening of multilateralism, de-globalization, the scars left by the COVID-19 pandemic, misinterpretation and dilution of the RtD, and inertia to reform international governance are among the multitude of reasons for this phenomenon. However, the need for a better, more inclusive and greener recovery, and the efforts necessary to attain the 2030 Agenda, have provided the international community an opportunity to reinvigorate the realization of the RtD. These efforts have shown the great relevance of RtD to promote a people-centred and fairer development process and the need for an international enabling environment in order to promote the kind of development we want.

This paper reviews the history of international discourse on RtD including major milestones, main divisive issues between the global South and the North, the evolution of voting patterns on intergovernmental outcomes, existing legal and political issues currently being discussed, the various mechanisms on the RtD, and recommendations on the way forward to revitalize the implementation of RtD at the 35th anniversary of the Declaration on Right to Development.

<https://www.southcentre.int/research-paper-149-8-march-2022/>

The Liability of Internet Service Providers for Copyright Infringement in Sri Lanka: A Comparative Analysis (Research Paper 150, 21 March 2022)

By Ruwan Fernando

The exclusive rights enjoyed by a copyright owner to reproduce his protected work in any material form, including any permanent or temporary storage in electronic form will have a direct impact on the lawful activities of an internet service provider (ISP). Any transmission of temporary copies of material protected by copyright law by their subscribers or third parties using the networks provided by an ISP may amount to unauthorised reproduction of such protected material. The exclusive rights granted to a copyright owner may, thus, place an ISP in a difficult position that may seriously affect the legitimate services and facilities provided by an ISP such as transmitting, routing and storing of information on their networks. It would be impracticable however, to equate the position of a person who engages in traditional copyright infringement with that of an ISP who may merely provide access to the internet and various services to its subscribers facilitated by its networks.

The making of temporary copies exception was developed in the



copyright law to safeguard the legitimate interests of an ISP, which may under certain conditions, exempt an ISP from liability for copyright infringement on the internet initiated by its subscribers or third parties by using the system provided by an ISP. There are laws in force in many countries to limit the liability of an ISP for the infringement of copyright that takes place on its networks. An ISP in Sri Lanka may not enjoy the same privilege for the infringement of unauthorised material initiated by its users or third parties on their networks. The current law is unlikely to provide adequate protection for the legitimate activities of ISPs in an attempt to minimize the vulnerability against copyright infringement claims.

<https://www.southcentre.int/research-paper-150-21-march-2022/>

Escaping the Fragility/Conflict Poverty Trap: How the interaction between service delivery, capacity development and institutional transformation drives the process of transition out of fragility (Research Paper 151, 19 April 2022)

By Mamadou Dia



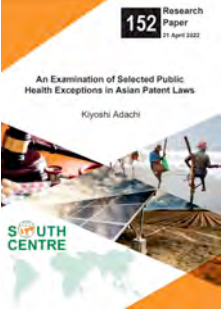


The main background and rationale of this research paper is that while donors' scaled-up engagements in Fragility and Conflict-affected States (FCS) during the last decades were a resounding success in terms of official development resources devoted to FCS, the value for money compared to the ultimate goal of helping these countries move out of fragility was well below expectations. The World Bank ex post evaluation of the results of its engagement in FCS found that 80 percent of FCS that were on the harmonized list of fragile situations in 2012 remain on it today and the author's observational study of a sample of 16 African FCS over a 5-year period found that only 1 made progress while 12 stayed in the status quo and 3 regressed. The main reason for the poor value for money is that while International Financial Institutions (IFIs) have spent tremendous amount of resources and brain power to build an excellent knowledge base about fragility and resilience, no such efforts were made to help understand the process and stages for a successful transition from fragility to resilience. The purpose of this paper is to help fill the knowledge gap in order to encourage development partners engaging in FCS to shift from a Fragility-focused to a Transition-based Engagement Business Model and thus minimize the risks of the poor value for money results. The paper will do so by outlining a methodology and framework for a better understanding of the process and a road map for a successful transition from fragility to resilience with measurable stage/sign posts and benchmarks to evaluate progress and necessary adaptation to donors' strategic and operational support instruments.

<https://www.southcentre.int/research-paper-151-19-april-2022/>

An Examination of Selected Public Health Exceptions in Asian Patent Laws (Research Paper 152, 21 April 2022)

By Kiyoshi Adachi

This study examines the variations within Asia of two exceptions to patent rights that are commonly justified under Article 30 of the World Trade Organization (WTO) Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPS Agreement), namely the research and experimentation exception and the regulatory review (or "Bolar") exception. Both these exceptions are important in the context of the 2001 Doha Declaration on the TRIPS Agreement and Public Health insofar as they are designed to provide flexibility to protect public health and support countries' overall scientific and technological aspirations. The study examines, from a comparative perspective, examples of these respective exceptions in patent legislation in South, Southeast and East Asia, and identifies

	<p>peculiarities in the variations among countries in these sub-regions.</p> <p>https://www.southcentre.int/research-paper-152-21-april-2022/</p>
<p>Patent Analysis for Medicines and Biotherapeutics in Trials to Treat COVID-19 (Research Paper 153, 26 April 2022)</p> <p><i>by Srividya Ravi</i></p> 	<p>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.</p> <p>The medicines considered for the patent analysis in this report are remdesivir, ruxolitinib, favipiravir, molnupiravir and nirmatrelvir, and the biotherapeutics tocilizumab, siltuximab and sarilumab.</p> <p>https://www.southcentre.int/research-paper-153-26-april-2022/</p>
<p>COVID-19 Vaccines as Global Public Goods: between life and profit (Research Paper 154, 9 May 2022)</p> <p><i>By Katuska King Mantilla and César Carranza Barona</i></p> 	<p>In the context of a health emergency like the COVID-19 pandemic, the global availability of and access to vaccines are imperative. This research paper provides an analysis from the perspective of international political economy, of the financing of COVID-19 vaccines and of the market strategies adopted by some of the companies that developed them. It notes that the development of vaccines was supported by substantial public funding from countries that later received preferential access to those vaccines through advance purchases. Despite such public support, the vaccines were not deemed as public goods but remained under the control of their developers.</p> <p>https://www.southcentre.int/research-paper-154-9-may-2022/</p>
<p>Manufacturing for Export: A TRIPS-Consistent Pro-Competitive Exception (Research Paper 155, 27 May 2022)</p> <p><i>by Carlos M. Correa and Juan</i></p>	<p>The paper discusses the flexibilization of the <i>sui generis</i> system of supplementary protection certificates (SPCs) under European law recently introduced to allow for the manufacturing, stockpiling and export of covered products. Against this background, it examines the viability under the Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPS Agreement) of an exception allowing for the manufacture and export of patent-protected</p>

I. Correa



products. It concludes that such an exception would promote competition and enhance access to medicines (including biologicals) for the general public while being consistent with Article 30 of the TRIPS Agreement if read in accordance with the principles of interpretation of customary international law.

<https://www.southcentre.int/research-paper-155-27-may-2022/>

A Tough Call? Comparing Tax Revenues to Be Raised by Developing Countries from the Amount A and the UN Model Treaty Article 12B Regimes (Research Paper 156, 1 June 2022)

By Vladimir Starkov and Alexis Jin



In this research paper, we attempt to estimate the tax revenues to be gained (or lost) by the South Centre and African Union's Member States under the Amount A and Article 12B regimes. Our analysis relied on sources of information available to private sector researchers but did not involve review of any information that taxpayers provide to tax authorities. Our research demonstrates that the comparative revenue effects of the Amount A and Article 12B taxation regimes largely depend on (a) design details of the Article 12B regime, (b) whether the country hosts headquarters of MNEs that may be in scope of Amount A or Article 12B taxation, and (c) what relief from double taxation, if any, the country will grant to domestic taxpayers subject to taxation under either the Amount A or Article 12B regimes.

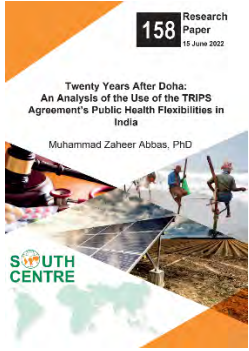
<https://www.southcentre.int/research-paper-156-1-june-2022/>

WTO Moratorium on Customs Duties on Electronic Transmissions: How much tariff revenue have developing countries lost? (Research Paper 157, 3 June 2022)

By Rashmi Banga





This research paper highlights the adverse impacts of the continuing WTO moratorium on customs duties on electronic transmissions on the developing and least developed countries. The rapidly progressing digitalization along with the ongoing pandemic and the food crisis are creating multiple demands on the government revenues. However, because of the moratorium almost all developing, and least developed countries are losing tariff revenues especially at the time when they are most needed. Not only are they losing the fiscal space but are also losing their regulatory space as they are unable to regulate the growing imports of digitizable products, especially of luxury items like the movies, music and video games. It is estimated that in the period 2017-2020, developing countries and LDCs lost \$56 billion of tariff revenue, of which \$48 billion were lost by the developing countries and \$8 billion by the least developed countries. It is interesting to note that this loss of tariff revenue is from the imports of just 49 products (at HS six-digit). With no clarity on the definition of electronic transmissions (ET) and thereby on the scope of the moratorium, the continuation of the WTO moratorium on customs duties on ET can lead to substantive tariff revenue losses for developing and least developed countries in the future.

	https://www.southcentre.int/research-paper-157-3-june-2022/
<p>Twenty Years After Doha: An Analysis of the Use of the TRIPS Agreement's Public Health Flexibilities in India (Research Paper 158, 15 June 2022)</p> <p><i>By Muhammad Zaheer Abbas, PhD</i></p> 	<p>The World Trade Organization (WTO) linked intellectual property protection with trade. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), however, included a number of public health flexibilities in order to provide latitude to the Member States to tailor their national patent laws to fit their individual needs. In 2001, the Doha Declaration further clarified and reaffirmed the existing TRIPS flexibilities. This paper argues that India has taken the lead role in enacting the TRIPS Agreement's substantive and procedural patent flexibilities by introducing unique legislative measures to deal with the problem of access to medicines. This article evaluates India's use of section 3(d) as a subject matter exclusivity provision. It examines constitutional validity and TRIPS compliance of section 3(d). It also evaluates India's use of the flexibility to define the term "inventive step". Moreover, this article evaluates India's use of compulsory licensing, the most notable exception to patent rights provided under the TRIPS Agreement. This empirical study is important in the context of the COVID-19 pandemic, which has once again highlighted the same public health issues that the Doha Declaration sought to address twenty years ago.</p> <p>https://www.southcentre.int/research-paper-158-15-june-2022/</p>

Policy Briefs

Title/Author/Date	Abstract/Link
<p>Global Minimum Corporate Tax: Interaction of Income Inclusion Rule with Controlled Foreign Corporation and Tax-sparing Provisions (Tax Cooperation Policy Brief 22, 12 January 2022)</p> <p><i>By Kuldeep Sharma, ADIT (CIOT,UK), FTI (Australia), Insolvency Professional (IBBI)</i></p>	<p>The OECD/G20 Inclusive Framework on BEPS (the Inclusive Framework) agreed on 8 October 2021 to the Statement on the Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy. The Two-Pillar Solution will ensure that MNEs will be subject to a minimum tax rate of 15%, and will re-allocate profit of the largest and most profitable MNEs to countries worldwide. Under these recommendations, inter alia, Pillar Two consists of two interlocking domestic rules (together the Global Anti-Base Erosion Rules (GloBE)), which includes an Income Inclusion Rule (IIR) to impose a top-up tax on a parent entity in respect of the low taxed income of a constituent entity. The IIR shall be incorporated in domestic laws of opting jurisdictions, and seems to have profound interaction with the Controlled Foreign Corporation (CFC) and tax-sparing provisions. The IIR operates in a way that is closely comparable to a CFC rule and raises the same treaty questions as raised by CFC rules, although there are a number of differences between the IIR and the CFC rules. In the context of IIR, there may be a case when the Ultimate Parent Entity (UPE) is taxed on the Constituent Entities' (CEs) income and the spared tax is not considered as covered taxes for calculating the Effective Tax Rate (ETR) of the CE. This generates a situation for developing countries in which they have to shore up their ETR by overhauling their tax</p>

	<p>incentive regimes and retooling domestic legal framework for more effective taxation of MNEs to avoid losing a significant portion of their tax right/base to a developed country. Adoption of IIR (which is an extension of CFC rules) under Pillar Two is therefore going to create conflict with the tax-sparing rules. From the perspective of developing countries, the adoption of GloBE implies losing tax incentives as a tax policy instrument to attract foreign direct investment. This is why every country involved, but especially developing countries, should undertake a thorough examination to determine whether such measures are convenient for their interests in the long run.</p> <p>https://www.southcentre.int/tax-cooperation-policy-brief-22-12-january-2022/</p>
<p>Artículo 12B: una solución del tratado tributario del Comité sobre Cooperación Internacional en Cuestiones de Tributación de la ONU para la tributación de ingresos digitales (Informes Sobre Políticas en Materia de Cooperación Tributaria 16, Julio de 2021)²</p> <p><i>Por Rajat Bansal</i></p> 	<p>La tributación sobre los ingresos de las empresas multinacionales dedicadas a actividades digitales por las jurisdicciones de origen y las de mercado es actualmente el desafío más importante para la comunidad tributaria internacional. El actual conjunto de miembros del Comité en cuestiones de tributación de las Naciones Unidas finalizó, en abril de 2021, una medida de tratados tributarios para abordar este desafío. Este informe explica la justificación para la solución particular de agregar un nuevo artículo a la Convención Modelo de las Naciones Unidas, sus méritos y cómo esto puede ser beneficioso para todos los países, especialmente los en desarrollo.</p> <p>https://www.southcentre.int/informes-sobre-politicas-en-materia-de-cooperacion-tributaria-16-juliod-2021/</p>
<p>Una carga molesta para naciones en vías de desarrollo: Cláusula de NMF en tratados impositivos (Informes Sobre Políticas en Materia de Cooperación Tributaria 17, Julio de 2021)³</p> <p><i>Por Deepak Kapoor, IRS</i></p>	<p>La cláusula de la nación más favorecida (“NMF”) de los convenios para evitar la doble tributación encarna el principio básico de no discriminación y tiene por objeto aportar paridad a las oportunidades empresariales y de inversión entre los países y las jurisdicciones partes en los tratados. La incorporación de disposiciones como las cláusulas de la NMF y de no discriminación en los tratados de tributación pretende promover la equidad entre las partes en los tratados. En el contexto de los tratados de tributación entre países desarrollados y en desarrollo, las cláusulas de la NMF también actúan como herramienta de negociación para contemplar mejores tipos impositivos en los tratados.</p> <p>Sin embargo, últimamente, estas cláusulas han empezado a manifestar</p>

² The English version of the paper was published in July 2021.

³ The English version of the paper was published in July 2021.



unos efectos negativos en los países de origen, que en su mayor parte son países en desarrollo. Por lo general, no parece que las cláusulas de la NMF estén creando posibles riesgos si son operativas entre dos países con el mismo grado de desarrollo, pero, cuando la relación se establece entre un país desarrollado y otro en desarrollo, donde una parte recibe de la otra más inversiones de las que hace, ese tipo de riesgo es inevitable. Recientemente, se han producido problemas a raíz de diversas interpretaciones de las cláusulas de la NMF por parte de los tribunales que han obligado a los países de origen a ampliar los beneficios de los tipos reducidos y el ámbito de aplicación restringido a los países parte en el tratado con arreglo a las normas de la NMF. Esa clase de interpretaciones beneficiosas han ido más allá del objetivo y el propósito básicos de las cláusulas de la NMF.

A tenor de causas judiciales que han tenido lugar recientemente en Sudáfrica y la India, parece que las cláusulas de la NMF están creando oportunidades de “reducción de impuestos” y están dando lugar a una erosión involuntaria de la base imponible de los países de origen. El problema también radica en la redacción y las formulaciones ambiguas de las cláusulas de la NMF, que finalmente provocan resultados negativos inesperados para los países que están obligados por compromisos futuros. Por consiguiente, en estos momentos, las jurisdicciones de origen necesitan con urgencia un examen exhaustivo de las cláusulas de la NMF existentes en los tratados de tributación, sus relaciones cruzadas y sus posibles efectos secundarios negativos en otros tratados.

<https://www.southcentre.int/informes-sobre-politicas-en-materia-de-cooperacion-tributaria-17-juliod-2021/>

Global Minimum Tax Rate: Detached from Developing Country Realities (Tax Cooperation Policy Brief 23, 11 February 2022)⁴



By Sebastien Babou Diasso



Under the umbrella of the G20 and the OECD, the Inclusive Framework adopted on 8 October 2021 a two-pillar solution to address tax challenges arising from the digitalization of the economy. However, these solutions do not respond to the needs of many developing countries, in particular the global tax minimum rate of 15%, in a context where most developing countries, defined as Member States of the South Centre and the G-77+China, have an average effective tax rate higher than the adopted rate. This policy brief provides information of the current effective tax rates in some developing countries, and highlights why the minimum rate of 15% in Pillar Two is insufficient for them. Tax revenue mobilization is important for developing countries to achieve the sustainable development goals. It is thereby recommended that developing countries simply ignore Pillar Two and maintain their current higher rate or increase their rate to an appropriate level and enforce it through unilateral measures rather than the rule order under Pillar Two, which they will have to follow if they decide to implement it.

<https://www.southcentre.int/tax-cooperation-policy-brief-23-11-february-2022/>

⁴ The French version of the paper has also been made available in February 2022.

<p>Mainstreaming Equity in the International Health Regulations and Future WHO Legal Instruments on Pandemic Preparedness and Response (Policy Brief 108, 25 March 2022)</p> <p><i>By Nirmalya Syam</i></p> 	<p>The Member States of the WHO are about to commence the most significant negotiations that could set the paradigm for international legal obligations for preparedness and response to future pandemics. These negotiations focus on amendments to the International Health Regulations (2005) (IHR) as well as the negotiation of a treaty or other legal instrument under the WHO Constitution that will complement the IHR to ensure better preparedness and response to future pandemics, drawing from the experiences of the ongoing COVID-19 pandemic. The most critical consideration for developing countries in these negotiations will be mainstreaming equity concerns, currently missing from the existing rules and mechanisms available globally to enable developing countries to effectively prevent and respond to a pandemic outbreak. In this context, this brief suggests some elements of equity that should be pursued through specific textual proposals by developing countries through amendments to the IHR.</p> <p>https://www.southcentre.int/policy-brief-108-25-march-2022/</p>
<p>Draft Fisheries Subsidies Agreement: some key issues to address for a sustainable catch (Policy Brief 109, 31 March 2022)</p> <p><i>By Peter Lunenborg</i></p> 	<p>This Policy Brief reviews the draft Chair’s text for a Fisheries Subsidies Agreement (WT/MIN(21)/W/5). Pursuant to Sustainable Development Goal 14.6, any agreement must effectively discipline fisheries subsidies especially of larger scale fisheries and distant water fishing fleets and must cater to the needs of developing countries including in the form of effective Special and Differential Treatment (S&DT).</p> <p>This Brief highlights several provisions of the text which would need to be improved to reach its mandated objectives. These provisions include the fisheries management flexibilities in Article 4.3 and Article 5.1.1 which would result in the continuation of fisheries subsidies; provisions on subsidies to fishing in Areas Beyond National Jurisdiction (ABNJ), subsidies to vessels not flying the flag of the subsidizing Member and non-specific fuel subsidies; due process requirements for determinations of Illegal, Unreported and Unregulated (IUU) fishing by coastal Members; treatment of subsidies to finance companies; the proposal purported to address forced labour; treatment of Regional Fisheries Management Organisations/Arrangements (RFMO/As) in the text; the relationship between the future Agreement and the Agreement on Subsidies and Countervailing Measures (ASCM) including their Committees; and the Agreement’s S&DT provisions.</p> <p>https://www.southcentre.int/policy-brief-109-31-march-2022/</p>
<p>Conceptualización de un Instrumento multilateral de la ONU (Informe sobre políticas en materia de cooperación tributaria 15, Junio de 2021)⁵</p> <p><i>Por Radhakishan Rawal</i></p>	<p>Los cambios que ha sufrido recientemente la Convención Modelo de las Naciones Unidas sobre la Doble Tributación entre Países Desarrollados y Países en Desarrollo han dado lugar a disposiciones mas favorables a los países en desarrollo, al aumentar los ingresos fiscales a través de la imposición de tributos internacionales, por ejemplo, en la imposición de tributos a los ingresos procedentes del extranjero. En esta imposición se incluyen, entre otros, los impuestos sobre los ingresos procedentes de</p>

⁵ The English version of the paper was published in June 2021.



servicios digitales automatizados, pagos de programas informáticos y plusvalías. Normalmente, estos impuestos se incorporarían en convenios fiscales bilaterales a través de largas negociaciones. En cambio, un instrumento multilateral de las Naciones Unidas permitiría actualizar de una manera mas acelerada varios convenios tributarios por medio de una sola negociación. Esto ayudará a los países en desarrollo a recaudar ingresos con mayor prontitud. En este informe sobre políticas se aborda la posible estructura de un instrumento multilateral de esa índole.

<https://www.southcentre.int/informe-sobre-politicas-en-materia-de-cooperacion-tributaria-15-juniode-2021/>

Analysis of the Outcome Text of the Informal Quadrilateral Discussions on the TRIPS COVID-19 Waiver (Policy Brief 110, 5 May 2022)

By Carlos M. Correa and Nirmalya Syam



Almost one and a half years after the proposal for a waiver of certain provisions of the TRIPS Agreement regarding health technologies for COVID-19 was proposed by India and South Africa with the support of the majority of WTO Members, the TRIPS Council has been unable to reach consensus on the proposed waiver or engage in text negotiations. In this context, the TRIPS Council agreed to suspend the discussions to allow the possibility of some solution to emerge from informal high-level consultations between the European Union, the United States of America, India and South Africa. Recently, the WTO Director-General transmitted the outcome of the informal consultations along with a draft text to the TRIPS Council. In this context, this policy brief analyzes the elements of the draft text that has been transmitted to the TRIPS Council. The proposed solution, which offers clarifications and limited waivers on some of the provisions governing compulsory licenses on patents relating to vaccines, reflects developed countries' strong opposition to the broader waiver sought by the proponents to rapidly expand manufacturing capacity and the supply of health products needed to address the pandemic.

<https://www.southcentre.int/policy-brief-110-5-may-2022/>


Advancing Global Response to Antimicrobial Resistance: Examining Current Global Initiatives (Policy Brief 111, 13 May 2022)

By Mirza Alas




Antimicrobial resistance (AMR) is a severe ongoing crisis threatening our health systems. Since adopting the WHO Global Action Plan on AMR in 2015, there has been progress, particularly in improving awareness, surveillance and implementation of infection, prevention, and control measures. However, there has been a slower response related to optimizing the use of antimicrobials in the animal sector and actions related to the environment. Unfortunately, the COVID-19 pandemic has also undermined the implementation of activities to address AMR, including shifting resources to other areas and deprioritizing responses to AMR due to the ongoing pandemic. While national-level actions are at the core of the AMR response, given its global nature and impact, there is broad recognition of the need to ensure that national efforts are complemented with measures at the global level. Examining global initiatives to address AMR and how they can be strengthened to accelerate action is critical to better understand the importance of global coordination and increasing investment to close the gaps that remain.



<https://www.southcentre.int/policy-brief-111-13-may-2022/>

<p>IPR-related Statistics in WTO Trade Policy Reviews (Policy Brief 112, 28 June 2022)</p> <p><i>By Peter Lunenborg</i></p> 	<p>The WTO Secretariat Trade Policy Review (TPR) report is an important tool for a WTO Member which synthesizes objective trade-related information in a single document and enables the monitoring of developments in trade. Relevant statistics are therefore an important element of a TPR report.</p> <p>Currently the practice of using statistical information on intellectual property rights (IPRs) across TPRs is not uniform. This Policy Brief surveys the use of IPR-related statistics in WTO TPRs with a view to exploring possible harmonization and inclusion of common information elements in future TPRs. Harmonized information would provide a baseline for comparison between countries and across time for a single country with respect to the level of IPR protection and immediate benefits derived from the creation of and trade in IPRs.</p> <p>https://www.southcentre.int/policy-brief-112-28-june-2022/</p>
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SouthViews

Title/Author/Date	Abstract/Link
<p>Mainstreaming Public Health Considerations in Adjudication of Intellectual Property Disputes: Implications of Specialized IP Courts and General Courts (SouthViews No. 233, 31 January 2022)</p> <p><i>By Justice (Retd.) Prabha Sridevan</i></p> 	<p>How can the public interest dimension be considered in the adjudication of intellectual property (IP) disputes, in particular those concerning patents on health technologies such as medicines and vaccines? This is the main question addressed by Justice (Retd.) Prabha Sridevan, former Judge of the Madras High Court and former Chairperson of the Intellectual Property Appellate Board (IPAB) of India, as an expert facilitator, at the Asian Regional Course for Judges on Intellectual Property and Public Health organized by the South Centre in August 2021. Justice Sridevan addressed the pros and cons of adjudication through specialized courts vis-à-vis general courts.</p> <p>https://www.southcentre.int/southviews-no-233-31-january-2022/</p>
<p>South Asia and the Need for Increased Tax Revenues from the Digitalized</p>	<p>It is understandable why Pakistan and Sri Lanka, both members of the OECD Inclusive Framework, rejected the Two Pillar solution of the OECD on the taxation of the digitalized economy. Both Pillars</p>

<p>Economy (SouthViews No. 234, 18 February 2022)</p> <p><i>By Abdul Muheet Chowdhary</i></p> 	<p>would have deprived them of badly needed revenues, especially Pillar One. South Asian countries, amongst the poorest in the world and with high levels of external debt, must conduct a careful cost-benefit analysis if they are considering proceeding with Pillar One. Agreeing to this means foregoing unilateral measures on all companies, including those out-of-scope and losing vital policy space. Further, the agreement will have a long shelf-life and likely last for the next 30-40 years. Thus, all developing countries, including from South Asia, should be clear about what they are ‘getting into’.</p> <p>https://www.southcentre.int/southviews-no-234-18-february-2022/</p>
<p>The WTO TRIPS Waiver and Essential Security Rights in 2022 (SouthViews No. 235, 10 March 2022)</p> <p><i>By Dr. Alexander Beyleveld</i></p> 	<p>Almost two years have passed since the start of the COVID-19 pandemic, and we are still far from bringing the pandemic to an end. One of the main reasons for this is the fact that large vaccine inequities remain worldwide. In order to address this problem, a large subset of World Trade Organization (WTO) members are in favour of waiving certain obligations contained in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). Against this backdrop, this article contemplates the legal necessity of such a waiver given that Article 73 of the TRIPS Agreement contains essential security exceptions which may render the obligations in question inapplicable under the interpretation that the pandemic affects law and public order interests.</p> <p>https://www.southcentre.int/southviews-no-235-10-march-2022/</p>
<p>Addressing Food Insecurity and Climate Change for Poverty Reduction in the Horn of Africa (SouthViews No. 236, 15 March 2022)</p> <p><i>By Ali Issa Abdi</i></p> 	<p>This article provides an assessment of the impact of food insecurity and climate change on poverty reduction in the Horn of Africa (HoA), which is one of the most affected regions in the world by these interlinked challenges. The region is confronted by these interconnected and mutually reinforcing negative conditions, which are compounded by institutional constraints, insecurity and scarce financial resources. Consequently, to end hunger, malnutrition and poverty in all its forms by 2030, it is imperative to implement urgent and radical transformation of food production systems, and to adopt accelerated and scaled up global actions to strengthen resilience and people’s livelihoods in response to climate variability and extremes.</p> <p>https://www.southcentre.int/southviews-no-236-15-march-2022/</p>
<p>Mejora la regla del nexo para una distribución justa de derechos fiscales a países en vías de desarrollo (SouthViews No. 220, 28 de</p>	<p>Uno de los problemas abiertos para Pilar Uno en el debate de la tributación de la economía digital es el umbral del Nexo, que determinaría qué Empresas multinacionales (MNE) tienen una presencia tributable. Las economías muy desarrolladas o las economías más pequeñas en vías de desarrollo pueden verse privadas</p>

<p>Junio de 2021)⁶</p> <p><i>Por Radhakishan Rawal</i></p> 	<p>de derechos fiscales como resultado de umbrales de nexos como son descritos en la propuesta de Pilar Uno. Asimismo, inclusive cuando se adoptan umbrales más pequeños, a algunos países aún se les puede denegar derechos fiscales. El umbral financiero nunca fue un parámetro de distribución de derechos fiscales entre los países. Un ligero ajuste del proceso de certeza impositiva podría abordar el problema.</p> <p>Este artículo recomienda otorgar el derecho fiscal por Monto A de Pilar Uno, que abarca la porción principal de ganancias tributables de la economía digital, a todas las jurisdicciones del mercado, pero otorgar derechos relacionados con las jurisdicciones impositivas afectadas solo a aquellos países que cumplen con los umbrales de Nexos. Este enfoque resultará en una distribución justa de derechos fiscales y también garantizará que no haya una carga adicional en el proceso de certeza impositiva, que será más sencillo para países en vías de desarrollo.</p> <p>https://www.southcentre.int/southviews-no-220-28-de-junio-de-2021/</p>
<p>Structural Change and the Environment (SouthViews No. 237, 31 May 2022)</p> <p><i>By Calixto Salomão Filho</i></p> 	<p>Free-riding and free driving are relevant problems undermining structural transformation in environmental matters. These two different trends of the markets give incentive to opportunistic and individualistic behavior that hinders the abilities of international markets to create positive environmental externalities. To the contrary, they might lead to monopolistic concentration and negative environmental externalities.</p> <p>Law, instead of allowing them (through carbon markets compensations only, for example) should look for alternatives of structural transformation of markets. Both well know concepts as the common goods and newer ideas as the possibility of positive screening of transformative market alternatives (or transformed enterprises) might be really useful for such a goal and consequently for the production of positive environmental externalities.</p> <p>https://www.southcentre.int/southviews-no-237-31-may-2022/</p>
<p>Doha Twenty Years On – Has The Promise Been Betrayed? (SouthViews No. 238, 20 June 2022)</p> <p><i>By Yousuf Vawda and</i></p>	<p>The Doha Declaration’s twentieth anniversary in November 2021 has taken place in the midst of the COVID-19 pandemic. The experience of the past two years has demonstrated that the very factors that necessitated the Declaration—the problems of inequitable access to medicines and other health technologies for the world’s poor—continue to plague us.</p>

⁶ The English version of the paper was published in June 2021.

Bonginkosi Shozi



Has the promise of the Doha Declaration been betrayed? In this contribution, we critically engage with this question, focusing our appraisal on whether the Doha Declaration has been successful in fulfilling its commitments to: (a) advancing access to health; (b) equity and fairness in the relations between WTO Members States; and (c) recognising perspectives from the developing world in formulating IP policy. Ultimately, we conclude that the promise of the Doha Declaration has failed to materialise.

There are many reasons for this. For instance, developed country governments have intentionally undermined the Declaration by their insistence on inserting more onerous TRIPS-plus provisions in free trade agreements and economic partnership agreements, which decimate the limited flexibilities permitted by the TRIPS Agreement. And where countries have sought to use such flexibilities, they have been assailed by an over-litigious pharmaceutical industry, and threats by governments such as the US 301 Watch List. For these reasons, we argue for the need for alternative paradigms to challenge Western hegemony and norms regarding IP and other trade-related issues, and for effectively challenging this through the application of a “decoloniality” approach.

<https://www.southcentre.int/southviews-no-238-20-june-2022/>

Farmers, Seeds & the Laws: Importing the Chilling Effect Doctrine (SouthViews No. 239, 30 June 2022)

By Saurav Ghimire



As an increasing number of countries are formulating Plant Variety Protection (PVP) laws, a growing number of farmers are affected by plant breeders’ rights. In addition, the seed certification law also affects farmers’ relations with seeds. Discussing the farmers’ interaction with the PVP law and seed certification law in Indonesia, this article establishes that the farmers have internalised the law beyond the scope of the legal text, such that they self-limit breeding, saving, and exchanging of seeds even in legally permissible situations. Based on the chilling effect doctrine, this article argues that the related laws should be relaxed to ensure that they do not over deter farmers from exercising their rights. This article calls for both negative and positive state obligations to address the chilling effect on farmers arising from both state and private actors.

<https://www.southcentre.int/southviews-no-239-30-june-2022/>

Title/Author/Date	Abstract/Link
<p>Outcomes and Recommendations of the FIRST AFRICAN FISCAL POLICY FORUM (16 December 2021)</p> <p><i>South Centre and Coalition for Dialogue on Africa</i></p> 	<p>The Coalition for Dialogue on Africa (CoDA) and the South Centre co-organized the First African Fiscal Policy Forum on 16 December 2021 with the theme “Inequalities in Taxing Rights”. It was the first of a series of dialogues aimed to bring together key stakeholders from Africa and the Global South on tax matters, to examine the legitimacy of the international tax reform processes and illicit financial flows and the place and role of Africa in the processes. The dialogue discussed contents of the Two-Pillar Solution of the Organization for Economic Cooperation and Development (OECD)/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and its implications for African countries. It analyzed other alternatives to the Inclusive Framework, including recommendations of institutions such as the United Nations High-level Panel on Financial Accountability, Transparency and Integrity (UN-FACTI) and Article 12B on Taxation of Automated Digital Services of the UN model Tax Convention. The forum sought to discuss the reasons some countries such as Nigeria, Kenya, Pakistan, and Sri Lanka did not endorse the Inclusive Framework proposals and made recommendations for African countries.</p> <p>https://www.southcentre.int/wp-content/uploads/2022/02/Outcomes-and-recommendations-of-the-First-African-Fiscal-Policy-Forum.pdf</p>
<p>Direct Monetary Costs of Intellectual Property for Developing Countries</p> <p>A changing balance for TRIPS? (South Centre Report, 2 March 2022)</p> 	<p>It is startling that almost no discussion exists on the direct monetary costs for countries of the IP international regulatory framework. Indeed, on top of the inherent costs on ‘access’ or ‘learning’ abilities, there are some important tangible, measurable, direct monetary costs to countries. These costs are the financial payments that occur simply for the use of intellectual property. These payments are relevant in any discussion on the role of IP in the context of development.</p> <p>An overview of some findings is presented in this report, with the aim of promoting an assessment and discussion at the WTO and other fora whenever there is a consideration of the impacts of the IP international regulatory framework, notably the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in individual countries.</p> <p>https://www.southcentre.int/wp-content/uploads/2022/03/SC-Report-DIRECT-MONETARY-COSTS-OF-INTELLECTUAL-PROPERTY-FOR-DEVELOPING-COUNTRIES-FINAL.pdf</p>

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