

South Centre Publications January 2021 – 5 i [i gh2022



BOOKS

Vaccins, Médicaments et Brevets

La covid-19 et l'impératif d'une organisation internationale (2021)



Details : À partir de début 2020, le monde a dû faire face à un considérable défi sanitaire, économique et social avec l'épidémie de la COVID-19. La crise s'est poursuivie et aggravée dans la plupart des pays du monde. Beaucoup ont voulu explorer des réponses sans prendre réellement en compte les avis des principaux organismes internationaux dans le domaine de la santé, au premier rang desquels l'Organisation mondiale de la santé (OMS). L'OMS fait l'objet de critiques. Il est néanmoins fondamental qu'une agence multilatérale comme elle puisse exercer une véritable autorité et jouer un rôle de chef de file indépendant et en défense de l'ensemble des pays de la planète. Alors, comment faire pour qu'elle puisse jouer ce rôle ? Ce livre contribue à apporter des réponses à cette question, en s'appuyant sur les réflexions développées

par le Centre Sud, un organisme intergouvernemental qui défend les perspectives des pays du Sud. Il aborde notamment l'avancement des réflexions et débats concernant l'accès aux médicaments et vaccins pour répondre à cette pandémie ou à d'éventuelles crises ultérieures.

Auteur: Germán Velásquez est conseiller spécial en matière de politique et de santé au South Centre à Genève.

<https://www.editions-harmattan.fr/livre-vaccins-medicaments-et-brevets-la-covid-19-et-l-imperatif-d-une-organisation-internationale-german-velasquez-9782343229027-69663.html>

Vacunas, medicamentos y patentes

COVID-19 y la necesidad de una organización internacional (2021)

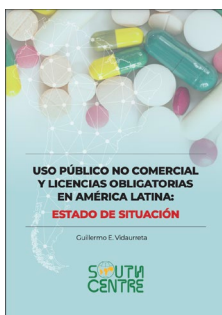


Velásquez, Germán: Vacunas, medicamentos y patentes. COVID-19 y la necesidad de una organización internacional. Vacunas covid-19: entre la ética, la salud y la economía. Desarrollo de la vacuna COVID-19; la inmunidad y el contagio; el nacionalismo de las vacunas; el mecanismo COVAX; licencias obligatorias; Acceso a medicamentos y vacunas: un nuevo actor. Medicamentos y propiedad intelectual: diez años de la estrategia mundial de la oms. Repensando la fabricación mundial y local de productos médicos tras el covid-19. Repensando la i+d para productos farmacéuticos después del covid-19. Propiedad intelectual y acceso a medicamentos y vacunas. Las reformas de la organización mundial de la salud en la época de covid-19. 2021. 244 pp. ISBN 978-9915-650-31-9.

Autor: Germán Velásquez, Asesor especial sobre políticas y salud, South Centre de Ginebra

<https://www.editorialbdef.com.ar/productos/velasquez-german-vacunas-medicamentos-y-patentes-covid-19-y-la-necesidad-de-una-organizacion-internacional/>

Uso Público No Comercial y Licencias Obligatorias en América Latina: Estado de Situación (2021)

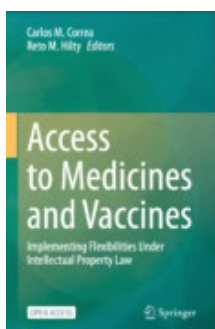


Descripción: Este libro examina cómo han sido regulados en el derecho latinoamericano el uso público no comercial y las licencias obligatorias de patentes de invención, una de las importantes flexibilidades en el marco del acuerdo sobre propiedad intelectual de la Organización Mundial de Comercio. Igualmente, indaga y compendia las experiencias registradas en cuanto al uso efectivo de esos instrumentos, el que no se agota en el ámbito de la salud pública, si bien han sido especialmente utilizados tanto por países desarrollados como en desarrollo para facilitar el acceso a medicamentos, incluso en el contexto de la pandemia del COVID-19.

Autor: Guillermo Vidaurreta es Abogado de la Universidad de Buenos Aires, Magister en Propiedad Intelectual por FLACSO – Argentina. Profesor de la Universidad de Buenos Aires y FLACSO – Argentina. Investigador principal y subdirector del Centro de Estudios Interdisciplinarios de Derecho Industrial y Económico de la Facultad de Derecho de la UBA (CEIDIE).

<https://www.southcentre.int/book-by-the-south-centre-2021-3/>

Access to Medicines and Vaccines: Implementing Flexibilities Under Intellectual Property Law (2021)



Description: This book is an outcome of a partnership between the Max Planck Institute (MPI) for Innovation and Competition and the South Centre, which jointly organized a Global Forum on Intellectual Property, Access to Medicine and Innovation in Munich on 9– 10 December 2019.

This book examines topics of particular relevance for shaping intellectual property regimes that take into account public health concerns. It provides not only deep analyses but options for the interpretation of existing regulations or the adoption of new legislation that, being consistent with the TRIPS Agreement, can allow the judiciary and policy makers to take such concerns into account. In different chapters, the book addresses various dimensions of

the flexibilities allowed under the TRIPS Agreement. Although there is a significant literature and statements on the subject, such as the 'Declaration on Patent Protection. Regulatory Sovereignty under TRIPS' elaborated under the auspices of the MPI, the book contains new reflections and examines recent developments in case law and legislation.

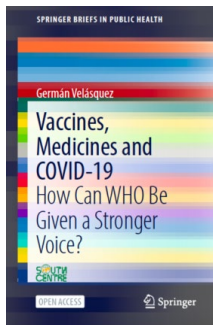
The covered issues include how the TRIPS Agreement can be interpreted to implement its flexibilities, the use of competition law to promote access to medicines, the role of cooperation in the examination of patent applications, patentability requirements, the impact of TRIPS plus provisions (such as the linkage between patents and drug regulatory approvals), the patentability in the area of CRISPR genome editing technologies, as well as an analysis of the scope of exceptions and limitations to exclusive rights provided for by the Agreement, such as the exhaustion of rights and parallel imports, compulsory licenses, the 'Bolar exemption', and procedural mechanisms like pre-grant oppositions. The implications of the protection of test data are also examined.

While celebrating the opportunity of working together in organizing the Global Forum, we hope that this book will assist policy makers and judges and provide new inputs for academic research. While, as mentioned, there is a differentiated impact of intellectual property rights depending on the level of development of the country where it applies, the reconciliation of such rights with public health interests, particularly in relation to access to medicines, is a matter of concern for all countries.

Editors: Carlos M. Correa and Reto M. Hilty

<https://www.southcentre.int/book-by-the-south-centre-2021-4/>

Vaccines, Medicines and COVID-19 How Can WHO Be Given a Stronger Voice? (2022)



Description: 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.

How can an agency like WHO be given a stronger voice to exercise authority and leadership?

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.

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.

Author: Germán Velásquez, Special Adviser for Policy and Health of the South Centre

<https://www.southcentre.int/book-by-the-south-centre-2022/>

RESEARCH PAPERS

Reconsidérations sur la fabrication mondiale et locale de produits médicaux après le COVID- 19 (Document de Recherche 118, Janvier 2021)

Par Germán Velásquez

La crise sanitaire mondiale sans précédent provoquée par la pandémie de coronavirus (COVID-19), au cours du premier semestre 2020, ramène avec une urgence particulière la discussion sur la production pharmaceutique locale. La crise du COVID-19 a mis en évidence l'interdépendance de la production mondiale de médicaments—aucun pays n'étant autosuffisant. De nombreux pays industrialisés prennent la décision de rapatrier ou de développer la production d'ingrédients pharmaceutiques actifs (IPA). De nombreux gouvernements commencent à parler de souveraineté pharmaceutique et/ou de sécurité sanitaire. Si cela devient une réalité, les pays en développement devront développer et/ou renforcer la production locale de médicaments et de vaccins. La guerre pour obtenir le futur vaccin pour COVID-19 ne semble pas facile avec ces nouveaux développements.

<https://www.southcentre.int/document-de-recherche-118-janvier-2021/>

Les réformes de l'Organisation mondiale de la Santé à l'époque de COVID-19 (Document de Recherche 121, Janvier 2021)

Par Germán Velásquez

Tout au long de ses 70 ans d'histoire, l'OMS a connu plusieurs réformes dirigées par plusieurs Directeurs généraux, tels que Halfdan Mahler à la Conférence d'Almaty sur les soins de santé primaires, en 1978, Gro Harlem Brundtland avec son appel à « tendre la main au secteur privé », en 1998, et Margaret Chan avec son débat inachevé sur le rôle des « acteurs non étatiques », en 2012. Une fois de plus, la crise sanitaire de 2020 a mis en évidence la fragilité de l'organisation et a révélé que l'OMS ne dispose pas des instruments et mécanismes juridiques nécessaires pour mettre en œuvre ses normes et lignes directrices, et que son financement n'est pas durable et adéquat pour répondre au défi de la COVID-19. Ce document cherche à identifier les principaux problèmes rencontrés par l'OMS et les mesures nécessaires qu'une réforme de l'Organisation devrait prendre.

<https://www.southcentre.int/document-de-recherche-121-janvier-2021/>

Intellectual Property in the EU–MERCOSUR FTA: A Brief Review of the Negotiating Outcomes of a Long-Awaited Agreement (Research Paper 128, February 2021)

By Roxana Blasetti, in collaboration with Juan I. Correa

This paper provides a first glance at the Intellectual Property Chapter of the Free Trade Agreement (FTA) between the Southern Common Market (MERCOSUR) and the European Union (EU). It is not intended to provide an exhaustive analysis of the commitments involved but rather to briefly review the scope of intellectual property in the bi-regional negotiations, which took more than 20 years and ended in June 2019 with an “agreement in principle.” It also aims to put the Chapter into context with the whole commitments covered by the FTA and, finally, to highlight its most relevant aspects.

<https://www.southcentre.int/research-paper-128-february-2021/>

The TRIPS waiver proposal: an urgent measure to expand access to the COVID-19 vaccines (Research Paper 129, March 2021)

by Henrique Zeferino de Menezes

Despite multilateral commitments and political statements of solidarity and cooperation to guarantee the availability and access to COVID-19 vaccines (and other relevant technologies for control and treatment), the scenario after the beginning of vaccination is marked by the deepening of vaccine nationalism, the concentration of inputs and vaccines production, and the uneven distribution of options of vaccine doses already approved for use. This pattern of production restrictions and unequal access will lead to an increase in international inequalities, leaving a large part of the world to have access to vaccines not until 2024. While advanced purchase agreements (APAs) among pharmaceutical companies and some developed countries are multiplying, the proposed mechanisms for voluntary licensing of technologies and the COVAX Facility do not achieve their goal of democratizing access to vaccines. In this sense, the current TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights) waiver proposal seems to be the political and institutional response with the greatest potential to guarantee the scaling of the production of pharmaceutical inputs, allowing the adoption of a comprehensive strategy to ensure timely, sufficient, and affordable access to all technologies developed to fight COVID-19.

<https://www.southcentre.int/research-paper-129-march-2021/>

Misappropriation of Genetic Resources and Associated Traditional Knowledge: Challenges Posed by Intellectual Property and Genetic Sequence Information (Research Paper 130, April 2021)

By Nirmalya Syam and Thamara Romero

Improper acquisition of genetic resources (GRs) and associated traditional knowledge (TK) without prior informed consent and on mutually agreed terms, in accordance with national laws of the country providing the GR and associated TK, as well as without any fair and equitable sharing of the benefits derived from their utilization, has been a significant concern for developing countries. Intellectual property (IP) rights can serve as one of the means of such misappropriation. One of the mechanisms sought by developing countries to prevent it consists in the establishment of an effective multilateral legal mechanism for defensive protection against misappropriation, primarily through the introduction of a mandatory disclosure requirement about the source and country of origin of such resources in intellectual property right (IPR) applications. These negotiations have been taking place in different fora. However, there is an increased sense of frustration due to the lack of progress in achieving consensus during the last twenty years. Meanwhile, new modes of misappropriation of GRs are evolving through the use of genetic sequence information and data of GRs, and by applying technological developments in synthetic biology. This paper discusses the use of IP and genetic sequence information and data as modes of misappropriation of GRs and associated TK and the deficits of the current international legal framework in preventing such misappropriation. This paper also maps the state of play of the ongoing negotiations in the context of these issues in different fora, and, in conclusion, proposes possible alternative approaches for addressing these pressing issues at the multilateral level.

<https://www.southcentre.int/research-paper-130-april-2021/>

TRIPS Flexibilities and TRIPS-plus Provisions in the RCEP Chapter on Intellectual Property: How Much Policy Space is Retained? (Research Paper 131, June 2021)

By Vitor Henrique Pinto Ido

The Regional Comprehensive Economic Partnership (RCEP) was signed on 15 November 2020 by 15 Asian-Pacific countries (ASEAN—Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Vietnam—, and China, Japan, South Korea, Australia and New Zealand), comprising about one third of the world's population and economy. India was a crucial party to the negotiations but opted out of the agreement. Ratification of the agreement is still pending, subject to more Parties ratifying it at the national level. This paper provides a broad overview of the RCEP agreement and discusses the details of the intellectual

property (IP) Chapter. Significantly, it does not contain substantive TRIPS-plus provisions that undermine public health in developing countries—although it does contain such provisions in other areas such as copyrights, trademarks, and IP enforcement.

<https://www.southcentre.int/research-paper-131-june-2021/>

Interpreting the Flexibilities Under the TRIPS Agreement (Research Paper 132, June 2021)

By Carlos M. Correa

While the TRIPS Agreement provides for minimum standards of protection of intellectual property, it leaves a certain degree of policy space for WTO members, whether developed or developing countries, to implement the Agreement's provisions in different manners, to legislate in areas not subject to the minimum standards under the Agreement, and to develop legal interpretations of such provisions to determine the scope and content of the applicable obligations. This paper focuses on some aspects of how panels and the Appellate Body of the WTO have interpreted said provisions. The paper also draws general conclusions for the implementation of TRIPS flexibilities, which are of crucial importance for the design of a pro-competitive intellectual property system and, in particular, for achieving public health objectives, as specifically recognized by the Doha Declaration on TRIPS and Public Health.

<https://www.southcentre.int/research-paper-132-june-2021/>

Repensando la fabricación mundial y local de productos médicos tras el COVID- 19 (Documento de Investigación 118, Junio 2021)

Por Germán Velásquez

La crisis sanitaria mundial sin precedentes provocada por la pandemia del coronavirus –COVID-19, durante el primer semestre de 2020, hace que se vuelva a plantear con especial urgencia el debate sobre la producción farmacéutica local. La crisis de COVID-19 puso de manifiesto la interdependencia en la producción mundial de medicamentos, ningún país es autosuficiente. Muchos países industrializados están tomando la decisión de repatriar o desarrollar la producción de Ingredientes Farmacéuticos Activos (API). Muchos gobiernos están empezando a hablar de soberanía farmacéutica y/o seguridad sanitaria. Si esto se hace realidad, los países en desarrollo tendrán que desarrollar y/o fortalecer la producción local de medicamentos y vacunas. La guerra para obtener la futura vacuna para COVID-19 no parece fácil con estos nuevos desarrollos.

<https://www.southcentre.int/documento-de-investigacion-118-junio-2021/>

Malaria and Dengue: Understanding two infectious diseases affecting developing countries and their link to climate change (Research Paper 133, August 2021)

By Mirza Alas

Developing countries will face more complex challenges as infectious disease patterns transform due to climate change and climate variability. These challenges include how to reduce the incidence of malaria (including the significant challenge of resistant malaria), dengue, and other vector-borne and water-borne diseases that are likely to experience alterations in geographical range and lengthening of the transmission seasons due to changing temperatures and rain patterns. Climate extremes, e.g., heat and floods, are implicating the spread of climate-sensitive infectious diseases such as dengue and malaria transmitted by vectors like mosquitoes. In the context of growing financial pressure on governments due to COVID-19, the ensuing fiscal challenges may severely limit the capacity to effectively respond to health challenges in countries already affected by malaria and dengue. Other countries that have made gains in controlling vector-borne infections could also be vulnerable to rising disease burden. This research paper aims to analyze how changes in malaria and dengue pose a challenge for developing countries as they prepare mitigation and adaptation

strategies for climate health. The paper will also provide some general recommendations on the importance of integration of health in national climate change strategies.

<https://www.southcentre.int/research-paper-133-august-2021/>

Restructuring the Global Vaccine Industry (Research Paper 134, September 2021)

By Felix Lobo

The purpose of this report is to analyse the vaccines industry under the focus of Industrial Economics as an input for the design of the pertinent instruments to promote development, manufacturing and distribution of vaccines against SARS-CoV-2 in sufficient amounts to immunize all countries as soon as possible. We also need to be prepared for future emerging infectious diseases with the potential of global expansion.

The report shows that the vaccines industry is – and has been for a long time – far away from the competitive market paradigm with notorious market failures. As a result, the industry is underperforming with shortages and stockouts, exit of firms from the industry, underinvestment in research and development (R&D) and manufacturing, even an “anaemic development pipeline”, all signs of market failure.

After a brief review of policies implemented to tackle these problems, we conclude that after the COVID-19 pandemic there is a need to implement a profound overhauling of the industry and to fundamentally reformulate and extend global public policies to stimulate R&D, manufacturing, distribution and access.

<https://www.southcentre.int/research-paper-134-september-2021/>

Implementation of a TRIPS Waiver for Health Technologies and Products for COVID-19: Preventing Claims Under Free Trade and Investment Agreements (Research Paper 135, September 2021)

By Carlos M. Correa, Nirmalya Syam and Daniel Uribe

While increasing support from WTO members for a proposed waiver from certain obligations under the TRIPS Agreement with regard to health products required for responding to COVID-19 has made a decision on the TRIPS waiver imminent, the waiver will have to be implemented domestically by WTO members through appropriate legislative, administrative or judicial measures, including through executive orders that have been utilized to implement emergency measures in the context of the COVID-19 pandemic. In this regard, the scope of the TRIPS waiver, as well as the terms of applicable free trade agreements (FTAs) and international investment agreements (IIAs) will also impact the policy space available to countries to implement the waiver. Ensuring a broad scope of the waiver, as well as complementary measures to safeguard the implementation of the waiver from potential challenges under FTAs or IIAs will be critical. This research paper discusses some options that could be explored to enable the implementation of the TRIPS waiver by overcoming possible impediments that could arise under such agreements.

<https://www.southcentre.int/research-paper-135-september-2021/>

Canada's Political Choices Restrain Vaccine Equity: The Bolivia-Biolyse Case (Research Paper 136, September 2021)

By Muhammad Zaheer Abbas, PhD

The COVID-19 pandemic has already claimed more than 4.6 million lives and caused significant economic harm. The Coronavirus is still circulating to cause further damage. In this context, this research paper argues that Canada's political choices have restrained the equitable distribution of

COVID-19 vaccines. Part I evaluates Canada's nationalistic approach of procuring COVID-19 vaccines more than its needs through secretly concluded pre-purchase agreements with brand-name pharmaceutical corporations as advised by a secretly born task force having clear ties with the vaccine industry. Part II examines Canada's wavering and non-committal position on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Waiver proposal. Canada's confusing position of 'not blocking' the TRIPS Waiver while not supporting it either lacks legal clarity. Part III analyses the Bolivia-Biolysse case which highlights clear contradictions between statements and actions of the Canadian government. Since March 2021, Biolysse Pharma has been hamstrung by the first step in Canada's Access to Medicines Regime (CAMR), where a preliminary requirement is that the COVID-19 vaccine must be added to Schedule 1 of the Canadian federal *Patent Act* before applying for an export-oriented compulsory licence. The Bolivia-Biolysse case is important as a test case for the CAMR system. Workability of this export-oriented compulsory licensing regime is critical for low- and middle-income countries in the Global South lacking the domestic capacity to manufacture COVID-19 vaccines. The Bolivia-Biolysse case is also important as Canada has argued at the World Trade Organization (WTO) that the TRIPS Waiver is not required because the existing mechanisms are working as intended.

<https://www.southcentre.int/research-paper-136-september-2021/>

The Ocean Economy: trends, impacts and opportunities for a post COVID-19 Blue Recovery in developing countries (Research Paper 137, October 2021)

by David Vivas Eugui, Diana Barrowclough and Claudia Contreras

This paper discusses preliminary and still quite unknown trends on trade, finance, and technology of the ocean economy, outlines key impacts and measures taken to respond to the COVID-19 pandemic and raises awareness about the potential of the ocean economy to contribute to a sustainable and resilient recovery. Based on these findings, the paper argues that sustainability and resilience considerations should be more highly prioritized in ocean-based value chains in a post COVID-19 recovery. To support this, the paper highlights the importance of securing sufficient and reliable long-term investment and the creation of capacities to develop new and adapt existing service innovations. It calls for a **global trade, investment and innovation Blue Deal** as sister to the Green New Deal already gaining support around the world, particularly for developing countries.

<https://www.southcentre.int/research-paper-137-october-2021/>

Beyond Corporate Social Responsibility: Strengthening Human Rights Due Diligence through the Legally Binding Instrument on Business and Human Rights (Research Paper 138, October 2021)

by Daniel Uribe Terán

The discussion on the need for mandatory human rights due diligence (HRDD) requirements has permeated the interests of policy makers, civil society organizations and international organizations. The current trend on the adoption of domestic legislation concerning HRDD standards shows a variety of options and models that might serve as a step forward to the adoption of a strong international framework of corporate accountability and remedy for human rights violations in the context of business activities.

This research paper aims at identifying the elements that characterize human rights due diligence to find a possible common definition for its implementation. It does so through analyzing current regional and State practice in the adoption of mandatory HRDD legislation in different sectors. Finally, it will discuss the principles that characterize the approach taken by the United Nations Open-ended Intergovernmental Working Group in charge of adopting a Legally Binding Instrument on transnational corporations and other business enterprises and how it could serve as an important cornerstone for modern rule making on the issue of business and human rights.

<https://www.southcentre.int/research-paper-138-october-2021/>

Governing Seed for Food Production: The International Treaty on Plant Genetic Resources for Food and Agriculture (Research Paper 139, October 2021)

By Nina Isabella Moeller

Plant genetic resources for food and agriculture (PGRFA) are part of the foundation of agriculture and of central importance to food sovereignty. These gain an increasingly pivotal role in the context of climate crises, which are threatening predictable crop production, and the erosion of agricultural biodiversity. The main instrument for the governance of PGRFA is the International Treaty on Plant Genetic Resources for Food and Agriculture. Strengthening the Treaty is crucial. The Treaty establishes a binding international framework for the conservation and sustainable use of plant genetic resources for food and agriculture, and the fair and equitable sharing of the benefits arising from their use. Since 2013, negotiations have been underway to enhance the functioning of the Multilateral System of Access and Benefit-sharing. Current informal consultations may pave the way for constructive negotiations at the next Governing Body meeting in May 2022.

<https://www.southcentre.int/research-paper-139-october-2021/>

Del SIDA al COVID-19: La OMS ante las crisis sanitarias globales (Documento de Investigación 140, Noviembre 2021)

Por Germán Velásquez

Este documento de investigación es una compilación de artículos de Germán Velásquez publicados por el "Monde Diplomatique" (ediciones francesa y española) entre el 2003 y el 2021. El autor analiza como la OMS enfrentó las grandes crisis sanitarias de los últimos 20 años. El SIDA y la llegada de los primeros antiretrovirales, la gripe H1N1 con el despilfarro del Oseltamivir (nombre de marca "Tamiflu") y las vacunas que al final fueron destruidas en grandes cantidades, el ébola donde la OMS llegó con cuatro meses de atraso, la hepatitis C y los fármacos que podrían curarla pero fueron lanzados al mercado con precios inaccesibles y, actualmente, la pandemia devastadora del COVID-19 que ha demostrado una vez más la insostenible desigualdad en el acceso a la salud y a las vacunas y tratamientos, entre los países del Norte y los países del Sur.

El denominador común a todas estas crisis sanitarias mundiales ha sido la reacción de los países miembros de la OMS de querer reformar la Organización de tal manera que ésta pueda responder mejor a la crisis del momento. Este es exactamente el movimiento que ha desatado la COVID-19 y el tema y las negociaciones que probablemente nos ocuparán en los próximos años.

<https://www.southcentre.int/documento-de-investigacion-140-noviembre-de-2021/>

Mise en œuvre d'une dérogation ADPIC pour les technologies et produits de santé pour la COVID-19: prévenir les réclamations dans le cadre des accords de libre-échange et d'investissement (Document de Recherche 135, Novembre 2021)

Par Carlos M. Correa, Nirmalya Syam et Daniel Uribe

Bien que le soutien croissant des membres de l'OMC pour une proposition de dérogation à certaines obligations de l'Accord sur les ADPIC concernant les produits de santé nécessaires pour répondre à la pandémie COVID-19 ait rendu imminente une décision sur la dérogation ADPIC, celle-ci devra être mise en œuvre au niveau national par les membres de l'OMC par le biais de mesures législatives, administratives ou judiciaires appropriées, y compris par le biais de décrets qui ont été utilisés pour mettre en œuvre des mesures d'urgence dans le contexte de la pandémie COVID-19. À cet égard, la portée de la dérogation ADPIC, ainsi que les termes des accords de libre-échange (ALE) et des accords internationaux d'investissement (AII) applicables, auront également un impact sur la marge de manœuvre dont disposent les pays pour mettre en œuvre la dérogation. Il sera essentiel de garantir un large champ d'application de la dérogation, ainsi que des mesures

complémentaires pour protéger la mise en œuvre de la dérogation contre d'éventuelles contestations dans le cadre des ALE ou des AII. Ce document de recherche examine certaines options qui pourraient être explorées pour permettre la mise en œuvre de la dérogation ADPIC en surmontant les obstacles qui pourraient survenir dans le cadre de tels accords.

<https://www.southcentre.int/document-de-recherche-135-novembre-2021/>

Implementación de una exención de los ADPIC relacionados con tecnologías y productos sanitarios para la COVID-19: Evitar reclamaciones en virtud de acuerdos de libre comercio e inversión (Documento de Investigación 135, Noviembre 2021)

Por Carlos M. Correa, Nirmalya Syam y Daniel Uribe

Aunque el creciente apoyo de los miembros de la OMC a una propuesta de exención de determinadas obligaciones en virtud del Acuerdo sobre los ADPIC con respecto a los productos sanitarios necesarios para responder a la COVID-19 ha hecho que sea inminente una decisión sobre la exención de los ADPIC, los miembros de la OMC tendrán que aplicar la exención a nivel nacional a través de medidas legislativas, administrativas o judiciales apropiadas, incluidas las órdenes ejecutivas que se han utilizado para aplicar medidas de emergencia en el contexto de la pandemia de la COVID-19. En este sentido, el alcance de la exención de los ADPIC, así como los términos aplicables en los acuerdos de libre comercio (ALC) y los acuerdos internacionales de inversión (AII) también influirán en el espacio de política disponible para que los países apliquen la exención. Será fundamental garantizar un amplio alcance de la exención, así como medidas complementarias para salvaguardar la aplicación de la exención de posibles impugnaciones en el marco de los ALC o los AII. Este documento de investigación analiza algunas opciones que podrían explorarse para permitir la aplicación de la exención de los ADPIC superando los posibles impedimentos que podrían surgir en el marco de dichos acuerdos.

<https://www.southcentre.int/documento-de-investigacion-135-noviembre-de-2021/>

Utilising Public Health Flexibilities in the Era of COVID-19: An Analysis of Intellectual Property Regulation in the OAPI and MENA Regions (Research Paper 141, November 2021)

By Yousuf A Vawda and Bonginkosi Shoji

The paper explores the unique approaches to IP protection in the countries belonging to the Organisation Africaine de la Propriété Intellectuelle/African Intellectual Property Organization (OAPI) and the Middle East and North Africa (MENA) regions; the limited extent to which legal and policy frameworks with regard to TRIPS flexibilities have been adopted and implemented in pursuit of access to medicines in those countries; and makes recommendations in order to optimise the use of the flexibilities in advancing public health objectives. In the context of the COVID-19 pandemic, the impact of IP rights on access, and some approaches to countering the challenges to access are also discussed.

<https://www.southcentre.int/research-paper-141-november-2021/>

Competition Law and Access to Medicines: Lessons from Brazilian Regulation and Practice (Research Paper 142, 4 January 2022)

By Matheus Z. Falcão, Mariana Gondo and Ana Carolina Navarrete

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 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.

<https://www.southcentre.int/research-paper-142-4-january-2022/>

Direito Brasileiro da Concorrência e Acesso à Saúde no Brasil: Preços Exploratórios no Setor de Medicamentos (Research Paper 143, 11 de janeiro de 2022)

Por Bruno Braz de Castro

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.

<https://www.southcentre.int/research-paper-143-11-de-janeiro-de-2022/>

A TRIPS-COVID Waiver and Overlapping 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

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 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)

By Nirmalya Syam

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 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)

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 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/>

Les négociations au sein de l'Organisation mondiale de la santé peuvent-elles aboutir à un cadre juste pour la prévention, la préparation et la riposte aux pandémies en tant que bien public mondial? (Document de Recherche 147, 28 Février 2022)

Par Viviana Muñoz Tellez

Ce document avance que les États membres de l'OMS, ayant accepté de promouvoir des objectifs d'équité et de solidarité pour la prévention, la préparation et la riposte futures aux pandémies, doivent maintenant les mettre en œuvre. Le document propose des suggestions pour les processus en cours à l'OMS concernant : 1) l'examen des recommandations en cours de révision par le Groupe de travail sur le renforcement de la préparation et de la riposte de l'OMS aux urgences sanitaires, 2) l'examen des amendements potentiels au Règlement sanitaire international (RSI) 2005, et 3) l'élaboration d'un projet de texte pour un instrument international sur la préparation et la riposte aux pandémies.

<https://www.southcentre.int/document-de-recherche-147-28-fevrier-2022/>

¿Podrán las negociaciones en la organización mundial de la salud resultar en un marco justo para la prevención, la preparación y la respuesta ante pandemias como bienes públicos globales? (Documento de Investigación 147, 28 de Febrero de 2022)

Por Viviana Muñoz Tellez

Los Estados miembros de la OMS, tras haber acordado los objetivos de avanzar equidad y solidaridad para la futura prevención, preparación y respuesta a la pandemia, ahora deben ponerlos en práctica. Este documento avanza sugerencias para las discusiones en los procesos en curso de la OMS de 1) el examen de las recomendaciones que está revisando el Grupo de Trabajo sobre el Fortalecimiento de la Preparación y la Respuesta de la OMS a las Emergencias Sanitarias, 2) la consideración de posibles enmiendas al Reglamento Sanitario Internacional (RSI) de 2005, y 3) la elaboración de un proyecto de texto para un instrumento internacional sobre la preparación y la respuesta ante una pandemia.

<https://www.southcentre.int/documento-de-investigacion-147-28-de-febrero-de-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 peculiarities in the variations among countries in these sub-regions.

<https://www.southcentre.int/research-paper-152-21-april-2022/>

Patent Analysis for Medicines and Biotherapeutics in Trials to Treat COVID-19 (Research Paper 153, 26 April 2022)

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, favipiravir, molnupiravir and nirmatrelvir, and the biotherapeutics tocilizumab, siltuximab and sarilumab.

<https://www.southcentre.int/research-paper-153-26-april-2022/>

COVID-19 Vaccines as Global Public Goods: between life and profit 19 (Research Paper 154, 9 May 2022)

By Katuska King Mantilla and César Carranza Barona

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.

<https://www.southcentre.int/research-paper-154-9-may-2022/>

Manufacturing for Export: A TRIPS-Consistent Pro-Competitive Exception (Research Paper 155, 27 May 2022)

by Carlos M. Correa and Juan I. Correa

The paper discusses the flexibilization of the *sui generis* 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 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/>

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)

By Muhammad Zaheer Abbas, PhD

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.

<https://www.southcentre.int/research-paper-158-15-june-2022/>

Un choix cornélien ? Comparaison des recettes fiscales à engranger par les pays en développement au titre des régimes du Montant A et de l'Article 12B du Modèle de convention des Nations Unies (Document de Recherche 156, 1 Juin 2022)

Par Vladimir Starkov et Alexis Jin

Le présent document de recherche se propose d'estimer le montant des recettes fiscales qui seraient engrangé (ou perdu) par les pays membres du Centre Sud et de l'Union africaine dans le cadre de la mise en œuvre du Montant A et de l'Article 12B. Notre analyse s'appuie sur des sources d'information accessibles aux chercheurs du secteur privé et non sur les informations communiquées par les contribuables aux autorités fiscales. Elle démontre que les effets comparatifs sur les recettes de la mise en œuvre du Montant A et de l'article 12B dépendent en grande partie (a) des détails de conception du régime mis en place par l'article 12B, (b) du fait que le pays accueille ou non le siège d'entreprises multinationales susceptibles d'être imposées au titre du montant A ou de l'article 12B, et (c) de l'allègement éventuel de la double imposition qui sera accordé par le pays aux contribuables nationaux imposés au titre du Montant A ou de l'article 12B.

<https://www.southcentre.int/document-de-recherche-156-1-juin-2022/>

Reaping the Fruits of Research on Microorganisms: Prospects and Challenges for R&D and Industry in Sri Lanka (Research Paper 158, 15 July 2022)

by Ruwan Fernando

When the Intellectual Property Bill designed to secure compliance with the Agreement on Trade Related Aspects of Intellectual Property Rights ("TRIPS Agreement") was challenged in the

Supreme Court of Sri Lanka, the Court determined that the patenting of naturally occurring microorganisms by right holders would result in the increase of the prices of diagnoses and cures. The Supreme Court found that in the absence in the Bill of mitigatory measures -as allowed by the TRIPS Agreement- and of a working definition of the term “microorganism”, there was a violation of the right to equal protection under Article 12 (1) of the Constitution. In the circumstance, the patent protection for microorganisms was narrowed down to transgenic microorganisms.

The policy makers do not appear to have disregarded the positive impact of the Supreme Court determination by making the necessary statutory provisions and policy changes to facilitate the patent applications on transgenic microorganisms, while ensuring that local researchers are not restrained from gaining access to naturally occurring microorganisms for research and development.

<https://www.southcentre.int/research-paper-159-15-july-2022/>

Movement Forward on ABS for the Convention on Biological Diversity: Bounded Openness Over Natural Information (Research Paper 160, 21 July 2022)

by Joseph Henry Vogel, Manuel Ruiz Muller, Klaus Angerer, and Christopher May

“Access to genetic resources” and “fair and equitable sharing of benefits arising [from their] utilization” is the third objective of the 1992 United Nations Convention on Biological Diversity (CBD). The expression is included in the full title of the 2010 Nagoya Protocol (NP). Neither agreement defined “material” in the phrase “genetic material” which resulted in misinterpretation that the object of access for R&D is tangible. Unfairness ensues: competition among provider Parties leads to the elimination of economic rents, which is desirable for tangibles but undesirable for intangibles. Once interpreted as natural information, the economics of information justifies a Global Multilateral Benefit-Sharing Mechanism (GMBSM) (Article 10 NP) which collects and distributes rents on value added to genetic resources. “Bounded openness over natural information” is the modality proposed for the GMBSM. The Executive Secretary of the United Nations Secretariat of the CBD recognized the argument in the 2021 Note “Digital Sequence Information on Genetic Resources”.

<https://www.southcentre.int/research-paper-160-21-july-2022/>

Two Pillar Solution for Taxing the Digitalized Economy: Policy Implications and Guidance for the Global South (Research Paper 161, 26 July 2022)

by Irene Ovonji-Odida, Veronica Grondona, Abdul Muheet Chowdhary

The taxation of the digitalized economy is the single most important topic in international tax negotiations today. The OECD has devised a “Two Pillar solution” to the problem. Pillar One is focusing on a reallocation of taxing rights to market jurisdictions, which are largely expected to be developing countries, and Pillar Two is instituting a global minimum tax. The Pillar One solution, known as Amount A, will be codified into a Multilateral Convention (MLC) and is expected to be placed before countries for signature in early 2023. The solution ushers in a new paradigm in the taxation of multinational enterprises but has immense complexity and likely minimal revenue gains for most developing countries. It will also require them to give up the right of unilateral tax measures on all out-of-scope companies, meaning they will only be able to tax the fewer than 100 companies likely to be in-scope, if at all. The decision to sign or not is thus a historic one, as it will lock developing countries into a constricted new framework, at a time when revenue needs are especially critical to recover the economies from COVID-19 in the context of a turbulent state of the global economy.

However, the United Nations too has a solution, known as Article 12B. This operates in a different manner and is a minor modification to the existing decentralized international tax system which is based on bilateral tax treaties, and which developing countries are more familiar with. It is also likely to generate far higher revenues than Amount A, and does not restrict any of their sovereign taxing rights. This Research Paper assesses the various implications for developing countries from

adopting the OECD's or the United Nations's respective solutions and concludes with a possible global South response to the Two Pillar solution.

<https://www.southcentre.int/research-paper-161-26-july-2022/>

The Proposed Standing Multilateral Mechanism and Its Potential Relationship with the Existing Universe of Investor – State Dispute Settlement (Research Paper 162, 11 August 2022)

by Danish and Daniel Uribe

The reform option on the Standing Multilateral Mechanism (SMM) currently under discussion at UNCITRAL's Working Group III (WGIII) has raised a number of important, systemic concerns for the procedural reforms of investor-State dispute settlement. This paper first seeks to situate the discussions on the SMM within its historical and contemporary contexts. Then it considers UNCITRAL Working Paper 213 and the legal provisions it contains, which form the basis of ongoing discussions of this reform option at WGIII. Further, it explores the potential relationship of this proposed SMM with different facets of the existing international investment law regime. The paper concludes by providing some elements which require further consideration in this process, particularly for safeguarding the interests of developing countries.

<https://www.southcentre.int/research-paper-162-11-august-2022/>

The Human Right to Science: From Fragmentation to Comprehensive Implementation? (Research Paper 163, 19 August 2022)

by Peter Bille Larsen and Marjorie Pamintuan

In times when the role of science in society is more debated than ever in polarized, politicized and partial terms, what is the role for the human right to science and rights-based approaches? The right to science remains poorly understood and neglected in both national and global human rights processes. Beyond defending the freedom of scientific expression, upholding the right to science is arguably fundamental to resolving key sustainability challenges of our times from climate change and the biodiversity crisis to global health and pandemics. The global COVID-19 pandemic has revealed persistent global inequalities not least in terms of how the privatization of science and current intellectual property regimes hinder just and equitable responses to access science and its benefits. This prompts the need for a shift from single-issue approaches to comprehensive and systematic treatment of the right to science as a bundle of human rights across multiple arenas to counter fragmentation and silo-tendencies.

<https://www.southcentre.int/research-paper-163-19-august-2022/>

¿Una elección difícil? Comparación de los ingresos fiscales que recaudarán los países en vías de desarrollo a partir de los regímenes del Monto A y del Artículo 12B de la Convención Modelo de las Naciones Unidas (Documento de Investigación 156, 1 de junio de 2022)

por Vladimir Starkov y Alexis Jin

En este documento de investigación, pretendemos calcular los ingresos tributarios que obtendrán (o perderán) los Estados miembros del South Centre y la Unión Africana con arreglo a los regímenes del Importe A y del Artículo 12B. En nuestro análisis hemos recurrido a fuentes de información disponibles para el personal investigador del sector privado, aunque no ha conllevado el examen de ninguno de los datos que los contribuyentes proporcionan a las autoridades fiscales. Nuestra investigación demuestra que los efectos comparativos en los ingresos obtenidos con los regímenes fiscales del Importe A y el Artículo 12B dependen en gran medida de a) los detalles de diseño del régimen del Artículo 12B; b) si el país es sede de empresas multinacionales que puedan estar dentro del ámbito de aplicación de los regímenes fiscales del Importe A o del Artículo 12B; y c) la

desgravación a partir de la doble tributación, de haberla, que conceda el país a los contribuyentes nacionales sujetos al pago de tributos en virtud del régimen del Importe A o del Artículo 12B.

<https://www.southcentre.int/documento-de-investigacion-156-1-de-junio-de-2022/>

Brazilian Competition Law and Access to Health in Brazil: Exploitative Pricing in the Pharmaceutical Sector (Research Paper 143, 11 January 2022)

by Bruno Braz de Castro

This paper aims to analyze the interfaces between Brazilian Competition Law and the issue of access to medicines, with a special focus on abuse of industrial property rights and related exclusionary and exploitative effects. The paper analyzes the case law of Brazilian Administrative Council for Economic Defense (CADE) in the pharmaceutical sector and discusses abusive practices such as illegitimately imposing non-existent or invalid intellectual property rights with anticompetitive purposes. It then addresses abusive strategies in the exercise of industrial property rights which are, in essence, valid: i.e., exclusionary practices, aimed at artificially raising barriers to entry; and exploitative practices, directly translated as the exercise of market power to the detriment of the consumer. The latter ultimately result in exploitative excessive prices; contractual, quality or privacy degradation; and restrictions on supply, such as by hoarding/preventing the exploitation of industrial property rights. The paper concludes that the prohibition of exploitative pricing under the current competition law is legally valid and effective, with certain methodological concerns towards reducing the risk of wrongful convictions (for instance, by applying screening tests to determine the markets that are candidates for intervention). In view of such guidelines, the pharmaceutical industry appears to be an important candidate for antitrust attention, given the magnitude of the harm potentially derived from non-intervention against the practice. Remedies in this area, importantly, should focus on identifying and solving the sector's structural competitive problems. In the case of medicines subject to price regulation by the Drug Market Regulation Chamber (CMED), the technical expertise of the competition authority may be of great value in terms of competition advocacy, a fact that is demonstrated in light of recent discussions on extraordinary price adjustments because of competitive problems in certain markets.

<https://www.southcentre.int/research-paper-143-11-january-2022/>

POLICY BRIEFS

Repenser la R&D pour les produits pharmaceutiques après le choc du nouveau coronavirus COVID-19 (Rapport sur les politiques 75, Janvier 2021)

Par Dr. Germán Velásquez

La crise sanitaire mondiale sans précédent provoquée par la pandémie de coronavirus –COVID-19–, au cours du premier trimestre 2020, ramène avec une urgence particulière la discussion sur le modèle de recherche et développement (R&D) pour les produits pharmaceutiques et autres technologies de la santé. La crise COVID-19 montre qu'il est urgent de repenser la gouvernance mondiale de la santé publique pour la R&D en matière de santé. L'adoption d'un instrument contraignant – comme le permet l'article 19 de la Constitution de l'OMS – sur cette question a été proposée il y a de nombreuses années. Ce document soutient qu'il est temps de relancer et de concrétiser cette initiative.

<https://www.southcentre.int/rapport-sur-les-politiques-75-janvier-2021/>

Countries' Policy Space to Implement Tobacco Packaging Measures in the Light of Their International Investment Obligations: Revisiting the Philip Morris v. Uruguay Case (Investment Policy Brief 20, January 2021)

By Alebe Linhares Mesquita and Vivian Daniele Rocha Gabriel

This Policy Brief aims to provide a concise analysis of the international investment dispute involving Philip Morris subsidiaries and the Republic of Uruguay. It depicts the main legal and political background that preceded the case, analyzes the decision reached by the arbitral tribunal, and assesses the award's major regulatory and policy implications. It intends to contribute to the discussions on how and to what extent States can adopt tobacco control measures without violating their international obligations to protect the investment and intellectual property of tobacco companies. The main lesson that can be learned from the analysis of the *Philip Morris v. Uruguay* case is that investors' rights are not absolute and can be relativized when there is a clash between private and public interests, such as in the case of public health. As a result, claims such as indirect expropriation and fair and equitable treatment can be dismissed. Finally, one of the main consequences is the progressive change in the design of international investment treaties, containing more provisions related to the right to regulate.

<https://www.southcentre.int/investment-policy-brief-20-january-2021/>

WIPO Negotiations for an International Legal Instrument on Intellectual Property and Genetic Resources (Policy Brief 87, February 2021)

By Nirmalya Syam

Over the past few years, Member States of the World Intellectual Property Organization (WIPO) have engaged in negotiations for concluding an international legal instrument on intellectual property and genetic resources. While developing countries have a major interest in securing through this instrument a mandatory requirement for applicants of IP rights over innovations that utilize genetic resources or associated traditional knowledge to disclose their source or origin, certain developed countries that are major markets for such products are absolutely opposed to recognizing the disclosure requirement as an objective of the legal instrument under negotiation. Other developed countries are agreeable to a disclosure requirement with a narrow scope, broad exceptions, and weakened remedies against non-compliance. This Policy Brief analyses the current state of play in the negotiations considering the different positions as reflected in the draft negotiating text, as well as a proposal by the Chair of the WIPO intergovernmental committee where the negotiations are taking place, to bridge the difference and take the negotiations forward. This brief concludes that any meaningful international legal instrument on IP and GRs in

WIPO must recognize the fundamental issue of misappropriation of GRs through the IP system that should be resolved through a mandatory disclosure requirement as the principal mechanism. It would also be critical to ensure that the WIPO instrument is coherent with other related international legal instruments such the Convention on Biological Diversity, the Nagoya Protocol on access and benefit-sharing; specialized instruments like the FAO Plant Treaty as well as related mechanisms or fora like the WHO (on use of pathogens as a genetic resource) and the United Nations Convention for the Law of the Sea (UNCLOS) negotiations on marine genetic resources beyond areas of national jurisdiction.

<https://www.southcentre.int/policy-brief-87-february-2021/>

Making the UN Tax Committee more effective for developing countries (Tax Cooperation Policy Brief 13, February 2021)

By Abdul Muheet Chowdhary

The United Nations Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee) is an important and influential subsidiary body of the Economic and Social Council (ECOSOC) that shapes standards and guidelines on international taxation. These are the rules through which Multinational Enterprises (MNEs) are taxed. Its role post-COVID-19 has become even more important as countries struggle to raise revenue. Despite being under-resourced, it has produced valuable guidance, especially on the crucial question of the digital economy. As a new Membership of the Committee is about to be selected, this Policy Brief provides practical recommendations on how the Committee can be reformed to be made more effective, especially for the interests of developing countries.

<https://www.southcentre.int/tax-cooperation-policy-brief-13-february-2021/>

The UNFCCC Virtual Regional Workshops on Gender and Climate Change 2020 (Climate Policy Brief 25, February 2021)

By Mariama Williams

In the last week of November 2020, the United Nations Framework Convention on Climate Change (UNFCCC)'s Gender and Climate Team presented its hallmark Global Gender Event as part of the virtual United Nations (UN) Climate Dialogues 2020 (Climate Dialogues). The Climate Dialogues provided "a platform for Parties and other stakeholders to showcase progress made in 2020 and exchange views and ideas across the subsidiary bodies and COP agendas mandated for 2020". They were held in lieu of the annual meeting of the Conference of the Parties (COP) previously slated to take place in the United Kingdom in December 2020. The virtual Global Gender Event held on November 26, 2020 occurred in two parts. Part 1, **Acting on the gender and climate GAP: progress and reflections** highlighted progress and reflections made at the regional workshops on gender and climate change held by the Gender team earlier in the year. Part 2, **Women for Results: showcasing women's leadership on climate change** showcased women's leadership on climate change including the five winning projects of the 2020 UN Global Climate Action Awards.

<https://www.southcentre.int/climate-policy-brief-25-february-2021/>

Need for Extension of the LDC Transition Period Under Article 66.1 of the TRIPS Agreement Until Graduation and Beyond (Policy Brief 88, March 2021)

By Nirmalya Syam

Least developed country (LDC) Members of the World Trade Organization (WTO) have submitted a duly motivated request for the extension of the transition period under Article 66.1 of the WTO

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which exempts LDCs from implementing the obligations for protection and enforcement of intellectual property rights under the Agreement, in view of their vulnerabilities, special needs, economic, administrative and financial constraints, and the need for a sound and viable technological base. This request, submitted prior to the expiry of the current transition period on 1 July 2021, seeks a further extension for as long as those Members remain LDCs, and also for an additional period of 12 years after their graduation. This request is legitimate in view of the varied challenges that LDCs face, which have been aggravated through the reversal of development gains due to the public health and economic impact of the COVID-19 pandemic. These vulnerabilities will also continue to afflict the LDCs even after graduation, as recognized in several reports by different United Nations (UN) agencies as well as resolutions of the UN General Assembly. Therefore, WTO Members must display political will and translate global solidarity pledges into action and unconditionally support the request for extension of the transition period for LDCs under the TRIPS Agreement.

<https://www.southcentre.int/policy-brief-88-march-2021/>

Competition Regulation in Healthcare in South Africa (Policy Brief 89, March 2021)

By Hardin Ratshisusu

South Africa's nascent competition regulatory regime is coming of age and has potential to address historical market concentration challenges previously enabled by the apartheid regime, prior to its dismantling in the 1990s. Many sectors of the economy are highly concentrated, including the private healthcare sector, with market outcomes that breed market failures, lack of competitiveness and high cost of care. Looking through competition in the healthcare sector it becomes evident that the market structure challenges do not only require domestic interventions, but also a global response to address some policy and regulatory gaps.

<https://www.southcentre.int/policy-brief-89-march-2021/>

Proposals to Advance the Negotiations of the Post 2020 Biodiversity Framework (Policy Brief 90, March 2021)

By Dr. Viviana Muñoz Tellez

Informal consultations are ongoing in virtual format towards the adoption of a Post-2020 Global Biodiversity Framework by the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD). The Fifteenth meeting of the CBD-COP is scheduled to be held on 11–24 October 2021, in Kunming, China. For negotiations to succeed, the Framework must be ambitious, balanced and achievable, building on past commitments. All three pillars of the CBD must be equally advanced. The Rio principles in particular on common but differentiated responsibilities (CBDR), must be clearly reflected. This policy brief advances proposals towards advancing negotiations on the current zero- draft of the Framework towards realizing the 2050 global vision of living in harmony with nature.

<https://www.southcentre.int/policy-brief-90-march-2021/>

Compulsory license in Germany: Analysis of a landmark judicial decision (Policy Brief 91, April 2021)

By Christoph Spennemann and Clara Warriner

This policy brief analyzes how the German Federal Court of Justice addressed compulsory licensing under German patent law, where the request for a compulsory license was used in preliminary proceedings as a defense against alleged patent infringement.

<https://www.southcentre.int/policy-brief-91-april-2021/>

Could COVID-19 trigger 'localizing' of international investment arbitration? (Investment Policy Brief 21, April 2021)

By Danish

In light of the challenges and travel restrictions due to the COVID-19 pandemic, many developing countries have been unable to effectively participate in international investment arbitration proceedings, traditionally held in locations like Washington D.C. and The Hague. To ease the heavy burdens currently being placed on States and ensuring investor confidence, this Policy Brief argues for the 'localization' of investor-State dispute settlement (ISDS) proceedings in host States and regions where the investment is actually located. It highlights the various advantages that localizing ISDS can bring, and the different regional initiatives already working towards this purpose. The brief also considers relevant legal and policy aspects, and seeks to provide concrete suggestions for the localization of ISDS as a small step towards the holistic reform of international investment arbitration.

<https://www.southcentre.int/investment-policy-brief-21-april-2021/>

**Expanding the production of COVID-19 vaccines to reach developing countries
Lift the barriers to fight the pandemic in the Global South (Policy Brief 92, April 2021)**

By Carlos M. Correa

The unfolding of COVID-19 has shown that the international system has been unable to ensure equal access to the vaccines and other products necessary to fight the pandemic. While the need for a strong response remains obvious, proposals for scaling up the production of COVID-19 vaccines across the globe are still blocked in the World Trade Organization.

<https://www.southcentre.int/policy-brief-92-april-2021/>

A New WHO International Treaty on Pandemic Preparedness and Response: Can It Address the Needs of the Global South? (Policy Brief 93, May 2021)

By Dr. Germán Velásquez and Nirmalya Syam

A recent joint communiqué by 25 Heads of Government and the WHO Director-General have called for the negotiation of a pandemic treaty to enable countries around the world to strengthen national, regional and global capacities and resilience to future pandemics. The COVID-19 pandemic has demonstrated the fragility of the mechanisms at the disposal of WHO for preparedness and response to pandemics. The use of binding instruments to promote and protect health in the context of pandemics is needed. If WHO Member States decide that an international treaty to prepare and respond to pandemics is the way forward, it would be important to have clarity from the outset on the elements and areas that will be the subject of negotiation. The first step should be to identify the aspects of pandemic preparedness and response that the current crisis has revealed are not working, and how to build up on the existing instruments, notably the International Health Regulations (IHR). This paper discusses some of the critical issues that should be addressed in such a treaty if negotiations are launched, in view of the needs of countries at different levels of development and with disparate capacities to implement treaty obligations.

<https://www.southcentre.int/policy-brief-93-may-2021/>

The Tax Sovereignty Principle and Its Peaceful Coexistence with Article 12B of the UN Model Tax Convention (Tax Cooperation Policy Brief 14, June 2021)

By Kuldeep Sharma, ADIT (CIOT, UK)

Article 12B of the United Nations (UN) Model Tax Convention (MTC) provides developing countries with a practical and easy way to administer policy solutions for taxing the digital economy, in particular income from Automated Digital Services. It merges seamlessly with the existing provisions of the UN MTC and it is completely aligned and coexistent with the Tax Sovereignty Principle.

<https://www.southcentre.int/tax-cooperation-policy-brief-14-june-2021/>

Conceptualizing a UN Multilateral Instrument (Tax Cooperation Policy Brief 15, June 2021)

By Radhakishan Rawal

Recent changes to the United Nations (UN) Model Tax Convention have resulted in provisions that are more advantageous for developing countries in raising revenue through international taxation, i.e. taxation of foreign income. These include taxation of income from automated digital services, software payments, capital gains and others. Normally, these would be incorporated into bilateral tax treaties through time-taking negotiations. A UN Multilateral Instrument (MLI) provides a speedy manner for updating multiple tax treaties through a single negotiation. This will help developing countries in collecting revenue more quickly. This Policy Brief discusses the possible structure of such an MLI.

<https://www.southcentre.int/tax-cooperation-policy-brief-15-june-2021/>

The Role of Courts in Implementing TRIPS Flexibilities: Brazilian Supreme Court Rules Automatic Patent Term Extensions Unconstitutional (Policy Brief 94, June 2021)

By Vitor Henrique Pinto Ido

This policy brief provides a background, summary and analysis of the Brazilian Federal Supreme Court decision of 6 May 2021 that ruled automatic patent term extensions unconstitutional, striking down Article 40, Sole Paragraph, of the Brazilian Industrial Property Code of 1996. It concludes that this is a landmark ruling that contributes to the implementation of a more balanced patent regime in Brazil, with a positive impact on access to medicines in the country. It is an important precedent in relation to the role that courts may play in defining the contours of intellectual property protection and the TRIPS flexibilities.

<https://www.southcentre.int/policy-brief-94-june-2021/>

Systemic reform of the international debt architecture is yet to start (Policy Brief 95, June 2021)

By Yuefen Li

The COVID-19 pandemic has pushed the reform of the international debt architecture to the policy agenda. Up to now policy measures to address the crushing debt burden of developing countries have focused on boosting time bound liquidity provision, which is insufficient in amount and restrictive in scope as debt-ridden and pandemic struck middle-income countries have not been covered. Even the

implementation of these policy measures has been hindered by existing systemic problems. The reform of the debt architecture is yet to start. However, complacency seems to emerge. The risk of “wasting” the crisis should be avoided.

<https://www.southcentre.int/policy-brief-95-june-2021/>

Investment Policy Options for Facing COVID-19 Related ISDS Claims (Investment Policy Brief 22, June 2021)

By Daniel Uribe and Danish

Developing and least developed countries have undertaken a number of measures to fight against the multidimensional impacts of the COVID-19 pandemic. Such measures and those that may be adopted in the context of the recovery efforts are, however, susceptible to challenges by foreign investors using investor-State dispute settlement mechanisms.

This policy brief first considers the kinds of measures States have adopted to limit the spread of COVID-19, protect their strategic sectors and promote economic recovery, including through foreign investment aftercare and retention. It then addresses how the investor-State dispute settlement system (ISDS) has been used by investors in times of crises, based on the analysis of the awards in several cases brought against both developed and developing countries.

Against this backdrop, the brief elaborates on the different options and initiatives States can take for preventing ISDS claims at the national, bilateral, regional and multilateral levels. It concludes with some policy advice for developing and least developed countries to face possible COVID-19 related ISDS claims in the future.

<https://www.southcentre.int/investment-policy-brief-22-june-2021/>

UNCITRAL Working Group III: Moving forward towards consensus or losing balance? (Investment Policy Brief 23, July 2021)

By Daniel Uribe and Danish

This policy brief considers some concerns arising from the ongoing discussions on procedural reform of investor-State Dispute Settlement (ISDS) in the United Nations Commission on International Trade Law (UNCITRAL) Working Group III. It highlights the need to allocate sufficient time to deliberate upon the important issues being raised by developing countries. It further discusses some structural reform options that have been identified by the Working Group and reflects on some concerns arising from a possible 'single undertaking' approach being implemented through a future possible multilateral agreement on ISDS.

<https://www.southcentre.int/investment-policy-brief-23-july-2021/>

Article 12B – A tax treaty solution by the UN Tax Committee for taxing digital incomes (Tax Cooperation Policy Brief 16, July 2021)

By Rajat Bansal

Taxation of income of multinational enterprises engaged in digitalised businesses by source or market jurisdictions is currently the most important challenge before the international tax community. The current membership of the United Nations Tax Committee in April 2021 finalised a tax treaty solution to address this challenge. This brief explains the rationale for coming up with a particular solution of inserting a new Article in the United Nations Model Tax Convention, its merits and how it can be beneficial for all countries, especially the developing ones.

<https://www.southcentre.int/tax-cooperation-policy-brief-16-july-2021/>

Precios justos para la cobertura sanitaria universal: El impacto de la judicialización de la salud (Informe sobre políticas 96, Julio 2021)

Por Silvina Andrea Bracamonte y José Luis Cassinerio

En el presente trabajo se describen las principales directrices y recomendaciones sobre políticas de precios para ayudar a los países a desarrollar estrategias efectivas, como herramientas para lograr el acceso equitativo a los productos sanitarios con precios asequibles, desechando el creciente fenómeno de la judicialización de la salud como vía adecuada para abordar con un enfoque sistémico esta problemática compleja.

<https://www.southcentre.int/informe-sobre-politicas-96-julio-2021/>

An Albatross Around the Neck of Developing Nations – MFN Clause in Tax Treaties incomes (Tax Cooperation Policy Brief 17, July 2021)

By Deepak Kapoor, IRS

The Most Favoured Nation (“MFN”) clause in double taxation avoidance conventions epitomises the basic principle of non-discrimination and intends to bring parity in business and investment opportunities among treaty partner countries and jurisdictions. Inclusion of provisions like MFN and non-discrimination clauses in tax treaties are intended to promote equity among treaty partners. In the context of tax treaties between developed and developing countries, the MFN clauses also act as negotiating tools to bargain for better treaty tax rates.

<https://www.southcentre.int/tax-cooperation-policy-brief-17-july-2021/>

The WTO TRIPS Waiver Should Help Build Vaccine Manufacturing Capacity in Africa (Policy Brief 97, July 2021)

By Faizel Ismail

The current global health crisis created by the COVID-19 pandemic has re-focused our attention on the inadequacy of the TRIPS agreement and the patent system to address global public health crises. This time, developing countries must ensure that the TRIPS waiver succeeds in creating the impetus for the building of manufacturing capacity in the poorest countries, especially in Africa, for vaccines, pharmaceuticals and other health technologies. This is the only effective way in which African countries can reduce their dependence on imports of essential medicines and build their health security, contributing to the achievement of the sustainable development goals, for the poorest countries.

<https://www.southcentre.int/policy-brief-97-july-2021/>

The Implementation of the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas: what is next? (Policy Brief 98, July 2021)

By Luis Fernando Rosales Lozada

The UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP) was adopted in December 2018. However, its application seems challenging. The South Centre organized a virtual meeting to discuss the implementation of the UNDROP on 4th June 2021, aiming to promote a debate about future actions to move forward the implementation of the UNDROP. The meeting provided an opportunity to listen to the views of government representatives, peasants’ associations, civil society organizations and academia. During the meeting, different questions were discussed such as how the current health and social crisis, caused by the COVID-19 pandemic, has impacted the situation of peasants, the role of the UNDROP in promoting and protecting peasants’ rights, the latest developments in the realization of the rights of peasants under the UNDROP and what steps are needed to promote its implementation.

<https://www.southcentre.int/policy-brief-98-july-2021/>

Un nuevo tratado internacional de preparación y respuesta ante pandemias: ¿Podrá atender a las necesidades del Sur Global? (Informe sobre políticas 93, Julio 2021)

Por Germán Velásquez y Nirmalya Syam

Un reciente comunicado conjunto de 25 Jefes de Gobierno y el Director General de la OMS han pedido que se negocie un tratado sobre pandemias que permita a los países de todo el mundo reforzar las capacidades y resiliencia nacionales, regionales y mundiales ante futuras pandemias. La pandemia del COVID-19 ha demostrado la fragilidad de los mecanismos a disposición de la OMS para la preparación y la respuesta a las pandemias. Es necesario utilizar instrumentos vinculantes para promover y proteger la salud en el contexto de las pandemias. Si los Estados miembros de la OMS deciden que el camino a seguir es un tratado internacional para la preparación y respuesta a las pandemias, sería importante tener claro desde el principio los elementos y áreas que serán objeto de negociación. El primer paso debe ser identificar los aspectos de la preparación y la respuesta ante una pandemia que la crisis actual ha puesto de manifiesto que no funcionan, y cómo aprovechar los instrumentos existentes, especialmente el Reglamento Sanitario Internacional (RSI). Este documento analiza algunas de las principales cuestiones que deberían abordarse en un tratado de este tipo si se inicia la negociación, teniendo en cuenta las necesidades de países que están en diferentes niveles de desarrollo y con capacidades dispares para aplicar las obligaciones del tratado.

<https://www.southcentre.int/informe-sobre-politicas-93-julio-2021/>

Un nouveau traité international de l'OMS sur la préparation et la riposte aux pandémies: pourra-t-il répondre aux besoins des pays du Sud? (Rapport sur les politiques 93, Juillet 2021)

Par Dr. Germán Velásquez et Nirmalya Syam

Dans un récent communiqué signé par 25 chefs de gouvernement et le Directeur général de l'OMS, ceux-ci ont appelé à la négociation d'un traité sur les pandémies afin de permettre aux pays du monde entier de renforcer les capacités et la résilience des pays aux niveaux national, régional et mondial face aux futures pandémies. La pandémie de COVID-19 a démontré la fragilité des mécanismes dont dispose l'OMS pour se préparer et réagir aux pandémies. L'utilisation d'instruments contraignants pour promouvoir et protéger la santé dans le contexte des pandémies est nécessaire. Si les États Membres de l'OMS décident que le recours à un traité international de préparation et de riposte aux pandémies est la voie à suivre, il serait important de clarifier dès le départ les éléments et les domaines qui feront l'objet de négociations. La première étape devrait consister à identifier les aspects de la préparation et de la réponse aux pandémies dont la crise actuelle a révélé les inefficacités, et à déterminer comment s'appuyer sur les instruments existants, notamment le Règlement sanitaire international (RSI). Ce document examine certaines des questions essentielles qui devraient être abordées dans un tel traité si les négociations sont lancées, en tenant compte des besoins des pays à niveaux de développement différents et des capacités disparates pour mettre en œuvre les obligations découlant du traité.

<https://www.southcentre.int/rapport-sur-les-politiques-93-juillet-2021/>

The TRIPS COVID-19 Waiver, Challenges for Africa and Decolonizing Intellectual Property (Policy Brief 99, August 2021)

By Yousuf Vawda

The intellectual property (IP) regimes of African countries are a function of their colonial past, which imposed strong protections, and which have been entrenched through the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement). This has had a devastating effect on their ability to access necessary health products both before and during the current COVID-19 pandemic. It is important to reflect on the challenges that African countries face, before

considering the implications of the WTO TRIPS waiver on COVID-19 (henceforth, waiver). In assessing the challenges faced by these countries, as well as the possibilities of improving access, this paper argues that while the waiver offers the best available solution to overcome the current supply shortages of a range of COVID-19 health products, in the longer term a break from this past—the decolonization of IP regimes—is necessary.

<https://www.southcentre.int/policy-brief-99-august-2021/>

EU Proposals regarding Article 31*bis* of the TRIPS Agreement in the Context of the COVID-19 Pandemic (Policy Brief 100, August 2021)

By Nirmalya Syam

This Policy Brief presents an analysis of the proposal by the European Union (EU) with regards to Article 31*bis* of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), as part of a Declaration on the TRIPS Agreement and Public Health in the circumstances of a pandemic. It discusses the EU's proposed clarifications, why Article 31*bis* does not provide an effective solution to promote access to pharmaceutical products and possible options.

<https://www.southcentre.int/policy-brief-100-august-2021/>

The Investment Facilitation Framework & Most Favoured Nation (MFN) Treatment (Policy Brief 101, September 2021)

By Peter Lunenborg

The issue of Investment Facilitation (IF) is one of the 'Joint Statement Initiatives' which has been under negotiation for a number of years between certain World Trade Organization (WTO) Members. It has not been without controversy as there is no multilateral mandate at the WTO for these negotiations. Questions have been raised about how the outcomes of these IF negotiations can be brought into the WTO framework. Despite these uncertainties, there is a draft Investment Facilitation Framework (IFF) text. This Policy Brief discusses the Most Favoured Nation (MFN) treatment as contained in Article 2 of the Investment Facilitation Framework (IFF), also referred to as the Investment Facilitation for Development Agreement (IFDA). This brief highlights the potential implications of the proposed text and proposes some options.

<https://www.southcentre.int/policy-brief-101-september-2021/>

Combatting Tax Treaty Abuse: Tools available under the BEPS Multilateral Instrument (Tax Cooperation Policy Brief 18, September 2021)

By Kuldeep Sharma, ADIT (CIOT,UK)

The anxiety of taxpayers, consultants and advisors over the consistent application of Principal Purpose Test (PPT) provisions in tax treaties can now be put to rest as tax authorities are expected to consistently read the PPT provisions in conjunction with the preamble, i.e. the key to application of PPT provisions lies in the preamble of the treaty itself. This follows on taking a leaf out of the Preamble to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion & Profit Shifting (MLI), Vienna Convention, Commentaries on PPT in the respective Organisation for Economic Co-operation and Development (OECD) and United Nations (UN) Model Tax Convention (MTC), 2017 and Australian Taxation Office's (ATO) instructions on PPT which abundantly highlight on conjoint application of the preamble in the course of invocation of PPT provisions. Now, the entire focus of extending treaty benefits has shifted to undertaking bonafide transactions and preventing double taxation as against a tendency of securing tax savings through tax avoidance. Therefore, PPT as read with the preamble can clearly be invoked to combat treaty-shopping arrangements, abusive tax planning and abusive tax avoidance arrangements or transactions. At the same time, tax authorities in any part of the world may not be inclined to invoke

PPT as read with the preamble in respect of any arrangement or transaction when taxpayers are able to discharge their onus establishing that (below mentioned conditions to be satisfied in tandem):

- genuine business and commercial reasons for a transaction exist;
- a purpose for the transaction cannot be ascribed to non-taxation or reduced taxation through tax evasion or tax avoidance;
- despite no tax advantages, the transaction would be carried out exactly in the same way; and
- it cannot reasonably be considered that one of the principal purposes of the arrangement or transaction is to obtain treaty benefits and that the object and purpose of the treaty is getting defeated.

<https://www.southcentre.int/tax-cooperation-policy-brief-18-september-2021/>

O papel dos tribunais na implementação das flexibilidades do TRIPS: Supremo Tribunal Federal (STF) do Brasil declara inconstitucionais as extensões automáticas de prazos de patentes (*Policy Brief 94, Setembro de 2021*)

Por Vitor Henrique Pinto Ido

Este *policy brief* traz uma contextualização, um resumo e uma análise da decisão do Supremo Tribunal Federal do Brasil, de 6 de maio de 2021, que declarou inconstitucionais as extensões automáticas de prazos de patentes, revogando o Artigo 40, Parágrafo Único, da Lei de Propriedade Industrial do Brasil, de 1996. Conclui-se que esta é uma decisão histórica que contribui para a implementação de um regime de patentes mais equilibrado no Brasil, com impacto positivo no acesso a medicamentos no país. É um precedente importante no que se refere ao papel que os tribunais podem desempenhar na definição dos contornos da proteção à propriedade intelectual e das flexibilidades do Acordo TRIPS.

<https://www.southcentre.int/policy-brief-94-setembro-de-2021/>

Accelerating COVID-19 Vaccine Production via Involuntary Technology Transfer (*Policy Brief 102, September 2021*)

By Dr. Olga Gurgula

This policy brief explains that the currently discussed proposals at the WTO related to increasing the production of COVID-19 vaccines, including the EU proposal to clarify the use of compulsory licensing and the submission by South Africa and India on the intellectual property (IP) waiver, require complementary mechanisms to rapidly improve the production of COVID-19 vaccines that are urgently needed today. The key problem is that to accelerate the manufacture of COVID-19 vaccines, access to knowledge and know-how, that are protected by trade secrets owned by several pharmaceutical companies, is required. It is therefore important that governments implement an additional mechanism of compulsory licensing of trade secrets that would allow an involuntary transfer of COVID-19 vaccine technologies. Such a mechanism would be compliant with the TRIPS Agreement and relevant whether the TRIPS waiver is adopted or not agreed upon. While this mechanism must provide full access to the information necessary to manufacture the vaccines in question, it must also ensure the protection of the transferred trade secrets.

<https://www.southcentre.int/policy-brief-102-september-2021/>

Strong Intellectual Property Protection, Weak Competition Rules – or the Other Way Around to Accelerate Technology Transfer to the Global South? Ten Considerations for a “Prodevelopment” IP-Related Competition Law (*Policy Brief 103, September 2021*)

By Klaus D. Beiter

Competition law provisions relating to intellectual property (IP) rights should play an enhanced role in facilitating the domestic and international transfer and dissemination of technology. IP-related competition rules in the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) create an obligation for Member States to apply competition law in the IP context. TRIPS competition rules should be read in a “prodevelopment” fashion – IP rights need to be read reductively, IP-related competition law expansively. Ten considerations for a “prodevelopment” IP-related competition law are formulated.

<https://www.southcentre.int/policy-brief-103-september-2021/>

Developing Country Demands for an Equitable Digital Tax Solution (Tax Cooperation Policy Brief 19, October 2021)

By Abdul Muheet Chowdhary

The taxation of the digitalized economy is the foremost challenge in international taxation today. Countries around the world, especially developing countries, are struggling with taxing the rising profits of major tech giants which operate on entirely new business models that have made traditional international tax rules obsolete. A “Two Pillar solution” is being negotiated in the OECD / G20 Inclusive Framework on BEPS that seeks to update these rules, re-allocate taxing rights and establish a global minimum tax. However, as it stands, the solution has very limited tax revenue benefits for developing countries and is administratively complex. For the solution to be durable, it must be equitable, and accordingly must incorporate the concerns of developing countries going forward.

<https://www.southcentre.int/tax-cooperation-policy-brief-19-october-2021/>

Some Key Elements for Developing Countries in Climate Change Negotiations of COP 26: Climate Finance, Article 6 Negotiations and Implications (Climate Policy Brief 26, October 2021)

By M. Natalia Pacheco Rodríguez and Luis Fernando Rosales

Human influence is deepening the climate crisis at an unprecedented pace. Developing countries’ economies have been hit hard by the crisis caused by COVID-19. Means of implementation are crucial for them to contribute to the achievement of the Paris Agreement goal. Developed countries must fulfill their commitments to provide US\$ 100 billion per year by 2025 to climate finance. The latest years’ negotiations have shown the importance of improving the reporting methodology and the need for an agreed operational climate finance definition. In turn, Article 6 negotiations offer an opportunity to ensure higher ambition of both mitigation and adaptation through cooperative approaches while respecting the agreed balance between market and non-market approaches. What should developing countries expect on these issues at COP 26?

<https://www.southcentre.int/climate-policy-brief-26-october-2021/>

Making the UN Tax Committee's Subcommittees More Effective for Developing Countries (Tax Cooperation Policy Brief 20, October 2021)

By Abdul Muheet Chowdhary, Sebastien Babou Diasso, and Aaditri Solankii

New United Nations (UN) Tax Committee Members have been appointed by the UN Secretary-General and among them 13 out of 25 are from developing countries. The Committee sets international tax standards, vital for financing for development, and works mainly through its Subcommittees. However, an unhealthy trend over time has been the disproportionate involvement of business representatives in the Subcommittees, which can be harmful for promoting the interests of developing countries. This policy brief examines this trend and outlines some of the tools available to developing countries to promote their interests in the Subcommittees.

<https://www.southcentre.int/tax-cooperation-policy-brief-20-october-2021/>

Compulsory licensing vs. the IP waiver: what is the best way to end the COVID-19 pandemic? (Policy Brief 104, October 2021)

By Olga Gurgula

This policy brief examines the currently discussed proposals at the World Trade Organization (WTO) that aim to resolve the problem of the production shortages of COVID-19 vaccines. This includes the two key submissions, ie the proposal by South Africa and India on the Intellectual Property (IP) waiver, partially supported by the United States (US), and the European Union (EU) proposal to clarify the use of compulsory licensing. While each of these mechanisms may help to improve the production of COVID-19 vaccines to various degrees, there is intense debate about which of these proposals is the most effective. This policy brief outlines the strengths and weaknesses of each of them with a view to informing the policy decisions by WTO Members on the best way to promptly accelerate the vaccine production that is urgently needed today.

<https://www.southcentre.int/policy-brief-104-october-2021/>

The International Treaty on Plant Genetic Resources for Food and Agriculture: Saving, Sharing and Taking Care of the Plants and Seeds that Feed the World (Policy Brief 105, October 2021)

By Dr. Kent Nnadozie

This Policy Brief provides an introduction to the International Treaty on Plant Genetic Resources for Food and Agriculture and its contribution to conserve, sustainably use and fairly and equitably share the benefits of plant genetic resources for food and agriculture, for sustainable agriculture and food security. The brief also provides an update on the involvement of the ITPGRFA in the prevailing issues under discussion in various biodiversity-related fora, including ongoing negotiations for a Post-2020 Global Biodiversity Framework, and response to the COVID-19 global pandemic.

<https://www.southcentre.int/policy-brief-105-october-2021/>

Strengthening WHO for Future Health Emergencies while Battling COVID-19: Major Outcomes of the 2021 World Health Assembly (Policy Brief 106, November 2021)

By Nirmalya Syam and Mirza Alas

The 74th World Health Assembly of the World Health Organization (WHO) took place in May 2021 in a time when developing countries had to confront a substantial surge in COVID-19 infections and fatalities, while continuing to face inadequate access to vaccines. Meanwhile, the majority of the global supplies were secured by a few rich countries, ignoring the pleas of the WHO Secretariat. However, even though discussions around the COVID-19 response and strengthening emergency preparedness and response dominated the Assembly, WHO Member States could not achieve any concrete outcome to addressing the question of equitable access to vaccines and other health technologies for COVID-19. In this context, this policy brief describes some of the major outcomes of the Assembly.

<https://www.southcentre.int/policy-brief-106-november-2021/>

Streamlining the Architecture of International Tax through a UN Framework Convention on Tax Cooperation (Tax Cooperation Policy Brief 21, November 2021)

By Abdul Muheet Chowdhary and Sol Picciotto

The architecture of international taxation at present is fragmented among multiple institutions. The UN Tax Committee, the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) and the Global Forum on Transparency and Exchange of Information for Tax Purposes are some of the key institutions which set multiple and overlapping international tax standards. The lack of a genuinely global international tax body has long been a lacunae in the international economic system and a disadvantage for developing countries, who are unable to participate in international tax standard setting as full and equal participants. This has been borne out most recently by the Two Pillar Solution for taxing the digital economy that has come from the OECD/G20 Inclusive Framework. The G-77's renewed demand for a global tax body shows the issue continues to remain a priority for developing countries.

This Policy Brief provides a way for bringing the existing plethora of institutions under unified, universal and democratic control through a UN Framework Convention on Tax Cooperation (UN FCTC). This idea builds on the long-standing idea of a UN Tax Convention, which has also been recommended by the UN FACTI Panel. A UN FCTC would function similarly to the UN Framework Convention on Climate Change (UN FCCC), through a Conference of Parties (COP) which would give the existing institutions such as the UN Tax Committee and Inclusive Framework mandates to work on. In this regard, it would replace the narrow mandates of the OECD and G20 with mandates coming from all the Parties to the UN FCTC, which could be all countries, both developed and developing. A UN FCTC thus provides a practical and realistic way forward for a genuinely universal, intergovernmental framework for international tax rule making under the auspices of the United Nations.

<https://www.southcentre.int/tax-cooperation-policy-brief-21-november-2021/>

The Doha Ministerial Declaration on TRIPS and Public Health on its Twentieth Anniversary (Policy Brief 107, November 2021)

By Nirmalya Syam, Viviana Munoz, Carlos M. Correa and Vitor Ido

This Policy Brief reviews the role of the Doha Declaration on TRIPS and Public Health in the twenty years since its adoption. It finds that the Doha Declaration has contributed to advance the use of the TRIPS flexibilities to promote public health and should be considered an important subsequent agreement to the TRIPS Agreement, despite the continuing challenges for WTO members to implement the TRIPS flexibilities in full. This brief also analyses the extent to which the Paragraph 6 System that became an amendment of the TRIPS Agreement as a new article 31 bis, pursuant to the Doha Declaration, has facilitated access to medicines and vaccines for countries with none or insufficient pharmaceutical manufacturing capacity. It finds that the system to date has not lived up to its promise. The Policy Brief recommends that WTO members assess and identify the challenges for the full use of the TRIPS flexibilities to promote public health, and advances that supplementary tools will need to be designed to never again allow such inequity in access to life saving vaccines and treatments as in the present COVID-19 pandemic.

<https://www.southcentre.int/policy-brief-107-november-2021/>

Potential Claims related to IP and Public Health in Investment Agreements: COVID-19, the Proposed TRIPS Waiver and Beyond (Investment Policy Brief 24, 9 December 2021)

By Cynthia Ho

An under-examined issue during the COVID-19 crisis is the potential liability of countries under investment agreements for taking steps to mitigate COVID issues. This Policy Brief provides an overview of how countries may be liable to companies for taking domestic action to protect public health, including pre-COVID claims related to Intellectual Property (IP), as well as possible claims because of COVID emergency measures, including claims that could result if the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Waiver was adopted. The current COVID-19 crisis opens the opportunity to consider and reevaluate the unnecessary threat of international agreements that allow for investment claims and potentially consider their termination.

<https://www.southcentre.int/investment-policy-brief-no-24-9-december-2021/>

Conceptualisation d'un instrument multilatéral des Nations Unies (IML des NU) (Rapport sur les politiques en matière de coopération fiscale 15, Juin 2021)

Par Radhakishan Rawal

Les récentes modifications apportées au modèle de convention des Nations unies concernant les doubles impositions entre pays développés et pays en développement ont donné lieu à l'introduction de dispositions plus avantageuses pour les pays en développement en matière d'imposition des revenus, en permettant en particulier l'imposition des revenus étrangers. Il s'agit notamment des revenus tirés des services numériques automatisés, des rémunérations sur les logiciels, de plus-values et autres. Ces dispositions sont généralement intégrées, au terme de longues négociations, dans les conventions fiscales bilatérales. Une convention des Nations Unies, en tant qu'instrument multilatéral, permet en une seule négociation de modifier plusieurs conventions fiscales et contribue ainsi à ce que les pays en développement puissent percevoir plus rapidement des recettes fiscales. Le présent rapport sur les politiques examine la forme qu'un tel instrument multilatéral peut revêtir.

<https://www.southcentre.int/rapports-sur-les-politiques-en-matiere-de-cooperation-fiscale-15-juin-2021/>

Article 12B – Une solution de convention fiscale par le Comité fiscal des NU pour taxer les revenus numériques (Rapport sur les politiques en matière de coopération fiscale 16, Juillet 2021)

Par Rajat Bansal

L'imposition sur les revenus des entreprises multinationales dans des activités numériques par les juridictions de la source ou de marché est actuellement le défi le plus important pour la communauté fiscale internationale. La composition actuelle du Comité fiscal des Nations Unies a finalisé, en avril 2021, un accord de convention fiscale pour relever ce défi. Ce rapport explique la raison d'être d'une solution particulière consistant à insérer un nouvel article dans le Modèle de convention des Nations Unies, ses mérites et comment il peut être bénéfique pour tous les pays, en particulier les pays en développement.

<https://www.southcentre.int/rapports-sur-les-politiques-en-matiere-de-cooperation-fiscale-16-juillet-2021/>

Un albatros autour du cou des pays en développement – Clause NPF dans les conventions fiscales (Rapport sur les politiques en matière de coopération fiscale 17, Juillet 2021)

Par Deepak Kapoor, IRS

L'inclusion dans les conventions en matière de double imposition d'une clause de la nation la plus favorisée (« NPF ») est une incarnation du principe fondamental de la non-discrimination et vise à permettre aux pays signataires de tirer également parti des perspectives en matière de commerce et d'investissement. L'objectif de dispositions telles que les clauses NPF et de non-discrimination dans les conventions fiscales est de favoriser l'équité entre les différents pays signataires. Dans les conventions fiscales conclues entre pays développés et pays en développement, les clauses NPF servent également d'outils de négociation pour obtenir de meilleurs taux d'imposition.

Cependant ces clauses ont aujourd'hui des effets négatifs pour les pays de source des revenus, qui sont pour la plupart des pays en développement. Lorsqu'elles sont appliquées entre deux pays également développés, les clauses NPF ne constituent pas, généralement, une source de danger potentielle, mais lorsque la convention est conclue entre un pays développé et un pays en développement, où l'un des pays reçoit plus d'investissements de l'autre qu'il n'en réalise, le danger

est réel. De fait, des difficultés sont apparues récemment en raison d'interprétations divergentes de ces clauses par les tribunaux, qui ont contraint les pays source à appliquer, sur la base des termes contenus dans la clause NPF, un taux d'imposition plus avantageux que celui prévu dans la convention fiscale et à modifier son champ d'application, remettant en cause l'objectif et l'utilité même des clauses NPF.

Il ressort des procédures judiciaires intentées en Afrique du Sud et en Inde que les clauses NPF peuvent aboutir à une réduction de la fiscalité et entraîner une érosion involontaire de la base d'imposition des pays de source des revenus. Le problème réside également dans la rédaction et la formulation ambiguë des clauses NPF, qui entraînent des répercussions négatives inattendues pour les pays ayant pris des engagements dans le cadre de ces conventions. Il est aujourd'hui urgent pour les pays source de procéder à un examen approfondi des clauses NPF figurant dans les conventions fiscales existantes, de la manière dont elles s'articulent entre elles et des retombées négatives qu'elles pourraient avoir sur d'autres conventions.

<https://www.southcentre.int/rapports-sur-les-politiques-en-matiere-de-cooperation-fiscale-17-juillet-2021/>

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)

By Kuldeep Sharma, ADIT (CIOT,UK), FTI (Australia), Insolvency Professional (IBBI)

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 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.

<https://www.southcentre.int/tax-cooperation-policy-brief-22-12-january-2022/>

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)

Por Rajat Bansal

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.

<https://www.southcentre.int/informes-sobre-politicas-en-materia-de-cooperacion-tributaria-16-julio-de-2021/>

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)

Por Deepak Kapoor, IRS

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.

Sin embargo, últimamente, estas cláusulas han empezado a manifestar 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-julio-de-2021/>

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

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/>

Taux Minimum d'Impôt Mondial: Détaché des réalités des pays en développement (Rapport sur les politiques en matière de coopération fiscale 23, 11 Février 2022)

Par Sébastien Babou Diasso

Sous la direction des pays du G20 et de l'organisation de Coopération et de Développement Economique (OCDE), le Cadre Inclusif sur la réforme de la fiscalité internationale a adopté le 8 octobre 2021 une solution à deux piliers visant à résoudre les défis auxquels sont confrontés les pays dans le système fiscal actuel au niveau international. Cependant, le moins que l'on puisse dire, c'est que ces solutions n'apportent pas de réponses aux préoccupations de nombreux pays en développement, en particulier le taux d'impôt minimum de 15%, dans un contexte où la plupart des pays en développement membres de Centre Sud et du G-77+Chine ont déjà des taux effectifs bien au-dessus de ce minimum. Cette note vise à informer sur les niveaux actuels des taux d'imposition effectifs dans les pays en développement, pour lesquels les données sont disponibles, et à montrer pourquoi il ne serait pas pertinent de prendre en compte le taux minimum adopté dans le cadre inclusif. Mobiliser plus de ressources fiscales des entreprises multinationales est important pour les pays en développement pour la réalisation des Objectifs de Développement Durable. Nous recommandons donc que les pays en développement ignorent simplement le pilier deux et maintiennent leurs taux d'imposition actuels, ou les augmentent à des niveaux plus adaptés à travers l'application de mesures unilatérales plutôt que d'accepter d'être soumis à la procédure indiquée dans le pilier deux s'ils décident de l'appliquer.

<https://www.southcentre.int/rapport-sur-les-politiques-en-matiere-de-cooperation-fiscale-23-11-fevrier-2022/>

Mainstreaming Equity in the International Health Regulations and Future WHO Legal Instruments on Pandemic Preparedness and Response (Policy Brief 108, 25 March 2022)

By Nirmalya Syam

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.

<https://www.southcentre.int/policy-brief-108-25-march-2022/>

Draft Fisheries Subsidies Agreement: some key issues to address for a sustainable catch (Policy Brief 109, 31 March 2022)

By Peter Lunenborg

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).

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.

<https://www.southcentre.int/policy-brief-109-31-march-2022/>

Conceptualización de un Instrumento multilateral de la ONU (Informe sobre políticas en materia de cooperación tributaria 15, Junio de 2021)

Por Radhakishan Rawal

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 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-junio-de-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/>

IPR-related Statistics in WTO Trade Policy Reviews (Policy Brief 112, 28 June 2022)

By Peter Lunenborg

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.

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.

<https://www.southcentre.int/policy-brief-112-28-june-2022/>

L'intégration de l'équité dans le Règlement sanitaire international et les futurs instruments juridiques de l'OMS sur la préparation et la riposte aux pandémies (Rapport sur les politiques 108, 25 Mars 2022)

Par Nirmalya Syam

Les États membres de l'OMS sont sur le point d'entamer les négociations les plus importantes qui pourraient définir le paradigme des obligations juridiques internationales en matière de préparation et de riposte aux futures pandémies. Ces négociations portent sur les amendements au Règlement sanitaire international (2005) (RSI) ainsi que sur la négociation d'un traité ou d'un autre instrument juridique dans le cadre de la Constitution de l'OMS qui complètera le RSI afin d'assurer une meilleure préparation et une meilleure riposte aux futures pandémies, en tirant parti de l'expérience de la pandémie actuelle de COVID-19. La considération la plus critique pour les pays en développement dans ces négociations sera l'intégration des préoccupations d'équité, actuellement absentes des règles et des instruments existants disponibles au niveau mondial pour permettre aux pays en développement de prévenir et de répondre efficacement à une pandémie. Dans ce

contexte, ce document suggère quelques éléments d'équité qui devraient être poursuivis par des propositions textuelles spécifiques des pays en développement par le biais des amendements au RSI.

<https://www.southcentre.int/rapport-sur-les-politiques-108-25-mars-2022/>

La incorporación de la equidad en el Reglamento Sanitario Internacional y en futuros instrumentos jurídicos de la OMS sobre preparación y respuesta frente a pandemias ONU (Informe sobre políticas 108, 25 Marzo 2022)

Por Nirmalya Syam

Los Estados miembros de la OMS están a punto de iniciar las negociaciones más importantes que podrían establecer el paradigma de las obligaciones jurídicas internacionales en materia de preparación y respuesta a futuras pandemias. Estas negociaciones se centran en las enmiendas al Reglamento Sanitario Internacional (2005) (RSI), así como en la negociación de un tratado u otro instrumento jurídico en el marco de la Constitución de la OMS que complementa el RSI para garantizar una mejor preparación y respuesta ante futuras pandemias, basándose en las experiencias de la actual pandemia de COVID-19. La consideración más crítica para los países en desarrollo en estas negociaciones será la integración de las preocupaciones de equidad, actualmente ausentes de las normas y mecanismos existentes a nivel mundial para permitir a los países en desarrollo prevenir y responder eficazmente a un brote pandémico. En este contexto, este informe sugiere algunos elementos de equidad que deberían perseguirse a través de propuestas textuales específicas de los países en desarrollo mediante enmiendas al RSI.

<https://www.southcentre.int/informe-sobre-politicas-108-25-de-marzo-de-2022/>

A Global Asset Registry to track hidden fortunes and for asset recovery (Tax Cooperation Policy Brief 24, 29 July 2022)

By Ricardo Martner

Financial opacity and offshore hidden wealth have become a major economic and political problem. Tax havens continue to exist and provide financial secrecy services that allow the richest individuals in the world to hide their wealth from national tax authorities. Implementing a Global Asset Registry could help tax authorities to identify, record and tax all wealth, regardless of where it is held. It would also be a critical tool in efforts to recover stolen assets of countries suffering from widespread corruption.

<https://www.southcentre.int/tax-cooperation-policy-brief-24-29-july-2022/>

OTHER PUBLICATIONS

Global Cooperation Instead of Confrontation (January 2021)

By Peter Lunenborg and Fernando Rosales

The world faces many challenges besides the current coronavirus pandemic, including hunger, environmental destruction, climate change, the proliferation of nuclear weapons and rising inequality. Global cooperation is necessary to address these challenges and, in some areas, the global community is responding to them. Calls to form a coalition against a particular country, such as from the United States towards China, divert attention from the problems the world is facing and hamper progress in addressing these global challenges. History taught us that the best way to resolve our differences and to move forward is through dialogue and cooperation, not confrontation.

<https://www.southcentre.int/sc-document-january-2021/>

South Centre's Submission to the 3rd Intersessional Meeting for Dialogue and Cooperation on Human Rights and the 2030 Agenda for Sustainable Development (January 2021)

Strengthening human rights for fighting inequalities and building back better

The COVID-19 pandemic has caused a global crisis without precedent in modern history. Its effects have not been felt equally among all countries as it has exacerbated the profound economic and social inequalities affecting the most vulnerable. In light of the lessons, we have learned – and are still learning – from the fight against COVID-19 pandemic, the 3rd Intersessional Meeting for Dialogue and Cooperation on Human Rights and the 2030 Agenda serves as a vital opportunity to understand the needs and realities of those who are still 'left behind'.

<https://www.southcentre.int/sc-submission-january-2021/>

South Centre Contribution in response to UPOV Circular E-20/246 (February 2021)

The South Centre, as an intergovernmental observer to the UPOV Council, submits this contribution on views on the implementation of the exception of acts done privately and for non-commercial purposes in relation to smallholder farmers. The South Centre appreciates this opportunity to inform the possible development of guidance regarding the implementation of the exception of acts done privately and for non-commercial purposes in relation to smallholder farmers.

<https://www.southcentre.int/sc-submission-february-2021/>

Scope of Compulsory License and Government Use of Patented Medicines in the Context of the COVID-19 Pandemic (February 2021)

To meet public health needs, such as in the current COVID-19 emergency, governments can use **compulsory licenses** and **government use** as a tool for procurement and import of patented medicines.

These mechanisms are provided for in most laws worldwide. The WTO TRIPS Agreement, as reaffirmed by the Doha Declaration on TRIPS and Public Health, recognises the right of WTO members to grant compulsory licenses and their freedom to determine the grounds upon which such licenses may be granted (read our Call for Action on Intellectual Property and Trade Measures to Address the Covid-19 Crisis [here](#)).

The South Centre offers a guide for the issuance of compulsory licenses and government use, see [here](#), [aquí](#) en español.

This table provides information of instances of their use.

<https://www.southcentre.int/covid-19-compulsory-licenses-table-february-2021/>

Scope of Compulsory License and Government Use of Patented Medicines in the Context of the COVID-19 Pandemic (March 2021)

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<https://www.southcentre.int/covid-19-compulsory-licenses-table-march-2021/>

Strengthening United Nations Action in the Field of Human Rights through the Promotion of International Cooperation (March 2021)

COVID-19 could be an opportunity for effective international cooperation for the achievement of the Sustainable Development Goals, taking Human Rights as its fundamental pillar, the South Centre notes in its submission for the United Nations Secretary-General's report.

<https://www.southcentre.int/sc-submission-march-2021/>

Comments on Discussion Draft: Taxation of Software Payments as Royalties (March 2021)

South Centre Tax Initiative

The South Centre supports the proposal being discussed in the UN Committee of Experts on International Cooperation in Tax Matters (UN Tax Committee) to tax payments for computer software as royalties. This will help developing countries more effectively tax the digitalized economy and will bring clarity to the application of existing bilateral tax treaties.

<https://www.southcentre.int/sc-submission-march-2021-2/>

Policy Paper on National Strategies for South-South and Triangular Cooperation (South Centre and IsDB Joint Publication, April 2021)

This paper was developed jointly by the Islamic Development Bank (IsDB) and the South Centre based on the concept of the Islamic Development Bank on National Ecosystems for South-South and Triangular Cooperation.

For developing countries to realize the full potential of South-South and Triangular Cooperation (SSTrC) for achieving their national sustainable development objectives, it is important to formulate national SSTrC strategies as part of their national SSTrC ecosystems. Such national strategies would serve as guidance for a country's SSTrC activities, initiatives and institutional framework,

both as provider and beneficiary of SSTRC. This policy brief highlights the importance of developing national SSTRC strategies for achieving national development objectives and lays out the main elements that can be taken into consideration by developing countries for designing their national SSTRC strategies. While many developing countries do not have an explicit SSTRC strategy in place yet, the state of play shows that its elements can be found in various policies, institutional guidance and national development strategies. The absence of a holistic approach and a nationally acknowledged strategy carries the risk of fragmentation and incoherence in undertaking SSTRC activities. The potential of national SSTRC strategies for enabling effective responses to crises (such as COVID-19) is also explored.

<https://www.southcentre.int/sc-and-isdb-joint-publication-april-2021/>

Submission to the Special Session of the General Assembly on Challenges and Measures to Prevent and Combat Corruption and Strengthen International Cooperation

South Centre, 28 May 2021

The South Centre submission to UNGASS2021 highlights the need for strong inter-institutional and cross-sectorial coordination and more effective and open government tools. The UNGASS2021 should support the implementation of the FACTI Panel recommendations as means to enhance States' effort to combat corruption.

<https://www.southcentre.int/sc-submission-june-2021/>

Propiedad intelectual y acceso a medicamentos: una introducción a cuestiones clave – algunos términos y conceptos básicos (Material de capacitación 1, Junio 2021)

Por Germán Velásquez

La propiedad intelectual y las patentes en particular se han convertido en uno de los temas más debatidos sobre el acceso a los medicamentos, desde la creación de la Organización Mundial del Comercio (OMC) y la entrada en vigor del Acuerdo sobre los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio (ADPIC). Las patentes no son de ninguna manera las únicas barreras para el acceso a medicamentos que salvan vidas, pero pueden desempeñar un papel significativo, o incluso determinante. Durante el período de protección de la patente, la capacidad del titular de la patente para determinar los precios, en ausencia de competencia, puede hacer que el medicamento resulte inalcanzable para la mayoría de las personas que viven en los países en desarrollo. Este primer número de los "Materiales de capacitación del South Centre" pretende, en su primera parte, ofrecer una introducción a cuestiones clave en el ámbito del acceso a los medicamentos y la propiedad intelectual. La segunda parte describe y define algunos términos y conceptos básicos de esta área relativamente nueva de las políticas farmacéuticas, que son los aspectos comerciales de los derechos de propiedad intelectual que regulan la investigación, el desarrollo y el suministro de medicamentos y las tecnologías sanitarias en general.

<https://www.southcentre.int/material-de-capacitacion-1-junio-2021/>

Written Contribution to the United Nations Committee on the Economic, Social and Cultural Rights Draft General Comment on Land and Economic, Social and Cultural Rights (July 2021)

As mentioned by the UN Committee on Economic, Social and Cultural Rights (CESCR), the purpose of the general comment is to clarify the specific obligations of States parties relating to land and the governance of tenure of land under the International Covenant on Economic, Social and Cultural Rights (ICESCR). In line with such an objective, the South Centre is keen to submit the following written contribution to the draft general comment on Land and Economic, Social and Cultural Rights (draft general comment). It will consider some of the concerns that developing

countries have raised in relation to their development realities and needs, mainly arising from the challenges they face due to the current COVID-19 pandemic crisis and the need for a fair and inclusive recovery.

<https://www.southcentre.int/sc-submission-july-2021/>

Comments on the STATEMENT ON A TWO-PILLAR SOLUTION TO ADDRESS THE TAX CHALLENGES ARISING FROM THE DIGITALISATION OF THE ECONOMY (South Centre Contribution, August 2021)

The BEPS Monitoring Group, 31 July 2021

On 1 July 2021 a statement was issued by the OECD outlining the agreement reached through the Inclusive Framework of the OECD/G20 base erosion and profit shifting (BEPS) project. These comments by the BEPS Monitoring Group (BMG) aim to contribute to a wider public understanding of the issues involved. The BMG is a network of experts on various aspects of international tax, set up by a number of civil society organizations which research and campaign for tax justice including the Global Alliance for Tax Justice, Red de Justicia Fiscal de America Latina y el Caribe, Tax Justice Network, Christian Aid, Action Aid, Oxfam, and Tax Research UK. This report has not been approved in advance by these organizations, which do not necessarily accept every detail or specific point made here, but they support the work of the BMG and endorse its general perspectives. It is based on previous reports, and has been drafted by Sol Picciotto with comments and contributions by Abdul Muheet Chowdhary (Senior Programme Officer, South Centre Tax Initiative), Jeffery Kadet, Annet Oguttu, Sudarshan Rangan, Attiya Waris, and Francis Weyzig.

<https://www.southcentre.int/sc-contribution-august-2021/>

South Centre Submission to the 18th Session of the CGRFA (August 2021)

The South Centre presents its compliments to the Commission on Genetic Resources for Food and Agriculture (CGRFA) and is pleased to send to the Commission the following information on its programmes and activities relevant to the prioritized themes for the 18th session of the CGRFA.

<https://www.southcentre.int/sc-submission-august-2021/>

Virtual Consultation in support of the UN Working Group's 2021 Report to the UN General Assembly on Human Rights-Compatible International Investment Agreements (Report, August 2021)

South Centre, 23 June 2021

Foreign direct investment (FDI) should support States' efforts to "bring the SDGs and goals of the Paris Agreement to life for all people, everywhere." However, achievement of these objectives is slowed down in the current situation where investor-State dispute settlement (ISDS) mechanisms are included in international investment agreements (IIAs). These mechanisms have increased the exposure of States to claims from foreign investors against regulatory measures taken to protect and guarantee a clean and safe environment, public health, human rights, social inclusion, and poverty reduction.

In the current scenario marked by the impact of the COVID-19 pandemic, FDI can be a valuable source of financing a better and fairer recovery, including investment needed to achieve the full realisation of all human rights. But to achieve this potential, there is a need to reshape the international investment regime, including through the reform of its substantive rules and standards, as well as of the ISDS mechanisms embedded in existing IIAs.

The South Centre and the United Nations Working Group on human rights and transnational corporations and other business enterprises convened a virtual consultation to identify and assess

the different challenges developing countries face while negotiating or reforming IIAs in line with their international human rights obligations. The virtual consultation aimed at highlighting and discussing some of the most common concerns and challenges those developing countries face in the promotion of responsible investment practices, including an exploratory discussion about balancing the rights and obligations of investors in IIAs and safeguarding the sovereign right of States to regulate in the public interest for building back better and fairer in face of the COVID-19 pandemic. It also discussed possible reforms of the ISDS mechanism.

<https://www.southcentre.int/south-centre-report-august-2021/>

Patenting of Plants and Exceptions to Exclusive Rights: Lessons from European Law (Study, September 2021)

Biotechnology has increased the use of patent law to protect the outcomes of plant breeding. While the TRIPS Agreement allows countries to exclude the patentability of plants and essentially biological processes to obtain them, many developing countries are granting patents on plants and plant components, such as seeds, cells, and genes. These patents can limit access to plant materials for further research and breeding and prevent farmers from saving and re-using seeds that incorporate patented materials. This study shows how European legislation has sought to strike a balance between the protection of plant-related inventions and the rights of breeders and farmers through the introduction of specific exceptions to patent rights and discusses what lessons can be drawn for developing countries.

<https://www.southcentre.int/south-centre-study-september-2021/>

Contribution of the South Centre to the Report of the Secretary-General on the Implementation of UN General Assembly Resolution A/75/L.97 dated 9 June 2021 on the “Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba” (September 2021)

This input by the South Centre is prepared in response to the UN Secretary-General’s request as a contribution to the report of the Secretary-General as per resolution A/75/L.97, with respect to the imposition of unilateral economic, financial and trade measures against Cuba, in violation of basic principles of the UN Charter.

<https://www.southcentre.int/sc-contribution-to-unsg-report-on-us-embargo-against-cuba-2021/>

Comments on Draft Agenda of the UN Tax Committee (September 2021)

The South Centre welcomes the UN Tax Committee’s invitation of public comments into its draft agenda and four-year work plan. By engaging the public in preparing the work plan, the UN Tax Committee’s work can be more responsive to the needs of developing countries, and of UN Member States as a whole. By stating that “the goal to ensure that the Committee’s agenda is practical and relevant to developing countries and includes the most pressing challenges they face in tax policy and administration” the Committee has shown a laudable intent which is also in line with its mandate, which is to give special attention to developing countries. The South Centre offers its written comments on the three topics on which inputs have been requested. These have been prepared based on consultation with the South Centre’s Member States, which are exclusively developing countries.

<https://www.southcentre.int/sc-submission-september-2021/>

International Taxation from Global South Perspectives (Report, October 2021)

By Badr Mandri, Sebastien Babou Diasso, and Aaditri Solankii

South Centre (SC) in collaboration with the Policy Center for the New South (PCNS) organized on October 13, 2021, a webinar on the issue of International Taxation from the Global South perspectives.

Tax revenue mobilization plays a key role in financing the economic and social development of countries. When well designed and implemented, tax policy can help developing countries raise revenue and increase their spending, especially in the social sector. Indeed, tax revenue as a share of GDP represent only 15% to 20% in low and middle-income countries, because of obstacles such as the imbalanced and complex international standards designed for developed countries, and the difficulties in collecting taxes in developing countries.

<https://www.southcentre.int/report-international-taxation-from-global-south-perspectives/>

A New Treaty on Pandemics: Some Key Issues from a Global South Perspective (Working Paper, 23 November 2021)

By Tamara Luciana Bustamante, Josefina del Rosario Lago, Mariana Magliolo, & Lucas Javier Segal, Facultad de Derecho, Universidad de Buenos Aires

In view of both the difficulty that negotiations on a possible new treaty will present for States of the Global South and their special needs, this paper aims to contribute by identifying and giving content to certain key issues —though not exhaustive— that should be taken into account by negotiators of a possible new treaty on pandemics or any other instrument on the subject in the future. The selected key issues are addressed through four cross-cutting questions: (i) Why is each issue relevant for the Global South, (ii) where it is currently regulated, (iii) what are the problems it entails, and (iv) how could a new instrument address them.

<https://www.southcentre.int/working-paper-on-pandemic-treaty-23-november-2021/>

Outcomes and Recommendations of the FIRST AFRICAN FISCAL POLICY FORUM (16 December 2021)

South Centre and Coalition for Dialogue on Africa

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.

<https://www.southcentre.int/outcomes-first-african-fiscal-policy-forum-16-december-2021/>

South Centre Comments on Draft Model Rules for Nexus and Revenue Sourcing (21 February 2022)

The South Centre offers its comments on the Draft Model Rules for Nexus and Revenue Sourcing. As a procedural matter, the extremely rapid pace of discussions is a matter of great concern for developing countries, a matter also raised by the African Tax Administration Forum (ATAF). While

an urgent solution is needed to the taxation of the digitalization of the economy, this must mean one which incorporates the interests of developing countries.

<https://www.southcentre.int/south-centre-comments-on-draft-model-rules-for-nexus-and-revenue-sourcing-21-february-2022/>

Comments on the Model Rules for the Globe (South Centre Contribution, 9 February 2022)

The BEPS Monitoring Group

The global minimum tax should provide an incentive for developing countries to raise their effective tax rate as close as possible to their statutory tax rates, which are often higher than the 15% rate. The average rate for South Centre and G-77+China Member States is around 25%. In any case it should be at least 15%, since any undertaxed profits would in any case be taxed at that rate by developed countries. Leading OECD countries have already adopted measures to protect their source tax base, which they intend to retain, such as the UK's diverted profits tax and the US's base erosion anti-abuse tax. Poorer countries have even more reason to do likewise. They should consider introducing or strengthening measures such as an alternative minimum tax on deemed or book profits, versions of which already exist in many countries. These are compatible with the GloBE rules, and should be regarded as an essential complement, to ensure that it contributes to both fair and effective taxation of MNE profits.

<https://www.southcentre.int/sc-submission-comments-on-the-model-rules-for-the-globe-9-february-2022/>

Direct Monetary Costs of Intellectual Property for Developing Countries A changing balance for TRIPS? (South Centre Report, 2 March 2022)

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.

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.

<https://www.southcentre.int/sc-report-on-direct-monetary-costs-of-ip-2-march-2022/>

South Centre Comments on Draft Model Rules for Tax Base Determinations (4 March 2022)

The South Centre today provided its comments to the OECD Inclusive Framework's Task Force on Digital Economy (TFDE) on the Draft Model Rules for Tax Base Determinations. These rules are part of the overall OECD project on the taxation of the digitalized economy known as Pillar One. They determine the amount of a Multinational Enterprise's (MNE) profits that will then be partially redistributed to market jurisdictions, which are expected to be largely developing countries.

The Model Rules for Tax Base Determinations are of importance as this affects the amount of tax revenues that developing countries will finally be able to collect under the so-called "Amount A" of Pillar One.

<https://www.southcentre.int/south-centre-comments-on-draft-model-rules-for-tax-base-determinations-4-march-2022/>

Comments on the Draft Model Rules on Nexus and Revenue Sourcing (South Centre Contribution)

The BEPS Monitoring Group, 18 February 2022

These comments by the BEPS Monitoring Group (BMG) analyse the draft model rules on nexus and revenue sourcing, released by the OECD Secretariat on 4 February 2022 for public consultation, in the continuing work to address the tax challenges of the digitalised economy by the Task Force on the Digital Economy (TFDE) set up by the G20/OECD Inclusive Framework on BEPS. The BMG is a network of experts on various aspects of international tax, set up by a number of civil society organizations which research and campaign for tax justice including the Global Alliance for Tax Justice, Red de Justicia Fiscal de America Latina y el Caribe, Tax Justice Network, Christian Aid, Action Aid, Oxfam, and Tax Research UK. This report has not been approved in advance by these organizations, which do not necessarily accept every detail or specific point made here, but they support the work of the BMG and endorse its general perspectives. It is based on our previous reports, and has been drafted by Sol Picciotto and Jeffery Kadet, with comments and contributions by Abdul Muheet Chowdhary, Sakshi Rai, Sudarshan Rangan, Attiya Waris and Yansheng Zhu.

<https://www.southcentre.int/sc-contribution-comments-on-the-draft-model-rules-on-nexus-and-revenue-sourcing-18-february-2022/>

South Centre Comments on Draft Model Rules for Domestic Legislation on Scope (19 April 2022)

The South Centre today provided its comments to the OECD Inclusive Framework's Task Force on Digital Economy (TFDE) on the Draft Model Rules for Domestic Legislation on Scope. These rules are part of the overall OECD project on the taxation of the digitalized economy known as Pillar One. They determine the amount of a Multinational Enterprise's (MNE) profits that will then be partially redistributed to market jurisdictions, which are expected to be largely developing countries. The Model Rules for Domestic Legislation on Scope are of importance as this affects which Multinational Enterprises (MNEs) will come under the scope of the "digital" tax, known as "Amount A" of Pillar One. In other words, they determine which companies will finally pay the tax.

<https://www.southcentre.int/south-centre-comments-on-draft-model-rules-for-domestic-legislation-on-scope-19-april-2022/>

South Centre Comments on Amount A: Extractives Exclusion (29 April 2022)

The South Centre today provided its comments to the OECD Inclusive Framework's Task Force on Digital Economy (TFDE) on the Amount A: Extractives Exclusion. These rules are part of the overall OECD project on the taxation of the digitalized economy known as Pillar One. They determine the amount of a Multinational Enterprise's (MNE) profits that will then be partially redistributed to market jurisdictions, which are expected to be largely developing countries.

Extractive Exclusion is of critical importance to developing countries as it is meant to ensure that revenues from natural resources such as mining, oil, gas, etc are excluded from the scope of the tax, known as Amount A.

<https://www.southcentre.int/south-centre-comments-on-extractives-exclusion-29-april-2022/>

DATA FOR DEVELOPMENT: HOW TO LEGALLY CHARACTERIZE DATA?

SOUTH CENTRE'S CONTRIBUTION TO THE eTRADE FOR ALL LEADERSHIP DIALOGUE OF THE UNCTAD eCOMMERCE WEEK 2022

Radical technological changes have always challenged pre-existing legal frameworks as demonstrated, for instance, by the commercialization of computer software independently from

hardware and the use of genetic information to develop biotechnological innovations in various areas such as health and agriculture. The emergence of big data is a new and outstanding example of such situations. With the growing digitalization of multiple activities, ranging from education and health to 'smart farming' and the supply of the most diverse goods, the production and storage of data have exploded. Individuals, businesses and governments are generating an immense amount of data and this will only continue to grow in the future. Yet, the legal characterization of data is still a matter of considerable divergencies and debate. Policy makers and scholars are still searching for legal approaches suitable to address the complex relationships among producers, processors, controllers and users of data...

<https://www.southcentre.int/sc-contribution-unctad-ecommerce-week-2022/>

South Centre Comments on Regulated Financial Services Exclusion (20 May 2022)

The South Centre today provided its comments to the OECD Inclusive Framework's Task Force on Digital Economy (TFDE) on the Amount A: Regulated Financial Services Exclusion. These rules are part of the overall OECD project on the taxation of the digitalized economy known as Pillar One. They determine the amount of a Multinational Enterprise's (MNE) profits that will then be partially redistributed to market jurisdictions, which are expected to be largely developing countries.

The Regulated Financial Services Exclusion seeks to remove financial institutions such as banks, insurance companies and asset managers from the scope of the tax, known as Amount A. This may greatly reduce the amount of tax that can be collected by the developing countries from the OECD solution.

<https://www.southcentre.int/south-centre-comments-on-regulated-financial-services-exclusion-20-may-2022/>

South Centre Contributions on 'taxation, illicit financial flows and human rights' to the report of the Independent Expert to the UN General Assembly, 77th session (30 May 2022)

The South Centre offers its comments to the report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights to the General Assembly, 77th session.

<https://www.southcentre.int/contributions-on-taxation-iffs-and-human-rights-to-ie-report-to-unga-77-30-may-2022/>

South Centre Comments on Tax Certainty Framework for Amount A, 10 June 2022

The South Centre offers its comments to the OECD Inclusive Framework's Task Force on Digital Economy (TFDE) on the Tax Certainty Framework for Amount A.

<https://www.southcentre.int/south-centre-comments-on-tax-certainty-framework-for-amount-a-10-june-2022/>

South Centre Comments on Tax Certainty Framework for Issues Related to Amount A, 10 June 2022

The South Centre offers its comments to the OECD Inclusive Framework's Task Force on Digital Economy (TFDE) on the Tax Certainty Framework for Issues Related to Amount A.

<https://www.southcentre.int/south-centre-comments-on-tax-certainty-framework-for-issues-related-to-amount-a-10-june-2022/>

South Centre Comments on the Draft Annotated Outline of a WHO Convention, Agreement or Other International Instrument on Pandemic Prevention, Preparedness and Response, 24 June 2022

The South Centre welcomes the opportunity to provide comments on the draft annotated outline of a WHO convention, agreement or other international instrument on pandemic prevention, preparedness and response. Comments are provided with respect to the process and the content.

<https://www.southcentre.int/comments-on-draft-annotated-outline-of-who-convention-agreement-or-other-international-instrument-on-pandemic-prevention-preparedness-response-24-june-2022/>

Outcomes and Recommendations of the CoDA-South Centre Dialogue Series on Illicit Financial Flows (IFFs): Comparing Tax Revenues to Be Raised by Developing Countries from the OECD and UN Solutions for Taxing the Digital Economy (1 June 2022)

The Coalition for Dialogue on Africa (CoDA) and the South Centre co-organised the first of a series of dialogues on Illicit Financial Flows (IFFs) on 1st June 2022. The dialogue was convened mainly to launch and discuss a research paper jointly commissioned by CoDA and the South Centre titled **'A Tough Call? Comparing Tax Revenues to Be Raised by Developing Countries from the Amount A and the United Nations Model Treaty Article 12B Regimes'**.

<https://www.southcentre.int/outcomes-coda-south-centre-dialogue-series-on-iffs-1-june-2022/>

South Centre Contribution – Comments on TAX CERTAINTY FOR 'RELATED ISSUES' IN PILLAR ONE

The BEPS Monitoring Group, 12 June 2022

The BEPS Monitoring Group submitted comments to the OECD on the draft proposals for tax certainty on issues related to Amount A in Pillar One. Abdul Muheet Chowdhary, Senior Programme Officer of the South Centre Tax Initiative, was a contributor.

The best way to achieve certainty for allocating the rights to tax the profits of multinational enterprises (MNEs) is to formulate rules that are clear and simple, and in line with the business reality that they operate as unitary global enterprises. This is achieved in the design of Amount A in Pillar One, for which certainty can be ensured through an essentially administrative coordination process. This will deal with all the issues of definition and allocation of Amount A, including avoiding any double taxation.

Regrettably, however, Amount A has been designed as an exception, applicable only to a small part of the profits of around one hundred of the largest and most profitable MNEs, so that the existing rules on transfer pricing would continue to apply in all other cases. These rules are highly complex and rely on subjective judgments, and inevitably generate conflicts. These concern often highly contentious issues, particularly when they involve claims by host countries to tax more than the 'routine' profits from the local activities of foreign-based MNEs. Yet it is these very disputes to which this proposed procedure would apply for MNEs in scope of Pillar One.

The proposal would require any unresolved conflict to be referred to mandatory supra-national arbitration through a Panel, the majority of members of which would be business tax advisers. This is a fundamental abdication of state sovereignty, entrusting decisions involving often large amounts of government revenue to unaccountable private practitioners, who would operate in total secrecy, and provide no explanation or rationale for any decisions made. These proposals are totally inappropriate and unnecessary, and their inclusion would make it even more unlikely that many states will adopt Pillar One. In our view, since international tax disputes are between states, and concern important issues affecting government revenue, they should be settled only between governmental representatives.

<https://www.southcentre.int/sc-contribution-comments-on-tax-certainty-on-issues-related-to-amount-a-in-pillar-one-12-june-2022/>

South Centre Contribution – Comments on TAX CERTAINTY FOR PILLAR ONE AMOUNT A

The BEPS Monitoring Group, 12 June 2022

The BEPS Monitoring Group submitted comments to the OECD on the consultation draft proposals to provide tax certainty for Amount A of Pillar One. Abdul Muheet Chowdhary, Senior Programme Officer of the South Centre Tax Initiative, was a contributor.

The best way of achieving tax certainty is to formulate rules that are simple, clear and objective. The design of Amount A is a major step forward, since it will allocate a portion of the global consolidated profits of multinational enterprises (MNEs) by a formulaic method, in contrast with the current rules. However, Pillar One is designed as an exceptional system that would apply to only a small part of the profits of only around one hundred of the largest and most profitable MNEs, retaining the current defective transfer pricing rules for all other purposes.

For Amount A itself, the small number of MNEs likely to be in scope should make it easier to roll out the system through administrative arrangements coordinated among the tax authorities concerned. Its design makes it easier to provide certainty through administrative arrangements that could and should involve only tax officials. We support the composition suggested in this draft for Review Panels, as well as the Government-Only option for Determination Panels, which provides an appropriate balance of officials from states that would benefit and those that would lose from an Amount A allocation. It is inappropriate, unnecessary, and we believe detrimental to include non-governmental experts, who would inevitably and overwhelmingly be current or retired business advisers who could not be truly independent.

Uncertainty will nevertheless be created in the short run because of the novelty of the system. It should now be recognised that the timescale for Pillar One has been far too ambitious, and to recalibrate the process. The proposals have been developed at great speed and largely under strict secrecy, and they require more effective participation of tax officials particularly from poorer countries, and much greater public scrutiny. A more careful process should aim to design the building blocks for a new approach to taxation of MNEs that could eventually be applied much more widely.

<https://www.southcentre.int/sc-contribution-comments-on-tax-certainty-for-amount-a-of-pillar-one-12-june-2022/>

South Centre Comments on Progress Report on Amount A of Pillar One (18 August 2022)

The South Centre offers its comments to the OECD Inclusive Framework's Task Force on Digital Economy (TFDE) on the [Progress Report on Amount A of Pillar One](#).

In June 2022, the [Coalition for Dialogue on Africa \(CODA\)](#), a Special Initiative of the African Union, and the South Centre, jointly released [country-level revenue estimates](#) from Amount A compared with [Article 12B of the UN Model Tax Convention](#), for the 84 combined Member States of the [African Union](#) and the [South Centre](#). CODA and the South Centre have also provided [a set of recommendations to developing countries](#) on the taxation of the digitalized economy.

The Progress Report on Amount A, the latest version of the OECD's proposed solution for taxation of the digitalized economy, makes it clear that the revenues expected for developing countries will dwindle even further than estimated by CODA and the South Centre.

With each successive update of the rules, the proposed solution is becoming increasingly less appealing to the developing countries. The OECD must, at a minimum, release revenue estimates for the 141 jurisdictions of the Inclusive Framework such that each can take an informed decision in the national interest. As an organization that sets 'transparency' standards, OECD must itself be

transparent and provide countries with the essential information needed for making what may become a historic decision for the international taxation regime.

<https://www.southcentre.int/south-centre-comments-on-progress-report-on-amount-a-of-pillar-one-18-august-2022/>

SOUTHVIEWS

The Right to Development and its Role in International Economic Law (SouthViews No. 212, 28 January 2021)

By Olasupo Owoeye

This paper provides a brief discussion on the right to development and examines some of the criticisms often raised against its significance as a cognizable human right. The paper argues that the principles encapsulated in the right to development represent the foundational principles of the international legal order. The right to development is therefore both a human right and an economic right. Thus, the principles it embodies are not only incorporated into the International Bill of Human Rights, they are also well reflected in World Trade Organization agreements and the field of international economic law. The paper argues that the right to development can play an important role in the interpretation and enforcement of rights under international economic law.

<https://www.southcentre.int/southviews-no-212-28-january-2021/>

Access to Medical Equipment in a Pandemic Situation: Importance of Localized Supply Chains and 3D Printing (SouthViews No. 213, 23 February 2021)

By Muhammad Zaheer Abbas, PhD

The response to the COVID-19 crisis highlighted the weaknesses of the free trade system and failures of the traditional supply chains. Public health preparedness for future pandemics demands nation-states to increase their local production of medical supplies in order to reduce their dependence on third countries. Globally connected local production, enabled by digital fabrication tools, is arguably the best policy response to collaboratively address supply-chain vulnerabilities. 3D printing technology, which is the most prominent manifestation of digital fabrication ecosystems, can play a key role in enhancing the local production capacity in a time- and cost-efficient manner. This paper calls for an increased focus on local production and proposes a more systematic use of 3D printing capabilities to address shortages of critical medical equipment in a health emergency.

<https://www.southcentre.int/southviews-no-213-23-february-2021/>

Increasing ecocides: On the need for a new global platform for redress (SouthViews No. 214, 26 February 2021)

By Dr S Faizi

Dr S Faizi argues that the community of nations should criminalise ecocide and create a mechanism to prosecute the culprits. This should be done by establishing an Environmental Security Council as a democratic, independent multilateral body, and by no means by overburdening the International Criminal Court (ICC) with this new agenda when ICC itself is in dire need of strengthening to enforce its original mandate.

<https://www.southcentre.int/southviews-no-214-26-february-2021/>

Technology and inequality: can we decolonise the digital world? (SouthViews No. 215, 6 April 2021)

By Padmashree Gehl Sampath

In this article, the author argues that techno-centric explanations of progress and industrialisation are deeply entrenched in a wider social context that encourages us to ignore the historical roots of

current inequalities – which, in fact, are not amenable to a technological solution alone. Making the data economy work for all will require a serious reflection on how we want to frame this debate, and how to align ourselves to a common vision of social progress that technology could help to accomplish.

<https://www.southcentre.int/southviews-no-215-6-april-2021/>

An Introduction to the UN Technology Bank for the Least Developed Countries (SouthViews No. 216, 4 May 2021)

By Spring Gombe

Adoption, adaptation and diffusion of technology offer Least Developed Countries (LDCs) substantial potential to increase economic productivity and development and to narrow the technological gap with developed countries. It is in recognition of the need for sustained and sustainable mechanisms to enable the transfer of technologies between countries that the United Nations (UN) Technology Bank for the Least Developed Countries was born.

<https://www.southcentre.int/southviews-no-216-4-may-2021/>

Financing for development from the perspective of the right to development (SouthViews No. 217, 14 May 2021)

Summaries of two reports by Saad Alfarargi, Special Rapporteur on the right to development

In 2020, the United Nations (UN) Special Rapporteur on the right to development, Saad Alfarargi, submitted two reports, one to the UN Human Rights Council (HRC) and the other to the UN General Assembly, on the issue of financing for development (FFD) from the perspective of the right to development (RTD). The first report (A/HRC/45/15) analyzed national-level FFD, while the second report (A/75/167) focused on the international dimension of FFD. In both reports the Special Rapporteur highlighted relevant challenges, with a particular focus on how to ensure the meaningful participation of rights-holders.

<https://www.southcentre.int/southviews-no-217-14-may-2021/>

The Proposed Pandemic Treaty and the Challenge of the South for a Robust Diplomacy (SouthViews No. 218, 19 May 2021)

By Obijiofor Aginam

The motivation for a pandemic treaty is infallible because of the ‘globalization of public health’ in a rapidly evolving interdependence of nations, societies, and peoples. Notwithstanding the lofty purposes of the proposed pandemic treaty as a tool for effective cooperation by member-states of the WHO to address emerging and re-emerging disease pandemics in an inter-dependent world, the proposal nonetheless raises some structural and procedural conundrums for the Global South. The negotiation of a pandemic treaty should, as a matter of necessity, take into account the asymmetries of World Health Organization member-states and the interests of the Global South.

<https://www.southcentre.int/southviews-no-218-19-may-2021/>

Opportunities and Challenges: Tax Cooperation and Governance for Asia-Pacific Countries (SouthViews No. 219, 31 May 2021)

By Sakshi Rai

An informal technical meeting was organised on April 8th 2021 by the Secretariat of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel) for tax officials from the Asia-Pacific, to discuss the relevance of the Panel's recommendations in the context of the region as well as to familiarise tax officials with its final report.

<https://www.southcentre.int/southviews-no-219-31-may-2021/>

Improve nexus rule for fair distribution of taxing rights to developing countries (SouthViews No. 220, 28 June 2021)

By Radhakishan Rawal

One of the open issues for Pillar One in the discussion on the taxation of the digital economy is the nexus threshold, which would determine which Multinational Enterprises (MNEs) have a taxable presence. Big developed economies or smaller developing economies both may be deprived of taxing rights as a result of nexus thresholds as presently described in the Pillar One proposal. Further, even where smaller thresholds are adopted, some countries may still be denied taxing rights. Financial threshold was never a parameter of distributing taxing rights between the countries. A minor tweaking of the tax certainty process could address the issue.

This article recommends giving the taxing right over Amount A of Pillar One, which covers the main portion of taxable profits from the digital economy to all the market jurisdictions, but to give rights related to affected tax jurisdictions only to those countries meeting the nexus thresholds. This approach will result in a fair distribution of taxing rights and will also ensure that there is no additional burden on the tax certainty process, which will be easier for developing countries.

<https://www.southcentre.int/southviews-no-220-28-june-2021/>

South-South and Triangular Cooperation: lessons from partnership between Argentina and Mozambique (SouthViews No. 221, 6 July 2021)

By Federico Villegas

This article reviews some fruitful South-South and Triangular Cooperation (SSTrC) initiatives between Argentina and Mozambique. The initiatives received political support from both countries and showed that the relationship between South-South Cooperation and Triangular Cooperation can be mutually reinforcing. SSTrC may channel financial resources from development partners to projects and initiatives that can produce highly effective development results.

<https://www.southcentre.int/southviews-no-221-6-july-2021/>

Development Priorities for Africa in 2021 and Beyond (SouthViews No. 222, 12 July 2021)

By Judith Amelia Louis

The author posits that Covid-19 is not the only major problem facing the global South and Africa in particular, although it is the most pressing for the times 2020-2021. The writer attempts to present important priority areas for attention by policymakers and decision makers at the national and regional levels in Africa within the context of the Covid-19 pandemic.

The paper recognizes that the social, economic, and political problems facing Africa are common to all its nation States and calls upon the African Union to play a more proactive role in shaping policy programs to address these persistent problems, including the crafting of statesmen genuinely committed to 'people-centered development'. The article discusses the issues impacting select priorities of socio-economic welfare; improved governance; human capital investment; regularization of migration and stemming the 'brain drain'. Suggested policy actions are prescribed

as solutions towards achieving development. Urgent action in controlling their economies with the acquisition and retention of requisite skills and technology is the undertone of the paper given the picture of poverty characterizing basic needs data for the continent. For example, in the health sector there are shortages of medical personnel, a situation magnified by the Covid pandemic.

The author envisions Africa's development utilizing its vast untapped potential including, inter alia, a young population.

<https://www.southcentre.int/southviews-no-222-12-july-2021/>

Financial integrity for sustainable development: Importance of developing country joint action on tax, corruption and money-laundering (SouthViews No. 223, 14 July 2021)

By Dr. Ibrahim Mayaki

Countries are beginning to realize that the landmark agreement on the Sustainable Development Goals will be unrealized if financing is not found for the agenda. Much of that financing can be found if illicit financial flows are stopped. In March 2020, the Presidents of the United Nations General Assembly and Economic and Social Council convened a High-Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda (FACTI Panel) to review global cooperation and recommend further actions by the international community as a contribution. Dr. Ibrahim Mayaki, the Co-Chair of the FACTI Panel, outlines the measures that the FACTI Panel recommended to combat tax abuse, corruption and money-laundering. He emphasizes the importance of developing countries taking a leading role in proposing solutions, and the value of inclusive international institutions. The text below is based on remarks that were made at a briefing to the Group of 77 and China in Geneva in April 2021, jointly organized by the FACTI Panel Secretariat and the South Centre. The Panel's full report can be read at: <http://www.factipanel.org/report>.

<https://www.southcentre.int/southviews-no-223-14-july-2021/>

Vaccination inequalities and the role of the multilateral system (SouthViews No. 224, 19 July 2021)

By Carlos M. Correa

The COVID-19 crisis has evidenced the fragility of the multilateral system to address a global health challenge. There are multiple reasons behind it. Since donations are not enough, a global solution to the pandemic would have required concerted actions in several fronts. The author suggests that, while examining how the proposed "pandemic treaty" might contribute to a global solution in future health emergencies, immediate actions are needed.

<https://www.southcentre.int/southviews-no-224-19-july-2021/>

Vaccine Nationalism (SouthViews No. 225, 21 July 2021)

By Prof. Ujal Singh Bhatia

The author posits that the global public health impact of the Covid-19 pandemic along with the economic and distributional aspects of vaccines and treatments, involves a market failure without the underlying institutional safety nets for an effective, globally coordinated response. He proposes strong, self-standing institutions with clear mandates and resources to make effective interventions at three levels: political, financial and regulatory. Also, the WTO rules regarding export restrictions are at present too accommodative to allow for a quick response. For Intellectual Property, both manufacturing and licensing, and relaxation of IP rules should be considered.

<https://www.southcentre.int/southviews-no-225-21-july-2021/>

Issues in Financing Education as a Human Right: Central principles for public policy responses (SouthViews No. 226, 3 September 2021)

By Kishore Singh

The realization of the right to education requires adequate financing of education. Public policy responses to the need and importance of financing education remain inadequate. And now there is a trend towards decreasing public investment in education. Not only should States shoulder the primary responsibility for education under human rights law, but non-State actors should also invest in education because of corporate social responsibility. Besides, the need and importance of preserving education as a public good and public interest in education should be kept in the forefront as regards multi-stakeholders and provision of education through public-private partnerships. The role devolves upon the parliamentarians in shaping regional and global architecture. In the conclusion, the author proposes ten central principles for a Global Alliance to do the task of world-wide advocacy in support of the architecture for financing education.

<https://www.southcentre.int/southviews-no-226-3-september-2021/>

Ending Extreme Poverty by Ending Global Tax Avoidance (SouthViews No. 227, 29 September 2021)

By Abdul Muheet Chowdhary

The world is estimated to lose around USD 500-600 billion in revenues from corporate tax avoidance each year. Ensuring that governments can collect this revenue through ending global tax avoidance will play a major role in ending extreme poverty. Overseas aid provided to developing countries focused on eliminating extreme poverty must therefore incorporate addressing tax avoidance, especially by Multinational Enterprises, as a core component of their efforts.

<https://www.southcentre.int/southviews-no-227-29-september-2021/>

Carving Out a Role for Human Rights in International Investment Law (SouthViews No. 228, 15 October 2021)

By Barnali Choudhury

The public health burdens that have been imposed on governments by Covid-19 serve as an important reminder of the importance for states to be able to regulate public health as well as other human rights issues. Commentators are already describing the myriad of investment arbitration claims that states may expect to face for their acts in handling the Covid-19 crisis. By carving out a role for human rights in international investment law, states can ensure that protection of human dignity, not property interests, will continue to be their ultimate objective.

<https://www.southcentre.int/southviews-no-228-15-october-2021/>

The Post COVID-19 Recovery: A Stringent Test for the Business and Human Rights Discourse (SouthViews No. 229, 25 October 2021)

By H.E. Ambassador Luis Benigno Gallegos Chiriboga

Although the global economic outlook seems to be improving for the rest of 2021 and 2022, such benefits seem to only affect developed economies, while furthering the gap with emerging markets and developing economies. This shows that 'recovery for all' will remain gloomy for several years, as access to the COVID-19 vaccine continues to showcase the global inequalities between the rich and the poor. In this scenario, States require to make full use of their regulatory and policy space to

protect and promote the human rights of all people and persons in their jurisdictions, including the right to health, while safeguarding the necessary fiscal space towards guaranteeing development expenditures to build back fairer and better. It is time for reducing inequalities rather than increasing the gap between developed and developing nations.

<https://www.southcentre.int/southviews-no-229-25-october-2021/>

The Place of Multilateralism in Tax Reforms: Exclusionary Outcomes of a Purported Inclusive Framework (SouthViews No. 230, 25 November 2021)

By Alexander Ezenagu

Countries have come to accept the wide application of international tax rules in both their domestic and international tax affairs. However, where international tax rules fall short of the legitimate expectations of countries and fail to provide necessary guidance, countries may be compelled to seek other sources of guidance. In this paper, it is argued that in the absence and failure of international tax rules to provide adequate guidance and encourage a fair tax system, countries should not be prohibited from exercising their fiscal sovereignty.

<https://www.southcentre.int/southviews-no-230-25-november-2021/>

Waive IP Rights & Save Lives (SouthViews No. 231, 29 November 2021)

By Srividhya Ragavan

In October of 2020, when India and South Africa proposed a waiver from certain provisions of the TRIPS agreement, it was meant to increase local manufacturing capacity in these countries. The waiver was proposed as a tool to kick-start prevention, containment and treatment of COVID-19. While there is an imminent need to meet a growing supply-demand gap for all medical products, COVID-19 related products are urgently required in poorer nations to contain the pandemic. The waiver has an additional role to play in the larger trade schema. In enabling vaccination of populations across the globe, the waiver would be critical to normalize global trade. The paper below captures the benefits of the waiver and compares it with the existing flexibilities under the trade regime, being compulsory licensing.

<https://www.southcentre.int/southviews-no-231-29-november-2021/>

Améliorer des règles du nexus pour une répartition équitable des droits d'imposition pour les pays en développement (SouthViews No. 220, 28 juin 2021)

Par Radhakishan Rawal

L'une des questions posées dans le Premier Pilier sur les discussions sur l'imposition de l'économie numérique est le seuil du nexus, c'est-à-dire le lien de rattachement au pays, qui déterminerait quelles entreprises multinationales (EMN) ont une présence imposable. Les grandes économies développées ainsi que les petites économies en développement peuvent être privées de droits d'imposition en raison des seuils des nexus tels que décrits actuellement dans la proposition du Premier Pilier. De plus, même si des seuils plus petits sont adoptés, certains pays peuvent encore se voir refuser des droits d'imposition. Un seuil financier n'a jamais été un paramètre de répartition des droits d'imposition entre les pays. Un ajustement mineur dans le processus de certitude fiscale pourrait résoudre le problème.

Cet article préconise d'accorder le droit d'imposition sur le montant A du Premier Pilier, qui couvre la portion principale des bénéfices imposables de l'économie numérique, à toutes les juridictions du marché, mais d'accorder les droits destinés aux juridictions fiscales concernées uniquement aux pays atteignant les seuils du nexus. Cette approche se traduira par une répartition équitable des

droits d'imposition et garantira également qu'il n'y ait pas de charge supplémentaire dans le processus de la certitude fiscale, ce qui sera plus facile pour les pays en développement.

<https://www.southcentre.int/southviews-no-220-28-juin-2021/>

Jamaica's Perspective on Reform of the Global Investment Regime (SouthViews No. 232, 10 December 2021)

By Omar Chedda

The Covid-19 pandemic has dealt a severe blow to the world economy, and in particular, Jamaica's economy, due to supply chain bottlenecks and reduction of tourism, on which Jamaica is heavily dependent. This is the context in which Jamaica is now reviewing its investment regime to ensure that investments contribute to recovery, building resilience and sustainable development, while improving investor rights and obligations in line with global trends.

<https://www.southcentre.int/southviews-no-232-10-december-2021/>

Mainstreaming Public Health Considerations in Adjudication of Intellectual Property Disputes: Implications of Specialized IP Courts and General Courts (SouthViews No. 233, 31 January 2022)

By Justice (Retd.) Prabha Sridevan

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.

<https://www.southcentre.int/southviews-no-233-31-january-2022/>

South Asia and the Need for Increased Tax Revenues from the Digitalized Economy (SouthViews No. 234, 18 February 2022)

By Abdul Muheet Chowdhary

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 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'.

<https://www.southcentre.int/southviews-no-234-18-february-2022/>

The WTO TRIPS Waiver and Essential Security Rights in 2022 (SouthViews No. 235, 10 March 2022)

By Dr. Alexander Beyleveld

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.

<https://www.southcentre.int/southviews-no-235-10-march-2022/>

Addressing Food Insecurity and Climate Change for Poverty Reduction in the Horn of Africa (SouthViews No. 236, 15 March 2022)

By Ali Issa Abdi

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.

<https://www.southcentre.int/southviews-no-236-15-march-2022/>

Mejora la regla del nexo para una distribución justa de derechos fiscales a países en vías de desarrollo (SouthViews No. 220, 28 de Junio de 2021)

Por Radhakishan Rawal

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 de derechos fiscales como resultado de umbrales de nexo 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.

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 Nexo. 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.

<https://www.southcentre.int/southviews-no-220-28-de-junio-de-2021/>

Structural Change and the Environment (SouthViews No. 237, 31 May 2022)

By Calixto Salomão Filho

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.

Law, instead of allowing them (through carbon markets compensations only, for example) should look for alternatives of structural transformation of markets. Both well known 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.

<https://www.southcentre.int/southviews-no-237-31-may-2022/>

Doha Twenty Years On – Has The Promise Been Betrayed? (SouthViews No. 238, 20 June 2022)

By Yousuf Vawda and Bonginkosi Shoji

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.

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. 238, 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.

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