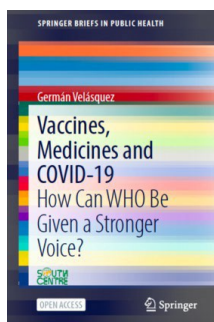


South Centre Publications January 2022 – January 2024



BOOKS

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?

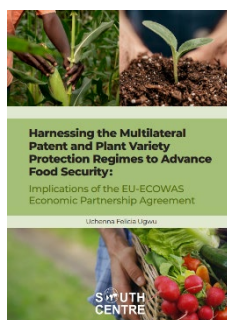
This book is a collection of research papers produced by the author between 2020 and early 2021 that helps answer this question. The topics address the state of thinking and debate – particularly with regard to medicines and vaccines – that would enable a response to this pandemic or subsequent crises 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/>

Harnessing the Multilateral Patent and Plant Variety Protection Regimes to Advance Food Security: Implications of the EU-ECOWAS Economic Partnership Agreement (2022)



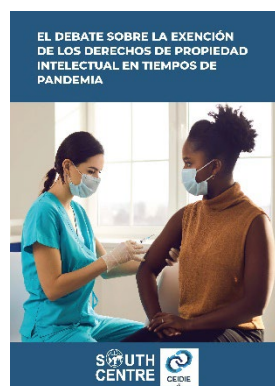
Description: This thesis analyzes the provisions of contemporary intellectual property (IP) and trade agreements to explore whether these provisions advance, or compromise, food security in West Africa. The agreements have been examined for how their provisions integrate IP and food security norms and policies, and the extent to which the IP frameworks are adaptable to the regional conditions that determine food security in the West African context. Critical analysis is made of a regional agreement signed between the Economic Community of West African States (ECOWAS) and the European Union (EU), the 2014 EU-ECOWAS Economic Partnership Agreement (EPA), to assess what implications the agreement may have for food security in West Africa. Interdisciplinary research is carried out to identify the characteristics needed to

advance food security in the region of West Africa. Also, philosophical and doctrinal analysis of IP laws and legal theories is conducted to identify which legal principles are best suited for advancing food security in the region. Based on the findings, the thesis draws up a model framework for IP protection that is more suitable for enhancing food security in West Africa.

Author: Uchenna Felicia Ugwu is a lawyer and academic researcher with over ten years' experience extensively investigating the relationship between Intellectual Property (IP) norms and socio-economic development in developing countries. She recently received a PhD in International IP Law and Development from the University of Ottawa.

<https://www.southcentre.int/book-by-the-south-centre-2022-2/>

El debate sobre la exención de los derechos de propiedad intelectual en tiempos de pandemia (2023)



Descripción: El 11 de marzo de 2020 la Organización Mundial de la Salud (OMS) comunicó que la enfermedad por coronavirus de 2019 (COVID-19), podía ser considerada una pandemia. A medida que el contagio de la enfermedad aumentaba se hizo evidente la insuficiencia de los recursos sanitarios, vacunas y métodos de diagnóstico y tratamiento para enfrentar con éxito la pandemia. En este contexto, en la Organización Mundial del Comercio (OMC) se reavivó la tensión entre las reglas de propiedad intelectual y la salud pública.

Como consecuencia de ello, el 2 de octubre de 2020, Sudáfrica e India, presentaron ante la OMC una propuesta para que ciertas disposiciones del Acuerdo sobre los ADPIC no resultaran de aplicación para cualquier producto o procedimiento destinado a la prevención, contención y tratamiento de la COVID-19. Esta propuesta de exención (waiver), contó con la férrea oposición de la Unión Europea que presentó una propuesta alternativa. Para intentar llegar a un acuerdo se formó una comisión cuadrilateral conformada por Sudáfrica, India, la Unión Europea y EEUU. Finalmente, luego de dos años de negociaciones y en el marco de la 12ª Conferencia Ministerial (MC12) celebrada en Ginebra el 17 de junio de 2022, se aprobó un proyecto de exención de los derechos de propiedad intelectual que dista mucho de la propuesta original de 2020.

El presente trabajo, analiza detalladamente el proceso de discusión – en torno al tema del “waiver” – dado en el Consejo de los ADPIC de la OMC: estudia los antecedentes de la propuesta de exención, analiza los documentos presentados por las partes en pugna, revisa los argumentos esgrimidos a favor y en contra del waiver, los instrumentos propuestos y, asimismo, muestra cómo se desarrollaron las distintas posiciones hasta alcanzar el acuerdo final.

Autores: Alejandra Aoun, Juan Correa, Martín A. Cortese, Vanesa Lowenstein, Sandra C. Negro, Guillermo E. Vidaurreta

<https://www.southcentre.int/book-by-the-south-centre-2023/>

Climate Finance Readiness E-book (July 2023)



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

Developing countries indisputably need climate finance to flow at a sufficient scale and in a timely manner. While the options and possibilities for countries to access climate finance are expected to increase, with a multitude of funding channels, this can also make the process even more complicated and confusing.

Which funds to turn to? For which activities? At what costs? These are a few of the many questions that climate change decision-makers must contend with. Each fund is administered with complicated rules and procedures, which makes it very challenging for developing countries to navigate when seeking to fund their domestic climate actions. There is currently no 'one-stop-shop' to provide useful and quick answers.

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

<https://www.southcentre.int/climate-finance-readiness-e-book-july-2023/>

RESEARCH PAPERS

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'allégement 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/>

Impact of a Minimum Tax Rate under the Pillar Two Solution on Small Island Developing States (Research Paper 164, 23 September 2022)

By Kuldeep Sharma

The Research Paper commences with an overview of Pillar One and Pillar Two followed by detailed discussions on salient provisions of Pillar Two.

Pillar Two is envisaged to have a widespread impact on Small Island Developing States (SIDS) which are a distinct group of 38 United Nations (UN) Member States and 20 Non-UN Members/Associate Members of UN regional commissions that are exposed to unique social, economic and environmental vulnerabilities. In all, 36 SIDS that are members of the Group of Seventy-Seven (G-77) have been analysed, namely, Antigua and Barbuda, Bahamas, Bahrain, Barbados, Belize, Cabo Verde, Comoros, Cuba, Dominica, Dominican Republic, Fiji, Grenada, Guinea-Bissau, Guyana, Haiti, Jamaica, Kiribati, Maldives, Marshall Islands, Mauritius, Federated States of Micronesia, Nauru, Papua New Guinea, Samoa, São Tomé and Príncipe, Seychelles, Singapore, Solomon Islands, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Suriname, Timor-Leste, Tonga, Trinidad and Tobago, and Vanuatu.

<https://www.southcentre.int/research-paper-164-23-september-2022/>

Evaluating the Impact of Pillars One and Two (Research Paper 165, 4 October 2022)

By Suranjali Tandon and Chetan Rao

The proposed OECD Pillar One and Two reforms mark a significant shift in the way large multinational enterprises are taxed on their global incomes. However, while considering the reform at the proposed scale tax administrators must be able to compare the revenue gains with alternatives. This paper uses open-source data to provide tentative estimates of the impact of Pillars One and Two. The methodology has been detailed so that administrators can replicate it for comparison. Further, the paper provides an assessment from the perspective of developing countries of some of the key design elements of the proposals so as to understand whether they are administrable and to foresee possible challenges.

<https://www.southcentre.int/research-paper-165-4-october-2022/>

Lessons From India's Implementation of Doha Declaration on TRIPS and Public Health (Research Paper 166, 6 October 2022)

By Nanditta Batra

The major bone of contention between the developed and developing countries in the TRIPS negotiations was patents for pharmaceuticals. The US-led developed countries bloc argued in favour of patents for pharmaceuticals amidst opposition from Brazil, India and other countries. Ample evidence, including patented AZT for HIV/AIDS treatment, showed that patents could make life saving drugs prohibitively expensive. Notwithstanding the effect of patents on access to medicines, Article 27 of the TRIPS Agreement ordained patents for inventions "in all fields of technology". While the genie was out of the bottle in the form of patents for pharmaceuticals, the developing countries were able to extract some procedural and substantive flexibilities like transition period, parallel importation and compulsory licensing to leverage the IP system to further public health. However, there was uncertainty with respect to the interpretation of TRIPS agreement, scope of the flexibilities and Member States' rights to use them. It is in this background that the historic Doha Declaration on the TRIPS Agreement and Public Health assumed importance as it reaffirmed the rights of the Member States to take measures to protect public health, reconciled the interpretative tensions in the text of TRIPS Agreement and clarified the scope of some of the flexibilities and attempts to find solutions to the problems faced by countries that do not have sufficient manufacturing facilities. The Declaration which was initially dismissed by some scholars as "non-binding," "soft law" has been held by WTO Dispute Settlement Body (DSB) to constitute a "subsequent agreement" which must be followed in interpreting the provisions of TRIPS Agreement (Australia-Tobacco Plain Packaging Case).

<https://www.southcentre.int/research-paper-166-6-october-2022/>

Analysing Intersections between Climate Change and Human Rights (Research Paper 167, 27 October 2022)

By Daniel Uribe Teran and Luis Fernando Rosales

The effects of climate change on people's daily lives threaten the full enjoyment of human rights. The Human Rights Council adopted two landmark resolutions recognising the human right to a clean, healthy and sustainable environment (Resolution 48/13), and establishing the mandate for a Special Rapporteur on the promotion and protection of human rights in the context of climate change (Resolution 48/14). Nevertheless, a broader dialogue between the UNFCCC and the UN human rights architecture seems necessary to establish a coordinated and coherent response to climate change and its effects on human rights.

This research paper analyses the intersections of these two legal systems. It does so by identifying how the climate change negotiations and the human rights architecture can contribute to strengthening international cooperation. It also recognises the need for a more profound international debate on the linkages between human rights and climate change consistent with the principles of equity and common but differentiated responsibilities included in the UNFCCC.

<https://www.southcentre.int/research-paper-167-27-october-2022/>

TRIPS Flexibilities and Access to Medicines: An Evaluation of Barriers to Employing Compulsory Licenses for Patented Pharmaceuticals at the WTO (Research Paper 168, 28 October 2022)

By Anna S.Y. Wong, Clarke B. Cole, Jillian C. Kohler

Under Articles 31 and 31bis of the TRIPS Agreement, WTO members may validly sanction the use of a patented invention without the patent owner's authorization by issuing a compulsory license (CL). In the pharmaceuticals space, governments have historically employed compulsory licenses to compel originator manufacturers to license their patents to generic manufacturers before patent expiry, increasing the supply and reducing the price of patented pharmaceuticals domestically.

This paper evaluates the three primary barriers to employing compulsory licenses for pharmaceuticals underscored by members during TRIPS waiver discussions at the WTO: (1) a lack of enabling domestic legislation, (2) a lack of domestic manufacturing capacity coupled with an unworkable Article 31bis importation system, and (3) consistent political pressure from other members to refrain from issuing compulsory licenses. A survey of members' domestic compulsory license legislation finds that virtually all members have enacted enabling legislation under Article 31 for the issuance of compulsory licenses to supply their local markets. However, implementation of Article 31bis is limited by a lack of enabling compulsory license export legislation, streamlined administrative processes, or both across all members, preventing members lacking domestic manufacturing capacity from importing pharmaceuticals. An analysis of USTR Special 301 Reports from 1994-2021 further reveals that countries have consistently been placed on the Special 301 Report Priority Watch List for issuing pharmaceutical compulsory licenses, with instances as recent as 2020. As such, general reluctance by members to issue compulsory licenses due to overt political pressure through the Special 301 Report is likely warranted. These results highlight a range of barriers preventing the full use of compulsory licenses for pharmaceuticals under the current Article 31 and 31bis framework, with the effects disproportionately borne by member states lacking domestic manufacturing capacity.

<https://www.southcentre.int/research-paper-168-28-october-2022/>

The WTO TRIPS Decision on COVID-19 Vaccines: What is Needed to Implement it? (Research Paper 169, 8 November 2022)

By Carlos M. Correa and Nirmalya Syam

The 12th WTO Ministerial Conference adopted a Ministerial Decision on the TRIPS Agreement on 17 June 2022. This partially concluded almost two years of protracted discussions in response to a proposal by India and South Africa for a waiver from certain obligations under the TRIPS Agreement for health products and technologies for the prevention, treatment and containment of COVID-19. The adopted Decision only waives the obligation under article 31 (f) of the TRIPS Agreement. Developing country WTO members are now allowed to export any proportion of vaccines, including ingredients and processes, necessary for the COVID-19 pandemic that are manufactured under a compulsory license or government use authorization to other developing countries. It also contains some clarifications of relevant TRIPS provisions, while introducing a number of conditionalities that are not present in the TRIPS Agreement. This paper examines the object and scope of the Decision, the requirements established for its use, and the required actions to be taken by WTO members to implement it.

<https://www.southcentre.int/research-paper-169-8-november-2022/>

Left on Our Own: COVID-19, TRIPS-Plus Free Trade Agreements, and the Doha Declaration on TRIPS and Public Health (Research Paper 170, 17 November 2022)

By Melissa Omino and Joanna Kahumbu

The cusp of the twentieth anniversary of the WTO Doha Declaration on the TRIPS Agreement and Public Health (hereafter “the Declaration”) was marked by a global pandemic. The Declaration and its iteration in the Agreement on Trade Related Aspects of Intellectual Property Rights (hereafter “TRIPS”) Article 31 bis, should have helped to contain the devastation in least developed and developing countries. The reality is that the pandemic is still ongoing, and the Global South led by South Africa and India are seeking a waiver of provisions to the TRIPS Agreement to ensure that COVID-19 therapeutics, diagnostics, and vaccines reach their citizens in order to contain the spread of the COVID-19 virus (“the TRIPS waiver”). These citizens are especially vulnerable because of their inability to access vaccines due to their prices and supply shortages caused by the refusal to share manufacturing technology. The Doha Declaration aimed at reaffirming the interpretation and implementation of the TRIPS Agreement to support WTO members’ right to protect public health and promote access to medicines. However, the operationalization of the Declaration via Article 31bis of TRIPS has been cumbersome and procedurally difficult to navigate. This paper argues that the current iteration of the Doha Declaration within TRIPS fails to meet the objectives of the Declaration as demonstrated by the need for a further waiver of the TRIPS agreement. It also attempts to “reimagine” Article 31 bis in light of the TRIPS waiver from the position of the Global South to make it more equitable and practicable and maintain the spirit of the Declaration.

<https://www.southcentre.int/research-paper-170-17-november-2022/>

Pautas para el Examen de Solicitudes de Patentes Relacionadas con Productos Farmacéuticos (Documento de Investigación 171, 29 de Noviembre de 2022)

Por Carlos M Correa

Este documento representa un seguimiento de un documento anterior, *Pautas para el examen de patentes farmacéuticas – Una perspectiva desde la Salud Pública*, que se publicó en 2007 como documento de trabajo por el Centro Internacional de Comercio y Desarrollo Sostenible (ICTSD), Estados Unidos, Conferencia de las Naciones Unidas sobre Comercio y Desarrollo (UNCTAD) y la Organización Mundial de la Salud (OMS).

El presente documento toma en cuenta los desarrollos desde la publicación del documento de trabajo ICTSD-UNCTAD-OMS en 2007. Incluye nuevos ejemplos de solicitudes y/o subvenciones de patentes, además analiza y hace referencia a las iniciativas de varios países que han adoptado leyes y/o políticas dirigidas a considerar temas de salud pública en el examen de solicitudes de patentes.

El objetivo de este documento es proporcionar orientación para el desarrollo o la revisión de directrices sobre los procesos de examen de patentes en países en desarrollo en respuesta a las

preocupaciones sobre el aumento del número de patentes en el sector farmacéutico. A tal fin, se formulan varias recomendaciones con respecto al examen de la patentabilidad de las solicitudes relativas a productos y procesos farmacéuticos.

Este documento es una traducción de la versión original de las “Directrices para el examen de solicitudes de patentes relacionadas con productos farmacéuticos” publicadas en inglés por la Programa de las Naciones Unidas para el Desarrollo (PNUD). El South Centre agradece al PNUD por la amable autorización para publicar esta versión no oficial. Traducido para el South Centre por el Sr. Natanael França.

<https://www.southcentre.int/documento-de-investigacion-171-29-de-noviembre-de-2022/>

Le mécanisme multilatéral permanent proposé et sa relation potentielle avec l’univers existant du règlement des différends entre investisseurs et États (Document de Recherche 162, 11 août 2022)

Par Danish et Daniel Uribe

L’option de réforme du Mécanisme permanent de règlement des différends internationaux en matière d’investissements actuellement en discussion au sein du Groupe de travail III de la CNUDCI a soulevé un certain nombre de préoccupations importantes concernant la réforme du système de règlement des différends entre investisseurs et États. Le présent document s’attache, dans un premier temps, à situer les discussions sur le mécanisme de règlement des différends dans leurs contextes historique et actuel. Il examine ensuite le document de travail 213 de la CNUDCI et les dispositions juridiques qu’il contient, qui constituent la base des discussions en cours sur cette option de réforme au sein du Groupe de travail. Enfin, il explore les liens potentiels entre le projet de mécanisme de règlement des différends et les différentes facettes du régime des accords internationaux d’investissement. Il se conclut sur les différents points qui nécessitent un examen plus approfondi en vue notamment de préserver les intérêts des pays en développement.

<https://www.southcentre.int/document-de-recherche-162-11-aout-2022/>

El mecanismo multilateral permanente propuesto y su posible relación con el universo existente de solución de controversias entre inversionistas y estados (Documento de Investigación 162, 11 de Agosto de 2022)

Por Danish y Daniel Uribe

La opción de reforma del Mecanismo Multilateral Permanente (SMM) que se está debatiendo actualmente en el Grupo de Trabajo III (GTIII) de la Comisión de las Naciones Unidas para el Derecho Mercantil Internacional (CNUDMI) ha planteado una serie de importantes preocupaciones sistémicas para las reformas procesales de la solución de controversias entre inversionistas y Estados. El presente documento trata en primer lugar de situar los debates sobre la SaaMM en su contexto histórico y contemporáneo. A continuación, examina el Documento de Trabajo 213 de la CNUDMI y las disposiciones legales que contiene, que constituyen la base de los debates actuales sobre esta opción de reforma en el GTIII. Además, explora la posible relación de esta propuesta de SMM con diferentes aspectos del régimen jurídico internacional vigente en materia de inversiones. El documento concluye proporcionando algunos elementos que requieren una mayor consideración en este proceso, especialmente para proteger los intereses de los países en desarrollo.

<https://www.southcentre.int/documento-de-investigacion-162-11-de-agosto-de-2022/>

Illicit Financial Flows and Stolen Asset Recovery: The Global North Must Act (Research Paper 172, 1 December 2022)

By Abdul Muheet Chowdhary and Sebastien Babou Diasso

Domestic resource mobilization is essential for developing countries to achieve the Sustainable Development Goals by the deadline of 2030. Concomitantly, Illicit Financial Flows (IFFs), which also lead to asset theft, are major means through which these countries are losing resources. This research paper analyzes the World Bank's Stolen Asset Recovery (STAR) database and shows that countries from where assets have been stolen are mostly developing countries, and countries where the stolen assets have been hidden are developed countries. The paper also shows that regarding the pending or ongoing asset recovery cases, there is a clear pattern where the majority of countries waiting to have their assets returned are developing countries, and those who must return them are developed countries. There is an unexplained and unjustified delay by developed countries in the process of returning the frozen assets to developing countries which needs to be addressed as soon as possible. There is also an evaluation of international legal reforms which can be implemented to accelerate the asset recovery process. However, all these will need the full commitment of Global North countries where most of the stolen assets are hidden and which bear the brunt of responsibility for returning them to the developing countries.

<https://www.southcentre.int/research-paper-172-1-december-2022/>

Directives pour l'examen des demandes de brevet relatives aux produits pharmaceutiques (Document de Recherche 171, 31 janvier 2023)

Par Carlos M Correa

Ce document fait suite à un document antérieur, *Directives applicables à l'examen des brevets pharmaceutiques: examen des brevets pharmaceutiques du point de vue de la santé publique*, publié en 2007 comme document de travail par le Centre international pour le commerce et le développement durable (CICDD), la Conférence des Nations Unies sur le commerce et le développement (CNUCED) et l'Organisation mondiale de la santé (OMS).

Le présent document tient compte des évolutions survenues depuis la publication du document de travail CICDD-CNUCED-OMS en 2007. Il comprend de nouveaux exemples de demandes et/ou de délivrance de brevets, ainsi qu'une analyse et des références aux initiatives d'un certain nombre de pays qui ont adopté des lois et/ou des politiques visant à prendre en compte les considérations de santé publique dans l'examen des demandes de brevets.

Avec ce document, l'objectif est de fournir des orientations pour l'élaboration ou la révision de directives sur les processus d'examen des brevets dans les pays en développement, en réponse aux préoccupations concernant l'augmentation du nombre de brevets dans le secteur pharmaceutique. À cette fin, un certain nombre de recommandations sont formulées en ce qui concerne l'examen des demandes de brevetabilité relatives aux produits et procédés pharmaceutiques.

Ce document est une traduction de la version originale des "Directives pour l'examen des demandes de brevet relatives aux produits pharmaceutiques" publiées en anglais par le Programme des Nations Unies pour le Développement (PNUD). Le South Centre remercie le PNUD pour l'aimable autorisation de publier cette version non officielle. Traduit pour le South Centre par M. Natanael França.

<https://www.southcentre.int/document-de-recherche-171-31-janvier-2023/>

Analysis of COVID-Related Patents for Antibodies and Vaccines (Research Paper 173, 7 February 2023)

By Kausalya Santhanam

This paper provides an analysis of patents covering selected antibodies and vaccines used in the treatment or prevention of 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 antibody combination considered for the patent analysis in this paper are Casirivimab and Imdevimab. The

vaccines considered for the patent analysis are mRNA-1273, Sputnik, ChAdOx1 nCoV-19 vaccine (AZD1222). The analysis was completed in May 2022.

<https://www.southcentre.int/research-paper-173-7-february-2023/>

Leading and Coordinating Global Health: Strengthening the World Health Organization (Research Paper 174, 13 February 2023)

By Nirmalya Syam

The World Health Organization (WHO) should act as the directing and coordinating authority in global health but it has been steadily marginalized over time by design, through criticism as an inefficient organization, the reduction of assessed contributions and consequent impoverishment, and the proliferation of “new” international health agencies to which WHO has been compelled to cede operational space. This paper discusses how such marginalization of the WHO is in the interest of the dominant actors in global health, and leads to the neglect of health as a development issue. Today the global health system is more fragmented than it was when the WHO was established in 1948. Rich donor countries and corporations dominate multistakeholder governance structures in health partnerships, marginalizing most of the WHO membership and, notably, the Global South, in their decision-making. A consequence of this fragmentation in global health governance is that the space of the only multilateral organization where developing countries have an equal presence in terms of participation and decision-making as sovereign States –WHO– has been marginalized. Consequently, the development dimension of health is also marginalized and only the development assistance aspects of it receive major attention through vertical programmes and agencies addressing limited health needs without effectively addressing the basic need of strengthening health systems. Therefore, for developing countries it is imperative that WHO is effectively retooled to act as the leading and coordinating authority on global health with adequate legal powers, as well as institutional and financial capacities to do so without undue influence from donor countries and entities that have interests in the private sector. This would enable WHO to ensure that the interests of all countries are fairly addressed in its normative and operational activities. Such a transformation of WHO would require action both within and outside the organization. The paper proposes some suggestions in this regard.

<https://www.southcentre.int/research-paper-174-13-february-2023/>

Más allá de la responsabilidad social de las empresas: reforzar la diligencia debida en materia de derechos humanos mediante el Instrumento jurídicamente vinculante sobre empresas y derechos humanos (Documento de Investigación 138, Octubre de 2021)

Por Daniel Uribe Terán

El debate sobre la necesidad de establecer requisitos obligatorios de debida diligencia en materia de derechos humanos (en inglés: Human Rights Due Diligence, o HRDD) ha atraído el interés de los responsables políticos, las organizaciones de la sociedad civil y las organizaciones internacionales. La tendencia actual sobre la adopción de la legislación nacional relativa a las normas de HRDD muestra una variedad de opciones y modelos que podrían servir como un paso adelante hacia la adopción de un marco internacional sólido de responsabilidad corporativa y remedio en caso de violaciones de los derechos humanos en el contexto de las actividades empresariales.

Este documento de investigación pretende identificar los elementos que caracterizan la debida diligencia en materia de derechos humanos para encontrar una posible definición común para su aplicación. Para ello, se analiza la práctica regional y estatal actual en la adopción de legislación obligatoria sobre HRDD en diferentes sectores. Por último, se discutirán los principios que caracterizan el enfoque adoptado por el Grupo de Trabajo Intergubernamental de Composición Abierta de las Naciones Unidas encargado de adoptar un instrumento jurídicamente vinculante sobre las empresas transnacionales y otras empresas comerciales y cómo este instrumento podría servir como una importante piedra angular para la elaboración de normas modernas sobre la cuestión de las empresas y los derechos humanos.

<https://www.southcentre.int/documento-de-investigacion-138-octubre-de-2021/>

Au-delà de la Responsabilité Sociale de l'Entreprise: Renforcer le devoir de diligence en matière de droits de l'homme au moyen de l'instrument juridiquement contraignant relatif aux entreprises et aux droits de l'homme (Document de Recherche 138, Octobre 2021)

Par Daniel Uribe Terán

Le débat sur la nécessité d'imposer des obligations de diligence raisonnable en matière de droits de l'homme (DDDH, en anglais Human Rights Due Diligence, ou HRDD) a suscité l'intérêt des décideurs politiques, des organisations de la société civile et des organisations internationales. La tendance actuelle à l'adoption de législations nationales concernant les normes de HRDD montre une variété d'options et de modèles qui pourraient servir d'étape vers l'adoption d'un cadre international solide de responsabilité des entreprises et de recours en cas de violation des droits de l'homme dans le contexte des activités commerciales.

Ce document de recherche vise à identifier les éléments qui caractérisent la diligence raisonnable en matière de droits de l'homme afin de trouver une éventuelle définition commune pour sa mise en œuvre. Pour ce faire, il analyse les pratiques actuelles des régions et des États en matière d'adoption de législations obligatoires sur HRDD dans différents secteurs. Enfin, il discutera des principes qui caractérisent l'approche adoptée par le Groupe de travail intergouvernemental à composition non limitée des Nations Unies chargé d'adopter un instrument juridiquement contraignant sur les sociétés transnationales et autres entreprises et de la manière dont cet instrument pourrait servir de pierre angulaire à l'élaboration de règles modernes sur la question des entreprises et des droits de l'homme.

<https://www.southcentre.int/document-de-recherche-138-octobre-2021/>

Analyse des Intersections entre le Changement Climatique et les Droits de l'Homme (Document de Recherche 167, 27 de octobre 2022)

Par Daniel Uribe Teran et Luis Fernando Rosales

Les effets du réchauffement climatique sur la vie quotidienne des êtres humains menacent la pleine jouissance de leurs droits. Le Conseil des droits de l'homme a adopté deux résolutions d'une portée historique, qui reconnaissent le droit de l'homme à un environnement propre, sain et durable (résolution 48/13), et nomment un rapporteur spécial chargé de la promotion et de la protection des droits de l'homme dans le contexte du changement climatique (résolution 48/14). Toutefois, un dialogue plus large entre la Convention-cadre des Nations unies sur les changements climatiques (CCNUCC) et l'architecture de protection des droits de l'homme de l'ONU semble nécessaire en vue de parvenir à une réponse coordonnée et cohérente au réchauffement climatique et à ses effets sur les droits de l'homme.

Le présent document de recherche analyse les points de convergence entre ces deux mécanismes en mettant en avant de quelle manière les négociations sur le réchauffement climatique et l'architecture de protection des droits de l'homme peuvent contribuer à renforcer la coopération internationale. Il reconnaît également la nécessité de discussions plus approfondies au niveau international sur les liens entre droits de l'homme et réchauffement climatique, conformément aux principes d'équité et de responsabilités communes mais différenciées inclus dans la CCNUCC.

<https://www.southcentre.int/document-de-recherche-167-27-octobre-2022/>

Análisis de las intersecciones entre cambio climático y derechos humanos (Documento de Investigación 167, 27 de octubre de 2022)

Por Daniel Uribe Terán y Luis Fernando Rosales

Los efectos del cambio climático en la vida diaria de las personas amenazan el pleno disfrute de los derechos humanos. El Consejo de Derechos Humanos ha adoptado dos resoluciones históricas en las que se reconoce por un lado el derecho humano a un medio ambiente limpio, saludable y sostenible (Resolución 48/13), y se establece por otro el mandato de un Relator Especial sobre la promoción y la protección de los derechos humanos en el contexto del cambio climático (Resolución 48/14). Aun así, parece existir la necesidad de que la CMNUCC y la estructura de derechos humanos de las Naciones Unidas mantengan un diálogo más amplio a fin de dar con una respuesta coordinada y coherente al cambio climático y sus efectos sobre los derechos humanos.

En este documento de investigación se analizan las intersecciones de estos dos sistemas jurídicos. Para ello, se identifica el modo en que las negociaciones relativas al cambio climático y la estructura de derechos humanos pueden contribuir a fortalecer la cooperación internacional. También se reconoce la necesidad de un debate internacional de mayor calado acerca de las relaciones entre los derechos humanos y el cambio climático, coherente con los principios de equidad y las responsabilidades comunes pero diferenciadas del CMNUCC.

<https://www.southcentre.int/documento-de-investigacion-167-27-de-octubre-de-2022/>

Experiencias internacionales sobre la concesión de licencias obligatorias por razones de salud pública (Documento de Investigación 175, 22 de marzo de 2023)

Por Catalina de la Puente, Gastón Palopoli, Constanza Silvestrini, Juan Correa

El presente estudio tiene como objetivo analizar los regímenes de licencias obligatorias (LOs) en países seleccionados, en particular los elementos económicos de la concesión de las LOs, la determinación y negociación de regalías al titular del derecho. Para ello se realizó un análisis descriptivo y exploratorio de experiencias de concesión de LO en países seleccionados, con foco en las experiencias de los países en vías de desarrollo por su proximidad al caso argentino.

En particular se discuten los ejemplos de **experiencias de emisión de medidas de LOs o de UG en países en vías de desarrollo**. Con especial foco en Latinoamérica, donde sólo dos países han hecho uso de dichas medidas por razones sanitarias (Ecuador y Brasil). Además se examina la eficacia del empleo de LO o de UG en la **reducción de precios** donde se evidencian ahorros significativos. Como conclusión se propone elaborar una metodología en relación a las **regalías** para Argentina mediante un rango de pago que tome en consideración criterios de accesibilidad y asequibilidad poblacional a la tecnología licenciada, así como la sustentabilidad de los presupuestos de los agentes financiadores.

<https://www.southcentre.int/documento-de-investigacion-175-22-de-marzo-de-2023/>

De dónde viene y a dónde va el financiamiento para la salud mundial (Documento de Investigación 176, 29 de marzo de 2023)

Por Germán Velásquez

En teoría la OMS es la agencia coordinadora de la salud mundial, y los grandes actores, privados y públicos, reivindican la relevancia y el rol central de esta agencia de Naciones Unidas. En la práctica, paradójicamente, los dineros para la salud van en gran parte a otras instituciones y no a la OMS o incluso se crean nuevas instituciones o mecanismos donde se canalizan los nuevos fondos (GAVI, Fondo Mundial, Act-A, CEPI, COVAX etc.) Estas instituciones o mecanismos son, en la mayoría de los casos, partenariados público-privados donde está presente la industria farmacéutica. La Ayuda Oficial para el Desarrollo es importante pero sólo representa el 1% de lo que invierten los países en desarrollo en salud. En qué se gasta para promover la salud global y a dónde va este dinero es el objeto de este documento. Una de las preguntas que debemos hacernos tras la experiencia con COVID-19 es cómo vamos a preservar el interés público global mediante la creación de bienes públicos comunes y la protección de los derechos humanos en las actividades de prevención, preparación y respuesta a las pandemias presentes y futuras.

<https://www.southcentre.int/documento-de-investigacion-176-29-de-marzo-de-2023/>

Where Does Global Health Funding Come From and Where Does It Go? (Research Paper 176, 29 March 2023)

By Germán Velásquez

In theory, the World Health Organization (WHO) is the coordinating agency for global health. Influential private and public actors have claimed the relevance and central role of this United Nations (UN) agency. In practice, paradoxically, the money budgeted for health goes largely to other institutions and not to the WHO. New institutions and mechanisms have been created to which funds are channeled (GAVI, The Global Fund, Act-A, CEPI, COVAX, etc.). These institutions or mechanisms are, in most cases, public-private partnerships where the pharmaceutical industry is usually present. Official Development Assistance is important but represents only 1 per cent of what developing countries' expenditure on health. How much is spent to promote global health and where this money goes is the subject of this paper. After the experience with COVID-19, a fundamental question that must be addressed is how the global public interest can be preserved by creating common public goods and protecting human rights in the prevention, preparedness, and response to present and future pandemics.

<https://www.southcentre.int/research-paper-176-29-march-2023/>

Policy Dilemmas for ASEAN Developing Countries Arising from the Tariff Moratorium on Electronically Transmitted Goods (Research Paper 177, 18 May 2023)

By Manuel F. Montes and Peter Lunenborg

This paper examines the policy dilemmas facing developing countries in ASEAN in working within, and participating in, international negotiations toward making permanent the WTO tariff moratorium on duties applicable to electronically transmitted goods. In the context of ASEAN's countries' trade-oriented development strategies, the analysis considers the moratorium's impact on tariff revenues, economic performance, and industrial development prospects. The paper presents estimates of tariff impacts and studies the national policy implications of the moratorium. An extension of the moratorium would establish a special regime for a class of goods whose components are contentiously defined but with a potential of being an important source of tariff revenue and of having an impact on industrial development in the future for developing ASEAN countries. This special regime for electronically transmitted goods cannot be justified as a global public good and is unnecessary. The removal of the regime would restore national space in developing ASEAN countries and allow them to obtain tariff revenues from the trade of these goods and to upgrade domestic capabilities in participating in the digital economy.

<https://www.southcentre.int/research-paper-177-18-may-2023/>

A Response to COVID-19 and Beyond: Expanding African Capacity in Vaccine Production (Research Paper 178, 22 May 2023)

By Carlos M. Correa

The unequal global distribution of vaccines against the deadly COVID-19 virus has cast a spotlight on the lack of access to vaccines on the African continent, and the vulnerability that such a lack places on both the economies of African nations and the health of their people. Various initiatives have been launched to overcome the dependence of African nations on vaccines produced elsewhere. If implemented in timely and effective ways, those initiatives will contribute to the diversification of African economies and strengthen the capacity of nations on the continent to address their public health needs during pandemics and at other times. While establishing a viable vaccine industry on the continent presents serious challenges, the African Continental Free Trade Area (AfCFTA) can provide

the framework for leveraging economies of scale to stimulate the production of needed vaccines across the region.

<https://www.southcentre.int/research-paper-178-22-may-2023/>

Reinvigorating the Non-Aligned Movement for the Post-COVID-19 Era (Research Paper 179, 14 July 2023)

By Yuefen Li, Daniel Uribe and Danish

The Non-Aligned Movement (NAM) was born out of the need felt by newly emerging post-colonial nations not to be compelled to be part of any single political or military bloc during the Cold War. As the international community finds itself once again in the midst of heightened geo-political tensions, the principles of non-alignment have seen a resurgence in the Global South, providing NAM with the potential to become a major force in the configuration of a new international order.

Over six decades after its inception, the NAM stands at a crucial juncture, where consolidating non-alignment among developing countries can help build solidarity, promote collaboration and defend the interest of developing countries in the reconfiguration of global governance. Dealing with these challenges requires unprecedented levels of international cooperation, both North-South and South-South. As the grouping of non-aligned countries, the NAM could play an important role against global fragmentation, build solidarity, and strengthen multilateralism.

This paper therefore looks at the role and position of the NAM at this time, and how it can be reinvigorated to address the most critical challenges facing its Member States and other developing countries today. Considering the history, evolution and important achievements of the NAM, the paper provides some proposals that can support NAM Member States in their recovery from the COVID-19 pandemic and make progress in implementing the 2030 Agenda for Sustainable Development.

<https://www.southcentre.int/research-paper-179-14-july-2023/>

Neglected Dimension of the Inventive Step as Applied to Pharmaceutical and Biotechnological Products: The case of Sri Lanka's patent law (Research Paper 180, 9 August 2023)

By Ruwan Fernando

Apart from the basic statutory definition in section 65 of the Intellectual Property Act of Sri Lanka, there do not appear to be any detailed statutory guidelines or judicial decisions to provide any framework for the assessment of inventive step in Sri Lanka. The current statutory definition is highly insufficient to evaluate the standard of obviousness in relation to biotechnological and pharmaceutical claims based on a combination or modification of a prior art reference.

The Courts in both developed and developing countries have adopted a variety of tests to evaluate the obviousness standard of a claimed invention based on a combination or modification of a prior art reference. Sri Lanka, as a developing country, should look at the development that has taken place in other jurisdictions and adapt the patent law to local conditions when developing tests or guidelines in a manner that is compatible with the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and its biotechnology/pharmaceutical policy guidelines.

This approach that is appropriate to Sri Lanka is twofold. First, it is most likely to prevent the issuance of patents on trivial or incremental inventions that do not provide any technical advance to the existing prior art and are a mere extension of what is already known in the prior art. Second, it is most likely to protect genuine technical advances to the existing prior art while at the same time enhancing competition and promoting local innovations so that the local researchers will be able to draw on the existing knowledge for the purpose of follow-on innovations

<https://www.southcentre.int/research-paper-179-14-july-2023/>

Trends, Reasons and Prospects of De-dollarization (Research Paper 181, 14 August 2023)

By Yuefen Li

The 1944 “Bretton Woods Agreement” gave birth to the new international financial system marked by the centrality of the US dollar which is a crucial pillar of the global power of the United States. Over the past eight decades, the asymmetry of the shrinking US economic weight in the world economy and growing dominant role of the dollar has become more and more glaring. The disadvantages of overreliance on the dollar have been keenly felt, especially by developing countries. The recent moves to weaponize the dollar and the payment clearance system have triggered another wave of reassessment by national states and enterprises of the role of the dollar and led to the hitherto most broad-based de-dollarization process covering from Southeast Asia to Latin America and the Middle East. De-dollarization has been incrementally taking place in different forms and led by BRICS and some commodity exporting countries. However, there are many challenges to meaningful de-dollarization. Overall, de-dollarization efforts, despite important progress, have been limited and partial. There has been progress in reducing overreliance on the dollar through foreign exchange reserve diversification and trade invoicing as evidenced by the decline in the dollar’s share of allocated foreign exchange reserves and the increase of trade invoiced and transacted in currencies other than the dollar. However, on aspects requiring the deep financial market and wide network such as foreign exchange transactions, issuance of debt and payment clearance, the dollar’s share has not suffered a decline. To reform the international financial system, the BRICS in particular should continue to take the lead in furthering the de-dollarization efforts.

<https://www.southcentre.int/research-paper-181-14-august-2023/>

Multistakeholderism: Is it good for developing countries? (Research Paper 182, 7 September 2023)

By Harris Gleckman

Published by South Centre and Transnational Institute

The preparations for the September 2024 Summit of the Future (SOTF) are well underway. In this process, the UN Secretary-General and most OECD countries argue that multistakeholderism should now be accepted as a part of global governance and multilateralism. This paper argues the opposite: multistakeholderism undermines multilateralism and limits the role of developing countries in global governance.

Global governance operates via a common narrative, a set of institutions, and the exercise of power. The first section of the paper provides the background to the World Economic Forum’s role in developing the narrative and the preliminary efforts of transnational corporations (TNCs) and major Northern NGOs to build an institutional structure for multistakeholderism. The first section also locates these developments in the context of TNC pressures on the UN and developing countries, going back 50 years to President Allende’s appeal to the General Assembly and UNCTAD.

The second section identifies six fundamental challenges presented by multistakeholderism to multilateralism and G77 governments.

- (a) an erosion of sovereignty
- (b) the outsourcing of global governance
- (c) a decline in accountability and trust in the international community
- (d) a shift in implementation from OECD governments to TNCs based in OECD countries
- (e) a narrowing of the range of policy directions to those that are compatible with a commercial return; and
- (f) a corruption of diplomatic language by masking the legitimate difference in governance actors as equivalent ‘stakeholders’

After an indepth analysis of each challenge, the paper concludes with a menu of multilateral options to respond today and in the context of the SOTF to multistakeholderism's intrusion into global governance. The choices include counter-moves on the political level and on the procedural level, the combination of which allows governments to create a variety of counter-strategies.

<https://www.southcentre.int/research-paper-182-7-september-2023/>

Least Developed Countries and Their Progress on the Sustainable Development Goals (Research Paper 183, 15 September 2023)

By Peter Lunenborg

This Research Paper reviews Least Developed Countries' (LDCs) collective progress on the implementation of the Sustainable Development Goals (SDGs), based on the available data on the indicators for the 169 SDG targets. It makes recommendations for LDCs and other States to consider advancing in relevant UN processes as well as the WTO's.

LDCs made progress on 28% of the SDGs. This collective progress shows that these countries are far from achieving what were deemed achievable goals in 2015. With respect to trade-related SDGs, LDCs have not made progress on any of the five trade-related SDGs that mention LDCs specifically.

This paper does not delve into the causes of this gap, but it suggests that international cooperation and, particularly, the developed countries' assistance, has been insufficient to address the needs of a large part of the world population that still lives in poverty and without hope of a better future. However, the Doha Programme of Action (DPoA), a development framework with targets specifically for LDCs - which overlap with SDG targets- appears to dilute several original SDG targets, in particular those in SDG 17 (Partnerships for the Goals).

<https://www.southcentre.int/research-paper-183-15-september-2023/>

Promoting Jordan's Use of Compulsory Licensing During the Pandemic (Research Paper 184, 15 September 2023)

By Laila Barqawi

This paper addresses the difficulties in utilizing Article 31 bis of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) on compulsory licensing for the export of pharmaceuticals during the pandemic through the case study of Jordan. This paper also recommends that Jordanian officials seek to capitalize on the pandemic whilst the Jordanian Defense Law and Orders are in effect to include Emergency Use Authorization (EUA) as a direct ground for applying compulsory licensing, introduce clauses similar to those introduced by countries who have signed FTAs with the US, as well as deactivate harmful clauses within its national laws that prevent the application and utilization of a compulsory license. Further, Jordanian officials should seek the opportunity, considering the change of stance of the Biden administration towards compulsory licensing, to re-negotiate favourable terms in the Jordanian – US Free Trade Agreement (JUSFTA). Moreover, Jordanian officials should also form a syndicate that calls for the overhauling of TRIPS at Article 31 bis when an EUA is invoked in any country.

<https://www.southcentre.int/research-paper-184-15-september-2023/>

Foreign Investment Flows in a Shifting Geoeconomic Landscape (Research Paper 185, 13 October 2023)

By Danish

The economic shocks from the pandemic and rising geoeconomic tensions have triggered an accelerated restructuring of foreign investment flows in global value chains. As the previous

determinants of foreign investment are rapidly changing, many new risks and opportunities abound for developing countries looking to attract FDI into their economies. This paper therefore looks at some of the important issues affecting foreign investment flows to developing countries both now and in the future. It then lays out some policy imperatives which can help countries ensure that the inbound foreign investment is responsible, sustainable and contributes to achieving the national development priorities.

<https://www.southcentre.int/research-paper-185-13-october-2023/>

Multistakeholderismo: ¿Es bueno para los países en desarrollo? (Documento de Investigación 182, 7 de septiembre de 2023)

Por Harris Gleckman

Publicado por South Centre y Instituto Transnacional

Resumen ejecutivo:

Los preparativos para la Cumbre del Futuro (SOTF) de septiembre de 2024 están en marcha. En este proceso, el Secretario General de las Naciones Unidas y la mayoría de los países de la OCDE sostienen que el multistakeholderismo debe aceptarse ahora como parte de la gobernanza mundial y el multilateralismo. En este documento se argumenta lo contrario: el multistakeholderismo socava el multilateralismo y limita el papel de los países en desarrollo en la gobernanza mundial.

La gobernanza global opera a través de una narrativa común, un conjunto de instituciones y el ejercicio del poder. La primera sección del documento proporciona los antecedentes del papel del Foro Económico Mundial en el desarrollo de la narrativa y los esfuerzos preliminares de las empresas transnacionales (ETN) y las principales ONG del Norte para construir una estructura institucional para el multistakeholderismo. En la primera sección también se sitúan estos acontecimientos en el contexto de las presiones de las transnacionales sobre las Naciones Unidas y los países en desarrollo, que se remontan a 50 años atrás, cuando el Presidente Allende hizo un llamamiento a la Asamblea General y a la UNCTAD.

En la segunda sección se identifican seis desafíos fundamentales que presenta el multilateralismo y los gobiernos del Grupo de los 77 a los desafíos fundamentales que plantea el multilateralismo y los gobiernos del Grupo de los 77.

- (a) una erosión de la soberanía
- (b) la delegación de la gobernanza mundial
- (c) una disminución de la rendición de cuentas y la confianza en la comunidad internacional
- (d) un cambio en la implementación de los gobiernos de la OCDE a las ETN con sede en los países de la OCDE;
- (e) una reducción de las opciones de política públicas con respecto a decisiones compatibles con intereses corporativos; y
- (f) una tergiversación del lenguaje diplomático al enmascarar la diferencia legítima entre los actores de la gobernanza como "partes interesadas" equivalentes

Después de un análisis en profundidad de cada desafío, el documento concluye con un menú de opciones multilaterales para responder hoy y en el contexto del SOTF a la intrusión de múltiples partes interesadas en la gobernanza global. Las opciones incluyen contramedidas a nivel político y a nivel de procedimiento, cuya combinación permite a los gobiernos crear una variedad de contra estrategias.

<https://www.southcentre.int/documento-de-investigacion-182-7-septiembre-2023/>

Multipartisme: est-ce bon pour les pays en développement? (Document de Recherche 182, 7 septembre 2022)

Par Harris Gleckman

Résumé exécutif:

Les préparatifs du Sommet du Futur (SOTF) de septembre 2024 vont bon train. Dans ce processus, le Secrétaire général de l'ONU et la plupart des pays de l'OCDE soutiennent que le multipartisme devrait désormais être accepté comme faisant partie de la gouvernance mondiale et du multilatéralisme. Cet article soutient le contraire : le multipartisme sape le multilatéralisme et limite le rôle des pays en développement dans la gouvernance mondiale.

La gouvernance mondiale fonctionne à travers un récit commun, un ensemble d'institutions et l'exercice du pouvoir. La première section du document fournit le contexte du rôle du Forum économique mondial dans l'élaboration du discours et des efforts préliminaires des sociétés transnationales (STN) et des principales ONG du Nord pour construire une structure institutionnelle pour le multipartisme. La première section situe également ces évolutions dans le contexte des pressions des STN sur l'ONU et les pays en développement, remontant 50 ans en arrière, à l'appel du président Allende à l'Assemblée générale et à la CNUCED.

La deuxième section identifie six défis fondamentaux présentés par le multipartisme au multilatéralisme et aux gouvernements du G77.

- (a) une érosion de la souveraineté
- (b) l'externalisation de la gouvernance mondiale
- (c) un déclin de la responsabilité et de la confiance dans la communauté internationale
- (d) un déplacement de la mise en œuvre des gouvernements des pays de l'OCDE vers les sociétés transnationales basées dans les pays de l'OCDE
- (e) un rétrécissement de l'éventail des orientations politiques à celles qui sont compatibles avec un rendement commercial ; et
- (f) une corruption du langage diplomatique en masquant la différence légitime entre les acteurs de la gouvernance en tant que « parties prenantes » équivalentes

Après une analyse approfondie de chaque défi, le document conclut par un menu d'options multilatérales pour répondre aujourd'hui et dans le contexte de la SOTF à l'intrusion du multipartisme dans la gouvernance mondiale. Les choix incluent des contre-mesures au niveau politique et au niveau procédural, dont la combinaison permet aux gouvernements de créer une variété de contre-stratégies.

<https://www.southcentre.int/document-de-recherche-182-7-septembre-2023/>

Patentamiento de anticuerpos monoclonales. El caso de Argentina (Documento de Investigación 186, 14 de noviembre de 2023)

Por Juan Correa, Catalina de la Puente, Ramiro Picasso y Constanza Silvestrini

Este documento de investigación tiene como objeto identificar, describir y analizar las patentes concedidas por el Instituto Nacional de la Propiedad Industrial (INPI) de Argentina, en materia de anticuerpos monoclonales desde el año 2010 al 2020 inclusive. La investigación incluye la materia protegida y el universo de solicitantes, entre otros aspectos. Para ello, se procedió a construir una base de datos de patentes y solicitudes, donde se examinan las características de las patentes solicitadas y concedidas, titularidad y nacionalidad de los solicitantes, estado de las solicitudes, tiempo que demora la resolución de una patente solicitada y patentes divisionales. El documento presenta también recomendaciones de política pública aplicables a las patentes sobre anticuerpos monoclonales.

<https://www.southcentre.int/documento-de-investigacion-186-14-de-noviembre-de-2023/>

The Global Digital Compact: opportunities and challenges for developing countries in a fragmented digital space (Research Paper 187, 4 December 2023)

By Carlos Correa, Danish, Vitor Ido, Jacquelene Mwangi and Daniel Uribe

The adoption of a Global Digital Compact (GDC) as one of the outcomes of the Summit of the Future opens up the opportunity to address in a systematic manner issues that are of critical importance for the digital global governance. It also poses a challenge to developing countries, as most of them lack the infrastructure and capabilities to fully participate in the digital transformation. Many inequalities, including a deep digital divide, do exist and would need to be addressed by the GDC for it to become a real instrument of change and improvement in the living conditions and the prospects of a better future for most of the world population. This paper examines the current fragmentation in the digital governance and some of the issues raised by the proposals made by the UN Secretary-General for adoption of the GDC.

<https://www.southcentre.int/research-paper-187-4-december-2023/>

The Intersection Between Intellectual Property, Public Health and Access to Climate-Related Technologies (Research Paper 188, 7 December 2023)

By Livia Regina Batista

On the 20th anniversary of the Doha Declaration on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and Public Health adopted by the World Trade Organization, we realize that its impact is beyond issues of public health *stricto sensu*. The Doha Declaration has inspired discussions at the Council for TRIPS regarding access to climate-related technologies. Climate change is the main and most globalized environmental problem with adverse effects on public health, especially for the vulnerable communities in the Global-South. The main argument of the proponents of the discussion in the TRIPS Council is the need to rebalance public interests (such as public health and environmental/climate issues) with the private/economic interests of the most powerful countries and corporations. This debate addresses both the recognition of intellectual property rights as an important means for the promotion of technological innovation, and the required wider dissemination of technologies – be they medicines or climate-related technologies. This research paper explores the possibilities that the TRIPS Agreement and the Doha Declaration create for international transfer of climate-related technologies. Even though such discussions on climate-related technologies have initially failed in linking climate change and public health, as well as the rhetoric of human rights, the relevance of the topic remains. Besides that, the response to public health issues also must learn from the experience in climate change, such as the case studies evidencing the insufficiency and inefficiency of fast-tracking programs to provide for a wider dissemination of technologies – which have now been widely replicated to address the COVID-19 pandemic. Such comparison can also be an entrance point to discuss the public health implications for the international regime on climate change, highlighting that such issues are deeply intertwined, and need to be addressed jointly as well.

<https://www.southcentre.int/research-paper-188-7-december-2023/>

Status of Permanent Establishments under GloBE Rules (Research Paper 189, 21 December 2023)

By Kuldeep Sharma

The objective of this Research Paper is to comprehensively identify and analyse all Permanent Establishment (PE) related provisions under the global minimum tax of the Organisation for Economic Co-operation and Development (OECD), which is implemented through the Global Anti Base Erosion (GloBE) Model Rules. The analysis has led to the conclusion that PEs hold a significant position and facilitate application of GloBE Rules.

The GloBE Rules have introduced certain new facets involving application of PE provisions when there is no tax treaty; no Corporate Income Tax (CIT) in the source state, and have brought in the concept of

stateless PEs. These newly-introduced facets have widened the scope of PEs to enable application of the GloBE Rules in specific situations which would otherwise have remained outside the ambit of taxation.

The paper concludes with an observation that the OECD's Inclusive Framework is drafting the provisions of Amount A in a manner that results in consistency with GloBE Rules. Likewise, acceptance of "deemed PE" for GloBE rules should be extended to Amount A as well. By doing so, a tax nexus would be provided in source jurisdictions, which will allow profits attributable to Multinational Enterprises (MNEs) in a digitalized economy (without physical presence) getting taxed under domestic rules of these source (market) jurisdictions. This would have been a much simpler solution and would have eliminated the complexity of Amount A rules to a large extent, as we see today.

<https://www.southcentre.int/research-paper-189-21-december-2023/>

Implementing the Doha Declaration in OAPI Legislation: Do Transition Periods Matter? (Research Paper 190, 25 January 2024)

By Patrick Juvet Lowé Gnintedem

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) provided for a number of transition periods allowing countries to engage in a phased implementation of their TRIPS obligations. More specifically, transition periods targeted the patenting of pharmaceutical products. The original deadlines for transition periods have expired for developed and developing country WTO members. However, based on the Doha Declaration on the TRIPS Agreement and Public Health and subsequent TRIPS Council decisions, least developed countries (LDCs) continue to benefit from extended transition periods. In the African Intellectual Property Organization (OAPI), after an amendment in 1999, the legal framework has evolved with the amendment of the Bangui Agreement, i.e., the Act of Bamako of 14 December 2015. As for the previous text, the newly amended Bangui Agreement consecrates the unification on industrial property amongst its seventeen Member States. The main objective of such an amendment remains to adapt its legal framework to the international environment and to the economic and social development needs of Member States. Yet only five OAPI Member States are developing countries; the twelve others are LDCs. Then the question arises: do transition periods consecrated pursuant to the Doha Declaration still matter for LDCs who have agreed to be subjected to the OAPI legislation? This paper points out that transition periods remain relevant in OAPI countries by application of the more favorable rule between the Bangui Agreement and the WTO TRIPS Council decisions. It is however noted that the OAPI current legal framework is still problematic, while its LDCs members are underutilizing this flexibility.

<https://www.southcentre.int/research-paper-190-24-january-2024/>

TRIPS Waiver Decision for Equitable Access to Medical Countermeasures in the Pandemic: COVID-19 Diagnostics and Therapeutics (Research Paper 191, 25 January 2024)

By Nirmalya Syam and Muhammad Zaheer Abbas, PhD

The Marrakesh Agreement Establishing the World Trade Organization (WTO) allows WTO Members to agree to temporarily waive obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement). However, the TRIPS Decision adopted by the 12th WTO Ministerial Conference in June 2022, after lengthy and protracted negotiations lasting for 20 months in the middle of a pandemic, allowed only a fragment of the waiver proposal submitted by India and South Africa. Moreover, since the adoption of the Decision there has been an impasse in the WTO about extending the Decision to COVID-19 diagnostics and therapeutics even though the WTO Members were mandated by the Decision to decide on this matter within six months of the Decision. This research paper analyses the current state of play and concludes that there is a need to immediately and unconditionally extend the Decision to COVID-19 diagnostics and therapeutics. Moreover, the paper suggests options for how the TRIPS flexibilities can be optimally utilized in a pandemic situation without developing countries being resigned to the vagaries of negotiations on a waiver which is supposed to be an urgent emergency solution. In this regard, the paper also suggests options that could be considered for reforming the process of decision-making on a waiver proposal to ensure that decisions

on waivers are taken in a timely and expedited manner without being negotiated for an extensive period of time in the midst of an emergency.

<https://www.southcentre.int/research-paper-191-25-january-2024/>

Pautas para el examen de patentes sobre anticuerpos monoclonales (Documento de Investigación 192, 30 de Enero de 2024)

Por Juan Correa, Catalina de la Puente, Ramiro Picasso y Constanza Silvestrini

La investigación tiene como objetivo conocer el estado de las solicitudes de patente en materia de anticuerpos monoclonales (mAbs). El documento analiza las distintas estrategias en materia de reivindicaciones que utilizan los solicitantes con el fin de obtener protección por derecho de patentes. Se utilizó como fuente de información la base de datos construida y descrita en el Documento de Investigación No. 186 de South Centre. Se indaga sobre las principales reivindicaciones utilizadas en el campo de los mAbs, el tipo de clasificación CIP y el tipo de invención (producto o proceso) más frecuente en las patentes concedidas vigentes o caducas en Argentina. Finalmente, se analiza la utilización de las directrices de patentamiento argentinas en el caso de mAbs y se hacen recomendaciones respecto de posibles reformas a dichas directrices.

<https://www.southcentre.int/documento-de-investigacion-192-30-de-enero-de-2024/>

POLICY BRIEFS

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 complemente 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/>

UN Model Tax Convention: Selective Territoriality – The Specter of Privileged Player in a Rigged Game (Tax Cooperation Policy Brief 25, 30 September 2022)

By Muhammad Ashfaq Ahmed

This paper lays out the chessboard on which taxes on international incomes from immovables are contested, bargained, and harvested as per pre-determined rules that are starkly tilted in favor of developed countries. This embedded and pronounced bias in the international taxes regime in favor of developed countries makes them a privileged player. The developed countries then make maneuvers to optimize on their economic gains at the expense of developing nations rendering it a rigged game setting. The paper derives its rationale from an exceptionally selective choice of territoriality on incomes from immovables, which was astonishingly not aligned with the expected reverse capital movement, that is, from developing to developed countries. The genesis and evolution of selective territoriality are traced through its various institutional development phases – League of Nations (LN), Organisation for Economic Co-operation and Development (OECD), and United Nations (UN). An overwhelming international consensus on selective territoriality on incomes from immovables notwithstanding, the UN's role is brought into spotlight to argue that the developing countries may have suffered massively over the past one hundred years by instinctively believing in the UN Model Tax Convention's (MTC) efficacy and blindly pursuing Article 6 in their bilateral double taxation conventions (DTCs). The inimical implications of herd-mentality on part of developing countries got galvanized in the particular wake of developed countries employing innovative optimization tools – citizenship/residence by investment programs, tax havenry, manipulable ownership structures, beneficial ownership legislations, and porous exchange of information regime – to maximize on the economic gains. The paper undertakes both normative and structuralist evaluation of selective territoriality to sum up that this is an unjust principle of distribution of fiscal rights at the international level particularly in asymmetric economic relationships, and can hold its ground only until developing countries attain full cognition of the reality and start raising their vocal chords in unison to dismantle it.

<https://www.southcentre.int/tax-cooperation-policy-brief-25-30-september-2022/>

A Breakthrough in Negotiations on Intellectual Property, Protection of Genetic Resources and Traditional Knowledge in WIPO? (Policy Brief 113, 11 October 2022)

By Dr. Viviana Muñoz Tellez

This Policy Brief provides a brief summary of the current negotiations in the World Intellectual Property Organization (WIPO) for an international legal instrument or instruments relating to intellectual property to ensure the balanced and effective protection of genetic resources (GRs), associated traditional knowledge (TK) and traditional cultural expressions (TCEs). The General Assembly in June 2022 took a significant decision to schedule a Diplomatic Conference in 2024 to conclude a treaty on the protection of GRs and associated TK. However broader protection for TK and TCEs is not part of the decision. The 44th session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), held on 12–16 September 2022, focused on advancing text-based negotiations on these issues and two more sessions will follow. Developing countries must coordinate closely, in parallel to the IGC sessions, to agree on a common negotiating position for the treaty to be concluded no later than in 2024.

<https://www.southcentre.int/policy-brief-113-11-october-2022/>

Reducing the Unnecessary Use of Antimicrobials in Animal Farming (Policy Brief 114, 19 October 2022)

By Dr. Viviana Muñoz Tellez

Antimicrobial resistance is aggravated due to excessive and inappropriate use of antimicrobials in human and animal health and in plant and animal agriculture. While international standards are being developed, governments are rolling out regulations with the aim to curb the overuse and misuse of antimicrobials, to preserve their efficacy for as long as possible. This Policy Brief discusses two new regulations introduced by the European Union (EU) on medicated animal feed (Regulation (EU) 2019/4 and veterinary medicinal products (Regulation (EU) 2019/6) that entered into effect on 28 January 2022. As part of the implementation of the regulations, the EU should devise a comprehensive plan to help implementation by countries and producers of animal food products of the Global South, linked to supporting the transition to sustainable agricultural systems and development.

<https://www.southcentre.int/policy-brief-114-19-october-2022/>

Understanding the Main Elements for an Operational Definition of Climate Finance (Climate Policy Brief 27, 25 October 2022)

By Luis Fernando Rosales Lozada

An operational definition of climate finance could contribute to facilitating access of developing countries to needed public and private financial resources to support them on climate action required to face the climate crisis and its impacts. The climate finance definition adopted by the UNFCCC Standing Committee on Finance in 2014 aimed to clarify the goals of climate finance, but it has not solved the main questions about climate finance. Although agreeing on an operational definition of climate finance in the multilateral negotiations may facilitate the flows of climate finance, achieving an outcome still faces some obstacles.

It is urgent for developing countries' government officials and delegations to be aware of the different elements that need to be considered to achieve an appropriate definition. This policy brief analyses the different elements to be considered in the negotiation of an operational definition of climate finance, that can be effective in promoting developing countries' interests in the context of the current international framework to address climate change.

<https://www.southcentre.int/climate-policy-brief-27-25-october-2022/>

Revenue Effects of the Global Minimum Corporate Tax Rate for African Economies (Tax Cooperation Policy Brief 26, 31 October 2022)

By Seydou Coulibaly

This policy brief provides the first piece of empirical evidence on the revenue implications of the recent global minimum tax rate reform agreement for African economies. We implement a regression discontinuity design to evaluate the effect of having an effective corporate tax rate of at least 15% on tax revenue collection for a panel of 28 African economies over the period 2000-2020.

The estimation results indicate that the implementation of the global minimum effective corporate tax rate of 15% proposed under Pillar II of the Organisation for Economic Co-operation and Development (OECD) Two Pillar Solution has a positive but not statistically significant likely impact on corporate tax revenue and total tax revenue at the conventional significance levels. This suggests that the global minimum tax deal is unlikely to increase tax revenue for African economies. These findings exhort the Inclusive Framework and all the stakeholders of the global tax reform negotiations to consider revising the global minimum tax rate rules to ensure that the agreement will effectively benefit African countries through better tax revenue collection.

<https://www.southcentre.int/tax-cooperation-policy-brief-26-31-october-2022/>

Technology Transfer and Climate Change: A developing country perspective (Climate Policy Brief 28, 14 November 2022)

By Nicolás M. Perrone

The role of technology transfer in climate change negotiations is vital. If technology is to help us mitigate and adapt to climate change, the international community needs to ensure sufficient innovation and technology transfer. One of the main challenges of the technology transfer regime for environmentally sound technologies is that a private and market-led model may not meet global technology transfer needs. This policy brief suggests that governments should explore market, hybrid and non-market approaches to accelerate the transfer of environmentally sound technologies. Developing countries' governments should also explore cooperative approaches to improve their bargaining power, reduce costs and ensure adaptation and innovation capacity in the developing world.

<https://www.southcentre.int/climate-policy-brief-28-14-november-2022/>

Taxing Big Tech: Policy Options for Developing Countries (Tax Cooperation Policy Brief 27, 21 December 2022)

By Abdul Muheet Chowdhary and Sébastien Babou Diasso

Even as the COVID-19 crisis wreaked havoc on the global economy, it gave rise to a small set of winners, namely Big Tech. The increasing prevalence of remote work and an acceleration of the digitalization of the economy allowed Big Tech companies to raise enormous revenues during the pandemic, which in some cases dwarfed the gross domestic product (GDP) of several countries. This policy brief explores the rising untaxed profits of Big Tech in particular, and the digitalized economy in general, and explains why the existing rules are insufficient. It also critically examines the solution that has been devised by the Organisation for Economic Co-operation and Development (OECD), an intergovernmental organization of developed countries. Finally, it outlines alternative policy options that are more suitable for developing countries to tax the profits of Big Tech.

<https://www.southcentre.int/tax-cooperation-policy-brief-27-21-december-2022/>

Climate Finance Withholding Mechanism: Exploring a potential solution for climate finance needs of the developing countries (Tax Cooperation Policy Brief 28, 20 January 2023)

By Radhakishan Rawal

The developed countries' commitment to provide climate finance to the developing countries has remained unfulfilled. The Climate Finance Withholding Mechanism (CFWM) is a potential solution for addressing climate finance needs of the developing countries. The CFWM adopts the well settled "withholding mechanism" under the tax laws to provide a steady flow of funds to the developing countries.

Multinational enterprises' (MNEs) tax residents of developed countries earn income from the developing countries and pay tax on such income in the developed countries. The CFWM requires retention in the developing country, of the amount of tax so payable by the MNE, towards climate finance commitments of the developed countries. The CFWM does not result in additional tax outflow for the MNEs and also does not adversely impact taxing rights of the developed countries. The CFWM results in application of tax revenue of the developed countries towards their climate finance commitments. The CFWM does not address all the issues related to the climate finance problem but only attempts to speed up the flow of funds to the developing countries from where the relevant income originates.

<https://www.southcentre.int/tax-cooperation-policy-brief-28-20-january-2023/>

Policy responses for fostering South-South and Triangular Cooperation in response to the food crisis in the area of trade (Policy Brief 115, 14 February 2023)

By Peter Lunenborg

The Russia-Ukraine conflict since 24 February 2022 and the various sanctions imposed on Russia are having tremendous global repercussions, including on developing countries. This world is already experiencing multiple crises such as COVID-19 and measures in response to the virus including lockdowns, money printing and increases in government debts, conflicts and tensions in other parts of the world as well as climate change and extreme weather events such as extreme flooding or droughts. The conflict is compounding and aggravating these shocks.

In the short to medium term, prices in particular for energy (oil, gas), derived products (fertilizers) and food (in particular cereals) will remain elevated. Availability might also suffer. As a result, food insecurity is and will remain a serious concern in the near and medium term. Policy actions are required to mitigate any potential famine(s) which may arise and to build resilience for the future.

This paper explores concrete options for developing countries to address food insecurity in the short, medium and long term, including purchase policies, better implementation of WTO rules and increase in domestic investment in wheat and fertilizers production.

<https://www.southcentre.int/policy-brief-115-14-february-2023/>

Digital taxation under the OECD Amount A and UN Article 12B mechanisms for market jurisdictions in Africa: a comparative analysis (Tax Cooperation Policy Brief 29, 3 March 2023)

By Erica Rakotonirina

This Policy Brief examines the need for the evolution and harmonization of international taxation in the face of the digitalization of economic transactions.

Between the OECD proposal for shared taxation of residual profits through the Amount A mechanism and the UN proposal of Article 12B for taxing income from Automated Digital Services on a gross basis through shared but capped taxation, with an optional variant of the taxation of net profits, African States need to make vital political and technical choices.

The strategic negotiations must include regulatory sustainability, the right balance and fiscal fairness between the divergent interests of residence states vs source states (which include almost all African countries), and MNEs in their quest for profit and expansion.

The Policy Brief carries out quantified evaluation of possible revenue estimates using a case study approach. However, such an exercise remains difficult for questions of accessibility and reliability of data relating to the activities of multinational companies.

To be realistic, the scope of the study was restricted to a reference company in the digital sector but targeted economies of different scales. The results of the revenue estimates represent an optimistic case of the impacts on tax revenues of the application of the OECD and UN measures on different types of economies.

<https://www.southcentre.int/tax-cooperation-policy-brief-29-3-march-2023/>

Understanding the Functioning of EU Geographical Indications (Policy Brief 116, 7 March 2023)

By Andrea Zappalaglio

This contribution investigates the functioning of the EU sui generis Geographical Indication (GI) system, with a specific focus on the regime for the protection of agricultural products and foodstuffs within the scope of EU Regulation 1151/2012. In particular, based on the results of the recent “Study on the Functioning of the EU Geographical Indications System” of the Max Planck Institute for Innovation and Competition (February 2022), this paper: (1) clarifies the nature of EU GIs as it emerges from an empirical assessment of the specifications of all the products that appear on the EU register; (2) comparatively analyses the national practices of the EU Member States and explores the discrepancies that exist among them to date; (3) provides an in-depth assessment of the structures of the specifications of EU GIs, highlighting the domestic specificities; (4) investigates the contents and functions of the amendments to the specifications of the registered products. It concludes by emphasizing the importance of the present research in light of the current EU international agenda, with a specific focus on the bilateral agreements recently or currently negotiated.

<https://www.southcentre.int/policy-brief-116-7-march-2023/>

The Midterm Comprehensive Review of the International Decade for Action on Water for Sustainable Development amid growing tension between a human rights perspective and the commodification and privatization of water (Policy Brief 117, 14 March 2023)

By Luis Fernando Rosales Lozada

Climate change is affecting the availability of water resources in different regions around the world. In addition, some growing trends towards water commodification and privatization could exacerbate the problem since they are guided by profit maximization strategies. The United Nations (UN) will hold the Midterm Comprehensive Review (MCR) of the Implementation of the Objectives of the International Decade for Action, “Water for Sustainable Development”, 2018–2028, from 22 to 24 March 2023. This is an important opportunity for the international community to assess the challenges on access to clean drinking water and sanitation. The MCR debates and outcomes should be guided by a human rights approach towards promoting access to water for all in 2030 in alignment with Sustainable Development Goal (SDG) 6.

<https://www.southcentre.int/policy-brief-117-14-march-2023/>

Enforcing Secondary Taxing Rights: Subject to Tax Rule in the UN Model Tax Convention (Tax Cooperation Policy Brief 30, 25 March 2023)

By Abdul Muheet Chowdhary and Sebastien Babou Diasso

The Global Anti Base Erosion (GloBE) Rules under OECD's Pillar Two recommendations, with a minimum effective tax rate of 15%, are expected to play a significant role to end the 'race to the bottom' in corporate taxation, which is one of the main drivers of profit shifting. However, the thrust of these rules is designed in a manner to give priority to the developed countries. In this light, the Subject to Tax Rule (STTR), which is a treaty-based rule that allows source jurisdictions to impose limited source taxation on certain payments that are taxed below a minimum rate in the country of residence, is of extreme significance for the developing countries. Under Pillar Two, application of STTR is restricted to base eroding payments or mobile income between related parties only, which does not address Base Erosion and Profit Shifting (BEPS) concerns in an entirety. That apart, the withholding tax rate of 9% proposed by the OECD may not result in generation of significant resources for the developing countries. In this light, developing countries keenly expect that the UN Tax Committee should devise an STTR that is simple to operate, has a broad scope covering all payments in a tax treaty and imposes a higher withholding tax closer to 15% to bring meaningful revenues for them. Also, developing countries desire that STTR provisions may be introduced at the earliest so as to speedily implement them through the UN Multilateral Instrument under contemplation. This Policy Brief also examines existing average withholding tax rates on interest and royalty payments in existing tax treaties of 48 South Centre and 52 G-77+China Member States and finds that out of a total of 100 developing countries, only 25 would stand to benefit from the STTR in its restricted form in Pillar Two, further strengthening the need for an improved version formulated by the United Nations.

<https://www.southcentre.int/tax-cooperation-policy-brief-30-25-march-2023/>

Taxation of Computer Software: Need for Clear Guidance in the UN Model Tax Convention (Tax Cooperation Policy Brief 31, 25 March 2023)

By Abdul Muheet Chowdhary and Sebastien Babou Diasso

Developing countries pay enormous sums of money for the right to use intellectual property such as patents, trademarks, copyrights, etc. Such payments are known as 'royalties'. The scale is enormous, and just 27 South Centre Member States paid \$45 billion in 2020 as royalties. Some proportion of these payments are for the right to use computer software. Developing countries can gain significant revenues if the United Nations can provide clear international tax guidelines that payments for the right to use computer software should be taxable as royalties. This Policy Brief provides the world's first country-level revenue estimates for 34 of the South Centre's Member States and finds that they could collect potentially \$1 billion in tax revenues in 2020 had they been able to tax payments for the use of computer software as royalties.

<https://www.southcentre.int/tax-cooperation-policy-brief-31-25-march-2023/>

Leveraging South-South and Triangular Cooperation for Reducing Poverty and Hunger, and Promoting Rural Development (Policy Brief 118, 21 April 2023)

By Yuefen Li, Daniel Uribe and Danish

The world is experiencing unprecedented global multidimensional crises that have increased poverty, hunger and food insecurity, with the sharpest impacts being felt among rural areas and communities. Deepening international cooperation is essential to help developing countries face economic headwinds and recover from lasting scars of the COVID-19 pandemic and climate change-induced natural disasters. In this scenario, scaling up of South-South and Triangular Cooperation (SSTC) can play a critical role in catalyzing sustainable development initiatives in developing and least developed countries.

This policy brief therefore considers how SSTC can be effectively leveraged for undertaking initiatives on poverty alleviation, hunger reduction and rural development through strengthening of national SSTC institutional setups. It also explores how SSTC can facilitate increased coordination among stakeholders, and considers areas for fostering mutually beneficial initiatives between developing

countries. This brief then focuses on the institutional setup for SSTC in some selected countries across Asia, Africa and Latin America, and considers their role in mainstreaming of SSTC. It further considers some recent experiences from developing countries that use SSTC modalities, outlining important initiatives which could be shared with partners to support poverty alleviation, food security and rural development efforts. Finally, the brief provides some important conclusions and lessons learned which can support developing countries' efforts to achieve the SDGs and the 2030 Agenda.

<https://www.southcentre.int/policy-brief-118-21-april-2023/>

Global Minimum Taxation of Multinationals: Opportunities and risks for some African States (Tax Cooperation Policy Brief 32, 30 May 2023)

By AMAGLO Kokou Essegbe, KOUEVI Tsotso and ADJEYI Kodzo Senyo

To face the challenges posed by the digitization of the economy, the OECD's Inclusive Framework has developed two Pillars to address tax base erosion and profit shifting. The objective of Pillar Two is to define the minimum amount of tax to be paid by multinational enterprises in the jurisdictions where they operate. The OECD's Inclusive Framework has adopted an average effective rate of 15% for this purpose. The objective of this study is to show whether the implementation of Pillar Two in African jurisdictions constitutes an opportunity or a risk for them.

The results show that it is an opportunity for countries with a low effective tax rate and a risk for countries with a high effective tax rate. Therefore, setting a 15% income tax rate for non-resident multinationals is an opportunity for some African countries. For it would constitute for these countries a source of additional tax revenue mobilization. For this reform to be an opportunity for Africa, however, the minimum effective tax rate must be raised to at least 20%, as was demanded by the African Tax Administration Forum (ATAF).

The risk that lies in the application of an effective rate of 15% for Africa as a whole is that some African countries might have to reduce their effective tax rate. This would be a loss of revenue for those African countries. Since most countries in the African jurisdiction have effective tax rates and statutory corporate income tax rates that are more than 20 percent, above the set average effective rate, multinationals would seek to shift their profits to the countries with the most advantageous taxation. This could lead to a transfer of profits to other jurisdictions.

<https://www.southcentre.int/tax-cooperation-policy-brief-32-30-may-2023/>

Strengthening efforts towards fulfilling the human right to food and the right to clean, safe and healthy environment (Policy Brief 119, 23 June 2023)

By Danish and Daniel Uribe

In the face of the unprecedented global crises that the world is currently facing, upholding and fulfilling the human right to food and a clean, safe and healthy environment have become critically important. The Human Rights Council (HRC) adopted two important resolutions on these issues in its 52nd Session, held from 27 February to 04 April 2023. The present policy brief discusses the implications and scope of these resolutions to strengthen and advance fundamental human rights, building resilience and promoting the role of multilateralism as a tool to face the triple planetary crises and recover better from the impacts of the COVID-19 pandemic.

<https://www.southcentre.int/policy-brief-119-23-june-2023/>

Taxation of Digital Services: what hope for the African States? (Tax Cooperation Policy Brief 33, 26 June 2023)

By ADJEYI Kodzo Senyo, KOUEVI Tsotso and AMAGLO Kokou Essegbe

Globalization makes it necessary to adapt multinational taxation by taking into account the place of use or consumption of goods and services. “Pillar 1” of the OECD aims to allow States in which multinationals market products or services, or collect data and content from users, to benefit from a portion of their residual consolidated worldwide profit. Since residual profit is a function of the turnover and profit achieved in the jurisdiction, this solution can only be an advantage if, beyond the rules of fair taxation, efforts are made to promote the use of digital services. Internet access is one of the levers that can increase the consumption of digital services. The current situation in Africa according to statistics published by the International Telecommunication Union (ITU) shows low rates of internet access compared to other continents.

<https://www.southcentre.int/tax-cooperation-policy-brief-33-26-june-2023/>

Towards A Latin American and Caribbean Medicines Agency (AMLAC) (Policy Brief 120, 11 July 2023)

By Germán Velásquez

On 26 April 2023 in Acapulco, Mexico, the Medicines Regulatory Authorities of Colombia (INVIMA), Cuba (CECMED) and Mexico (COFEPRIS) signed the “Declaration of Acapulco” for the creation of the Latin American and Caribbean Medicines and Medical Devices Regulatory Agency (AMLAC). This declaration was confirmed in Bogota, Colombia on 16 June 2023 in a meeting called “Regulatory convergence” by the heads of the medicines regulatory agencies of Argentina, Brazil, Chile, Colombia, Cuba and Mexico who agreed on the progressive creation of a Latin American and Caribbean Medicines Agency (AMLAC).

AMLAC was created to contribute to regional integration through harmonisation and convergence in health regulation, the creation of a regional medicines market in pursuit of access to safe, effective and quality medicines and medical devices.

<https://www.southcentre.int/policy-brief-120-11-july-2023/>

Hacia una Agencia Latinoamericana y del Caribe de Medicamentos (AMLAC) (Informe sobre políticas 120, 11 de julio de 2023)

Por Germán Velásquez

El 26 de abril de 2023 en Acapulco, México, las Autoridades Reguladoras de Medicamentos de Colombia (INVIMA), Cuba (CECMED) y México (COFEPRIS) firmaron la “Declaración de Acapulco” para la creación de la Agencia Latinoamericana y del Caribe de Regulación de Medicamentos y Dispositivos Médicos (AMLAC). Esta declaración fue confirmada en Bogotá, Colombia el 16 de junio de 2023 en una reunión titulada “Convergencia regulatoria” por los responsables de las agencias reguladoras de medicamentos de Argentina, Brasil, Chile, Colombia, Cuba y México que acordaron la creación progresiva de una Agencia Latinoamericana y del Caribe de Medicamentos -AMLAC-.

La AMLAC fue creada para contribuir a la integración regional a través de la armonización y convergencia en materia de regulación sanitaria, la creación de un mercado regional de medicamentos en busca del acceso a medicamentos y dispositivos médicos seguros, eficaces y de calidad.

<https://www.southcentre.int/informe-sobre-politicas-120-11-de-julio-de-2023/>

Assessing the State of Play in the WHO Pandemic Instrument Negotiations (Policy Brief 121, 18 July 2023)

By Viviana Muñoz Tellez

This Policy Brief discusses the state of play of the negotiations of the pandemic instrument at the World Health Organization. The Intergovernmental Negotiating Body (INB) is increasing its meetings as the target deadline for completion in the first half of 2024 draws closer. To advance, the political will needs to be scaled up in the next months. The expectations should not be lowered to focus on the lowest common denominator. Real progress needs to be made in priority areas of concern for developing countries to keep momentum.

<https://www.southcentre.int/policy-brief-121-18-july-2023/>

Conceptualizing Remote Worker Permanent Establishment (Tax Cooperation Policy Brief 34, 24 July 2023)

By Radhakishan Rawal

COVID-19 impacted humanity in many ways and one such impact is wide acceptance of the concept of Work From Home (WFH) by the corporate sector. Previously, WFH did exist in some countries, perhaps at a much smaller scale, but compulsions of COVID-19 have made WFH a new normal. This new normal also creates new tax challenges for the Multinational Enterprises (MNEs). Does the employee create a taxable presence in the countries where they are working remotely through a "permanent establishment" and if yes what are the profits attributable to such permanent establishment?

The existing treaty provisions are likely to result in widespread litigation on these issues. It is desirable that a new provision is introduced in the tax treaties to tackle these issues. The suggested remote worker permanent establishment provision adopts a very simple measurable threshold for determination of permanent establishment and also attempts to balance taxing rights of the country of source as well as residence. A simple standardised approach could be adopted for determining the profits attributable to such permanent establishment.

<https://www.southcentre.int/tax-cooperation-policy-brief-34-24-july-2023/>

The GloBE Rules: Challenges for Developing Countries and Smart Policy Options to Protect Their Tax Base (Tax Cooperation Policy Brief 35, 18 August 2023)

By Emmanuel Eze, Sol Picciotto, Muhammad Ashfaq Ahmed, Abdul Muheet Chowdhary, Bob Michel and Tommaso Faccio

The OECD global minimum tax of 15%, known as the Global Anti-Base Erosion (GloBE) Rules, have meant that developing countries need to consider what policy responses to take to ensure they collect the minimum tax and not cede it to developed countries. One option being promoted by the OECD is the "Qualified Domestic Minimum Top Up Tax" (QDMTT), with the claim that it will help developing countries collect the minimum tax of 15%. This Policy Brief points out that under the QDMTT MNEs can still pay zero taxes, it does not guarantee tax collection, it is complex to administer, it curtails national sovereignty in the form of the "peer review" mechanism and it is relevant mainly for tax havens which are destinations of profit shifting. The Brief then outlines policy options relevant for developing countries, namely Alternative Minimum Taxes (AMTs) and reform of tax incentives.

<https://www.southcentre.int/tax-cooperation-policy-brief-no-35-18-august-2023/>

Beyond the Two Pillar Proposals: A Simplified Approach for Taxing Multinationals (Tax Cooperation Policy Brief No. 36, 26 October 2023)

By Sol Picciotto, Muhammad Ashfaq Ahmed, Alex Cobham, Rasmi Ranjan Das, Emmanuel Eze, Bob Michel

This paper puts forward an alternative to the proposed multilateral convention under Pillar One of the BEPS project, by building on and going beyond the progress made so far. A new direction was signalled in 2019 by the G-24 paper proposing a taxable nexus based on significant economic presence, combined with fractional apportionment. The resulting measures agreed under the two Pillars entail acceptance in principle of this approach, and also provide detailed technical standards for its implementation. These include: (i) a taxable nexus based on a quantitative threshold of sales revenues; (ii) a methodology for defining the global consolidated profits of MNEs for tax purposes, and (iii) detailed technical standards for defining and quantifying the factors that reflect the real activities of MNEs in a jurisdiction (sales, assets and employees).

The time is now right to take up the roadmap outlined by the G-24. The work done shows that technical obstacles can be overcome, the challenge is essentially political. This paper aims to provide a blueprint for immediate measures that States can take, while engaging in deliberation at national, regional and international levels for a global drive towards practical and equitable reforms. Unitary taxation with formulary apportionment is the only fair and effective way to ensure taxation of MNEs where economic activities occur, as mandated by the G20. It can ensure that MNE profits are taxed once and only once, provide stability and certainty for business, and establish a basis for international tax rules fit for the 21st century.

** Also available in French, Spanish, Portuguese and Arabic*

<https://www.southcentre.int/tax-cooperation-policy-brief-no-36-26-october-2023/>

Data Access and the EU Data Strategy: Implications for the Global South (Policy Brief 122, 30 November 2023)

By Marc Stuhldreier

This study explores the value of data in the digital economy and the challenges surrounding data ownership, access rights, and equitable distribution of the value. It examines the European Data Strategy and highlights its shortcomings as well as its implications for the Global South. This contribution emphasises the need for unlocking the potential of collected data by enhancing accessibility and challenging protectionist measures and discusses the importance of fair competition and innovation. It also discusses the importance of balancing access rights with legitimate privacy concerns, trade secrets, and intellectual property rights. The paper concludes by highlighting the importance for developing countries to introduce tailored regulations that suit their specific needs, empowering them to seize opportunities and navigate the digital economy effectively.

<https://www.southcentre.int/policy-brief-122-30-november-2023/>

The WHO CA+ Discussions on Pathogen Access and Benefit Sharing: State of Play (Policy Brief 123, 14 December 2023)

By Nirmalya Syam

This brief explores the scope of a World Health Organization (WHO) pathogen access and benefit-sharing (PABS) mechanism as a possible outcome of the negotiations ongoing in the WHO Intergovernmental Negotiating Body (INB) for a WHO Convention, Agreement or other Instrument (WHO CA+) for pandemic prevention, preparedness, response and recovery (PPRR). After seven sessions of the INB, substantial differences remain between developed and developing countries on the PABS system. While the text contains specific obligations on rapid sharing of pathogen material and genetic sequence information reflective of the primary interest of developed countries to get such access outside the framework of the Nagoya Protocol to the Convention on Biological Diversity through a specialized WHO instrument such as the PABS system under the WHO CA+, the current text continues to be weak in terms of effectively operationalizing fair and equitable-benefit sharing. To that end, it is critical that detailed provisions on standard material transfer agreements, data access relating to their genomic sequence information and specific obligations on monetary and non-monetary benefit-sharing by recipients of pathogen material and sequence information are included

in the provisions establishing the PABS system. Therefore, it is important that the proposals that have been made in this regard by developing countries are incorporated in the draft negotiating text.

<https://www.southcentre.int/policy-brief-123-14-december-2023/>

A Decade of the Indian Advance Pricing Agreement Programme: Achievements and Challenges (Tax Cooperation Brief No.37, 29 January 2024)

By Priyanka Mashelkar and Apoorv Tiwari

India's Advance Pricing Agreement (APA) programme was introduced in 2012 with the objective of reducing transfer pricing disputes and providing certainty to taxpayers on their international transactions. In the last decade or so, the programme has proven to be a successful dispute mitigation and resolution mechanism. The authors use data and statistics from a recently released report by the Central Board of Direct Taxes (CBDT) in India to highlight the success of the programme, while also acknowledging the challenges ahead, especially as taxpayers' expectations from the programme continue to rise.

<https://www.southcentre.int/tax-cooperation-policy-brief-no-37-29-january-2023/>

OTHER PUBLICATIONS

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/>

South Centre Contribution – Comments on Progress Report on Amount A of Pillar One

The BEPS Monitoring Group, 24 August 2022

The BEPS Monitoring Group submitted comments to the Public Consultation on the Progress Report on Amount A of Pillar One released by the OECD in July on behalf of the Inclusive Framework on BEPS. Abdul Muheet Chowdhary, Senior Programme Officer of the South Centre Tax Initiative, was a contributor.

Pillar One marks a historic paradigm shift in international taxation, rightly described as 'revolutionary' by the OECD Secretary-General. For the first time it will allocate rights to tax multinational enterprises (MNEs) on a portion of their global profits among the countries from which they derive revenues, regardless of physical presence. Furthermore, the technical work that has now been done provides the methodologies to define for tax purposes the consolidated profits of MNE corporate groups, rules to determine the source of revenues from sales (including for services), and definitions and quantification of physical assets, employee numbers and employee remuneration.

We now therefore have the building blocks to ensure that MNEs can be taxed in accordance with the business reality that they are unitary enterprises, by apportioning their global profits for taxation by countries in which they have real economic activities, as mandated by the G20 in 2013.

Regrettably, however, the current proposals for implementation are designed to apportion only a part of the so-called 'residual' profit of less than one hundred of the largest and most profitable MNEs. This leaves in place the current defective rules for attributing the remaining profit of these in-scope MNEs, as well as for all others. Hence, instead of replacing the present flawed and complex rules with this new and simpler approach, it simply adds a new layer of complexity.

<https://www.southcentre.int/sc-contribution-comments-on-amount-a-of-pillar-one-24-august-2022/>

Key Messages from the High-level meeting organized by UNCTAD and South Centre on Building South-South Solidarity on Climate Adaptation

Geneva, 25 October 2022

Drawing on the discussions from the meeting organised by UNCTAD and South Centre on 25th October 2022 on "Building South-South Solidarity for Climate Adaptation", UNCTAD and South Centre believe that South-South solidarity is indispensable to ensure the needed international support for the Global South to break the eco-development trap, strengthen their climate adaption capacities, and achieve sustainable development. UNCTAD and South Centre therefore urge developing countries to build South-South solidarity and common positions in climate negotiations in the UNFCCC and the Paris Agreement as well as in the trade and environment discussions at the WTO and other multilateral fora.

<https://www.southcentre.int/key-messages-from-unctad-sc-hlm-on-s-s-solidarity-on-adaptation-25-october-2022/>

South Centre Comments on the ‘Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One’ (11 November 2022)

The South Centre submits the following comments and recommendations to the OECD Inclusive Framework’s Task Force on Digital Economy (TFDE) on the Progress Report on the Administration and Tax Certainty Aspects of Amount A of Pillar One.

<https://www.southcentre.int/south-centre-comments-on-progress-report-on-administration-and-tax-certainty-aspects-of-amount-a-11-november-2022/>

Combating Illicit Financial Flows: “Now or Never” Statement of H.E. Thabo Mbeki, Chairperson of the African Union High Level Panel on IFFs

21 November 2022

“I fully support the creation of a globally inclusive, intergovernmental process at the UN. I urged all international organisations and Member States to resist attempts to block this important step forward, and thus call into question our global commitment to fighting illicit financial flows and corporate tax abuse in support of the Sustainable Development Goals.”

<https://www.southcentre.int/call-to-action-now-or-never-by-h-e-thabo-mbeki-21-november-2022/>

South Centre Comments on the ‘Amount A Draft Multilateral Convention Provisions on Digital Services Taxes and Other Relevant Similar Measures’ (20 January 2023)

The South Centre provided its comments to the OECD Inclusive Framework’s Task Force on Digital Economy (TFDE) on the [Draft Multilateral Convention Provisions on Digital Services Taxes and other Relevant Similar Measures under Amount A of Pillar One](#) (MLC). This MLC is part of the components of Pillar One to address [the tax challenges arising from the digitalization of the economy](#). It aims to restrict countries which sign to the Pillar One MLC from implementing any digital tax policy solution apart from the OECD’s, such as Digital Service Taxes (DSTs) and other relevant similar measures.

These draft provisions are amongst the most controversial aspects of the Pillar One rules, as countries which decide to implement the OECD solution will be expected to give up the use of DSTs and similar measures on all companies, not just those in-scope of Amount A.

<https://www.southcentre.int/south-centre-comments-on-the-amount-a-draft-mlc-provisions-on-dsts-other-relevant-similar-measures-20-january-2023/>

South Centre Comments on Pillar One – Amount B (25 January 2023)

The South Centre provided its comments to the OECD Secretariat on Pillar One – Amount B. Amount B is part of the components of Pillar One to address [the tax challenges arising from the digitalization of the economy](#). It seeks to simplify transfer pricing rules for ‘baseline’ marketing and distribution functions.

Transfer pricing remains a highly complex and challenging area for developing countries. The ultimate objective of transfer pricing [is to determine a market price](#) for intra-company transactions, but doing this in practice is a largely subjective exercise, which makes it prone to abuse and profit shifting. Developing countries lose billions of dollars in revenue each year due to abusive transfer pricing.

Amount B is important for developing countries as it seeks to provide a simple method through which in-scope intra-company transactions can be priced, which can potentially ease tax administration,

reduce disputes and increase tax certainty. However, the current form of the proposal renders it highly complex and unlikely to achieve its stated objective of simplification.

<https://www.southcentre.int/south-centre-comments-on-pillar-one-amount-b-25-january-2023/>

South Centre Contribution - COMMENTS ON PILLAR ONE – AMOUNT A: DRAFT MULTILATERAL CONVENTION PROVISIONS ON DIGITAL SERVICES TAXES AND OTHER RELEVANT SIMILAR MEASURES

The BEPS Monitoring Group, 25 January 2023

The BEPS Monitoring Group submitted comments to the public consultation on the draft provisions on withdrawal of Digital Services Taxes and 'relevant similar measures'. Abdul Muheet Chowdhary, Senior Programme Officer of the South Centre Tax Initiative, was a contributor.

These draft articles would be included in the multilateral convention (MLC) to implement a new taxing right (Amount A), allowing states that decide to join the MLC to tax around 100 of the largest and most profitable multinational enterprises (MNEs) on a share of their 'residual' profits (25% of global profits over 10%), based on sales. In exchange, participating states would be required to withdraw any digital services taxes (DSTs) listed in Annex A of the MLC. Also, if they subsequently introduce any DSTs or 'relevant similar measures', as defined in these draft articles, they would lose their Amount A allocations.

Negotiations are continuing on some dozen issues, including the criteria for de facto discrimination, which we suggest should include a purpose test. and we urge further clarification also on others, in particular whether withholding taxes on fees for services would be treated as relevant similar measures.

Each country should carefully evaluate its potential gains from Amount A against the losses from measures proscribed under the MLC, following a full public debate. From the available evidence, our expectation is that many countries will find their projected allocation of Amount A from the MNEs in its scope to be insufficient. The narrower the scope of the proscription of alternative measures, the more likely it would be that countries would join the MLC, although its complexity will also be a deterrent, especially for low capacity countries.

<https://www.southcentre.int/sc-contribution-withdrawal-of-digital-services-taxes-relevant-similar-measures-25-january-2023/>

South Centre Supports Debates on Developments in Copyright Law and Access to Knowledge in Africa (South Centre Report on Copyright Week in South Africa, 23-27 January 2023)

By Vitor Ido

A conference "A Right to Research in Africa? A Week of Debates on Copyright and Access to Knowledge" took place on 23-27 January 2023 at the University of Pretoria and the University of Cape Town, South Africa. The gathering of scholars, artists, librarians, researchers and government officials had the objective to discuss the evolution of copyright law and the role of limitations and exceptions (L&Es) to advance research in Africa. The week of debates was co-organized by the South Centre, ReCreate South Africa, Program on Information Justice and Intellectual Property (PIJIP) – American University Washington College of Law, Electronic Information for Libraries (EIFL), the University of Pretoria – Future Africa, the University of Cape Town – IP Unit, the Centre for Intellectual Property and Information Technology Law (CIPIT) – Strathmore University, Wikimedia Foundation and Masakhane.

<https://www.southcentre.int/sc-report-on-copyright-week-in-south-africa-23-27-january-2023/>

The Right to Seeds in Africa, The United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas and the Right to Seeds in Africa (South Centre Joint Publication, Geneva Academy Briefing No. 22, February 2023)

By Karine Peschard, Christophe Golay and Lulbahri Araya

Pursuant to the United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDROP), the African Union and African states should ensure that their regional & national laws & policies, as well as international bodies to which they are party, lead to effective protection of peasant rights, including their right to seeds.

The Geneva Academy acknowledges the support of the South Centre for the production of this publication.

<https://www.southcentre.int/sc-joint-publication-the-right-to-seeds-in-africa-february-2023/>

The UPOV accession process: Preventing appropriate PVP laws for new members (South Centre Joint Publication, February 2023)

By Nirmalya Syam, Shirin Syed, and Viviana Munoz-Tellez

The International Union for the Protection of New Varieties of Plants (UPOV) is an intergovernmental organization established by the International Convention for the Protection of New Varieties of Plants adopted in Paris in 1961. UPOV requires its contracting parties to establish an intellectual property system for plant varieties that favors the interests of commercial plant breeders but does not address the needs of farming systems in developing countries or the rights of smallholder farmers.

The accession process for new countries to UPOV as provided in the UPOV Convention is based on an examination of conformity of the plant variety protection (PVP) law of the acceding country with obligations under the UPOV Convention. Only if the UPOV Council gives a positive decision on the basis of such conformity examination, the acceding state can deposit its instrument of accession. This accession process does not allow new members any flexibility to adapt their national PVP law to their own needs and accommodate their traditional agricultural sector and related public policy issues such as the livelihoods of farmers, sustainable agriculture, and implications for food security. Prior UPOV members have greater flexibility than new members in enacting domestic legislation to implement the obligations under the 1991 Act by adopting their own interpretations of the obligations, which cannot be reviewed by the UPOV Council at the time of their accession to the 1991 Act.

The various acts of the convention were essentially negotiated between developed countries. The UPOV accession procedure is unique compared to intellectual property treaties administered by the World Intellectual Property Organization (WIPO) as well as the accession processes in the World Trade Organization (WTO), the Convention on Biological Diversity and its protocols, or the Food and Agricultural Organization (FAO) International Treaty on Plant Genetic Resources. None of these agreements have an obligatory conformity examination of national legislation before accession. In addition, the UPOV Council's decisions regarding examination of conformity are not always consistent, and significant discretion is exercised by the UPOV Secretariat in interpreting the provisions of the convention as well as their implementation in national law. The UPOV Council's guidance document for the preparation of laws in accordance with the 1991 Act also provides an extremely narrow interpretation of the provisions of the convention.

Therefore, developing countries should consider whether, instead of accession to UPOV, it would be better for them to adopt their own sui generis system of PVP which allows them to enact a law in accordance with their needs and circumstances. It would also be important for the UPOV Council to adopt a national deference principle in conformity examinations; limit the examinations to a review of adopted laws, as the convention does not mandate the council or the secretariat to intervene in the process of development of national PVP laws; and not undertake additional examinations after a positive decision is given.

<https://www.southcentre.int/sc-joint-publication-upov-accession-process-february-2023/>

Strengthening United Nations Actions in the Field of Human Rights through the Promotion of International Cooperation (South Centre Submission to the United Nations Secretary-General Report, 24 February 2023)

The South Centre submits the following written contribution to the United Nations Secretary General's Report on 'Strengthening the United Nations' action in the field of human rights through the promotion of international cooperation', in line with the United Nations General Assembly (UNGA) resolution A/RES/76/164, adopted on 16 December 2021. The resolution recognises the need for respecting the political, economic and social realities of each society in compliance with the principles and purposes of the Charter of the United Nations. The report to be presented by the Secretary-General to the UNGA represents an important opportunity to recognise that global challenges do not affect all societies equally, and that they require a broader consideration of policies and innovative solutions that can cater to the unique realities and specific needs of each society.

<https://www.southcentre.int/sc-contribution-to-the-unsg-report-24-february-2023/>

South Centre Inputs to UN Secretary-General for "Promotion of inclusive and effective tax cooperation at the United Nations" (16 March 2023)

The South Centre submits the following comments and recommendations to the UN Secretary-General for the report being prepared in response to [UN General Assembly resolution 77/244](#) on "Promotion of inclusive and effective tax cooperation at the United Nations."

<https://www.southcentre.int/south-centre-inputs-to-un-secretary-general-16-march-2023/>

Submission by the South Centre to the USITC hearing on Covid-19 diagnostics and therapeutics (17 March 2023)

India, South Africa and co-sponsors made a proposal for a waiver to certain provisions of the provisions of the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) in March 2020. In June 2022, the WTO Ministerial Decision on the TRIPS Agreement provided a partial waiver to obligations in Article 31, namely an exception to the 31.f export restrictions, in relation to patents for Covid-19 vaccines. No decision has yet been made with respect to diagnostics and therapeutics for Covid-19.

In this context, the U.S. Trade Representative (USTR) requested the U.S. International Trade Commission (USITC) to prepare a report on Covid-19 diagnostics and therapeutics.

Read below the submission by the South Centre to the USITC investigation: *COVID-19 Diagnostics and Therapeutics: Supply, Demand, and TRIPS Agreement Flexibilities* (Inv. No. 332-596).

<https://www.southcentre.int/south-centre-submission-to-usitc-17-march-2023/>

Contribución del Centro Sur al Informe del Secretario General sobre la aplicación de la Resolución A/RES/77/7 de la Asamblea General de la ONU sobre la "Necesidad de poner fin al bloqueo económico, comercial y financiero impuesto por los Estados Unidos de América contra Cuba" (Marzo 2023)

Esta aportación del Centro Sur se presenta en respuesta a la solicitud del Secretario General como contribución al informe del Secretario General de acuerdo a la resolución **A/RES/77/7**, con respecto a la imposición de medidas económicas, financieras y comerciales unilaterales por parte de los Estados Unidos de América, contra Cuba, en violación de los principios básicos de la Carta de las Naciones Unidas.

<https://www.southcentre.int/contribucion-al-informe-del-secretario-general-sobre-la-aplicacion-de-la-resolucion-a-res-77-7-marzo-2023/>

Submission to the Global Digital Compact Apply Human Rights Online

*South Centre
Geneva, April 2023*

The South Centre's Board approved in September 2022 its Programme of Work 2023-2025 where the policy dimensions of digital transformation are highlighted as one of the priority areas for developing countries, including the need to harness digital technologies in education, health and the production of goods and services, support the development of a domestic digital industry, improve their digital infrastructure, advance digital equity and inclusion, effectively tax the digital companies and contribute to shaping the digital governance architecture to advance the Sustainable Development Goals (SDGs).

Following the call made in the Declaration on the Commemoration of the Seventy-Fifth Anniversary of the United Nations (A/RES/75/1) for improved digital cooperation, the United Nations (UN) Secretary General's Roadmap for Digital Cooperation and his report 'Our Common Future', the South Centre submits the following written contribution to the UN Secretary General ahead to the Summit of the Future with the objective of providing support to developing countries in the intergovernmental process concerning the digital transformation.

<https://www.southcentre.int/sc-submission-to-the-global-digital-compact-april-2023/>

Response to the Call for Inputs by the UN Special Rapporteur on human rights and the environment (June 2023)

"Should the interests of foreign investors trump the human right to a clean, healthy and sustainable environment?"

South Centre

To realize the right to clean, healthy & sustainable environment and reduce ISDS risks, States need to align their FDI policies with human rights, climate action and SDGs, including via reform of the international investment regime.

<https://www.southcentre.int/sc-contribution-call-for-inputs-by-un-sr-on-hrs-environment-14-june-2023/>

Inputs – Special Rapporteur on the Right to Development (June 2023)

"Role of businesses in realising the right to development"

South Centre

The Human Rights Council, in its resolution 33/14 of 29 September 2016, established the mandate of the [United Nations Special Rapporteur on the right to development](#). In 2023, the Special Rapporteur will present a report on "the role of business in realising the right to development in the context of the [2030 Agenda for Sustainable Development](#) and other relevant international human rights instruments" to the United Nations General Assembly in October 2023.

With the objective of collecting information regarding the role of businesses in realising the right to development, Prof Surya Deva, Special Rapporteur on the Right to Development, made an open call for inputs from various stakeholders such as States, international organisations, national human rights institutions, civil society organisations, and others.

In line with its programme of work, the South Centre is keen to submit the following information to the Special Rapporteur on the Right to Development considering the need to achieve progress on the fulfilment of social rights, in particular the Right to Development (RtD) and its interface with issues such as climate change, corporate responsibility, food security and small farmers' livelihood.

<https://www.southcentre.int/sc-contribution-call-for-inputs-by-un-sr-on-rtd-june-2023/>

MATRIX OF KEY ISSUES IN THE WTO TRIPS COUNCIL (June 2023)

Health, Intellectual Property and Biodiversity Programme, South Centre

The following matrix provides a factual overview and analysis of the standing and non-standing agenda items of the regular session of the WTO TRIPS Council. The matrix also discusses the TRIPS Implementation issues as part of the WTO Doha Development Round of negotiations.

<https://www.southcentre.int/matrix-of-key-issues-in-trips-council-june-2023/>

Climate Finance Readiness E-book (July 2023)

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

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

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

<https://www.southcentre.int/climate-finance-readiness-e-book-july-2023/>

TAXING MULTINATIONALS: THE BEPS PROPOSALS AND ALTERNATIVES (6 July 2023)

BEPS Monitoring Group

This briefing by the BEPS Monitoring Group (BMG) analyses the outcomes of the latest phase of the G20/OECD project on base erosion and profit shifting, and outlines options and alternatives, especially for developing countries. 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 South Centre's Abdul Muheet Chowdhary, Alex Cobham, Emmanuel Eze, Tommaso Faccio, Jeffery Kadet, Bob Michel, and Sol Picciotto.

<https://www.southcentre.int/sc-contribution-taxing-multinationals-the-beps-proposals-and-alternatives-6-july-2023/>

South Centre Comments on Pillar One – Amount B August 2023

The South Centre submits the following comments and recommendations to the OECD Secretariat on Pillar One – Amount B.

<https://www.southcentre.int/south-centre-comments-on-pillar-one-amount-b-august-2023/>

Submission to the UN Working Group on Business and Human Rights for its report on Investors, Environmental, Social and Governance and Human Rights (October 2023)

South Centre

The South Centre has contributed to an upcoming report by the UN Working Group on Business and Human Rights on Investors, Environmental, Social and Governance and Human Rights which will be presented to the Human Rights Council at its 56th Session in 2024. Greater uptake in ESG reporting must be accompanied by mandatory corporate due diligence, accountability & remedies.

<https://www.southcentre.int/sc-submission-to-un-wg-on-b-hrs-october-2023/>

Taxation of the Digital Economy (South Centre & Geneva Graduate Institute Report, October 2023)

By Adnan Sose, Nicolás Tascon and Anders Viemose

As globalisation has pushed through complex inter-State trade in goods and services, in parallel there is a growing complexity in determining the taxation of Multinational Enterprises (MNEs) in an increasingly digitalized economy. This report reviews existing bilateral tax treaties between South Centre's Member States and States where most digitalised MNEs are headquartered, using a threshold of EUR 750 million in annual turnover to limit the number of in-scope MNEs in the study. This analysis produced primary data on South Centre Member States' source taxing rights scores and the implications of this on tax treaty negotiations to enable effective taxation in the digital economy through the inclusion of the United Nations (UN) solution for digital taxation, Article 12B of the UN Model Tax Convention. Further, the study sought to identify 'weak' tax treaties with low source taxing rights which merited a comprehensive renegotiation beyond the inclusion of Article 12B. Furthermore, the reports examined the treatment of "Computer Software" in the tax treaties under study, and concluded with recommendations going forward.

<https://www.southcentre.int/sc-iheid-report-october-2023/>

Corte Interamericana de Derechos Humanos

Solicitud de Opinión Consultiva presentada por la República de Chile y la República de Colombia

Observaciones remitidas por el Centro Sur (South Centre Submission to IACtHR, December 2023)

Diciembre de 2023

In reference to the invitation extended by the Inter-American Court of Human Rights to submit amicus briefs in the matter of the Request for Advisory Opinion submitted by the Republic of Colombia and the Republic of Chile to the Inter-American Court of Human Rights (IACtHR or the Court) regarding the Climate Emergency and Human Rights. The South Center, an intergovernmental organization of developing countries, respectfully submits to the Inter-American Court of Human Rights the following

amicus brief at the request of the Advisory Opinion submitted by the Republic of Chile and the Republic of Colombia.

These observations consider how the definition of shared and differentiated obligations and responsibilities in the legal regime related to climate change is linked to the obligations to cooperate and make reparations arising from the American Convention on Human Rights and the need to consider the right to life and survival of the most affected regions and populations in the various countries and in the region.

<https://www.southcentre.int/sc-submission-to-iacthr-december-2023/>

Identifying Legal Challenges for Farmers' Innovation (South Centre Report, 16 January 2024)

By Saurav Ghimire

On 9 October 2023, an expert workshop on "Identifying Legal Challenges for Farmers' Innovation" was organised at the Centre for Private and Economic Law, Vrije Universiteit Brussel, in collaboration with the South Centre and Université Catholique de Louvain. The hybrid event gathered experts to discuss the challenges for farmers' innovation, particularly those emerging from regulatory regimes. The workshop brainstormed policy and regulatory hindrances to farmers' involvement in plant breeding, namely, in access to breeding materials, access to the market and reward/protection for the innovation.

The expert workshop was organised as a part of a joint research project, "Farmers as Plant Breeders: Legal Mechanisms to Foster Farmers' Innovation", led by Prof. Christine Frison (Université Catholique de Louvain), Prof. Kim Van der Borght (Vrije Universiteit Brussel), and Prof. Carlos Correa (South Centre). The research project is funded by the Research Foundation Flanders (FWO).

<https://www.southcentre.int/south-centre-report-16-january-2024/>

Inputs for the analytical study on the impact of loss and damage from the adverse effects of climate change on the full enjoyment of human rights, pursuant to Human Rights Council Resolution 53/6 on human rights and climate change (South Centre Input to OHCHR Report on Loss and Damage and Human Rights, 7 February 2024)

31 January 2024

The adverse impacts of climate related loss & damage on human rights in the Global South require concrete actions. Our submission shows that a just and fair green transition requires protecting human rights while prioritizing the needs of developing countries, especially by providing climate finance, access to green tech and integrating human rights in climate actions.

See the inputs provided by South Centre to an upcoming study by the UN Secretary-General. The study will be presented to the Human Rights Council in September 2024.

<https://www.southcentre.int/sc-input-to-ohchr-report-on-loss-damage-and-human-rights-7-february-2024/>

SOUTHVIEWS

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 know concepts as the common goods and newer ideas as the possibility of positive screening of transformative market alternatives (or transformed enterprises) might be really useful for such a goal and consequently for the production of positive environmental externalities.

<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.

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

Competition Law and Intellectual Property: A Study Drawing from The Eli Lilly Case on ‘Sham Litigation’ in Brazil (SouthViews No. 240, 1 September 2022)

By Pablo Leurquin

Competition authorities may be the best equipped institutions to penalize certain illicit practices that involve intellectual property rights. This article analyzes the decision by the Brazilian Administrative Council for Economic Defense (Conselho Administrativo de Defesa Econômica – CADE) in the Eli Lilly case, in which the company was convicted for abusive use of the right to petition (sham litigation) with anti-competitive effects. It examines general aspects of technological dependence in the Brazilian pharmaceutical industry, presents the legal premises necessary for the understanding of the decision made by the competition authority, and analyzes the legal grounds for the sanction imposed on Eli Lilly.

<https://www.southcentre.int/southviews-no-240-1-september-2022/>

The South's Role and Responsibilities in the Next Phase of Multilateralism (SouthViews No. 241, 12 September 2022)

By Elizabeth Sidiropoulos and Luanda Mpungose

The global erosion of trust in the global institutions is the direct result of non-delivery on the most crucial challenges that face humanity such as inequality, poverty, and climate change. South-South Cooperation can play a vital role in reinvigorating multilateralism. Beyond its horizontal engagements it has already begun supporting and enriching processes, institutions and norms-building at the global level. However, changing the superstructures that have discriminated against many developing countries will require a strategy that involves prioritising, coalition-building and coordination.

<https://www.southcentre.int/southviews-no-241-12-september-2022/>

A Proposal for a New Approach to Restructuring African Eurobonds: The DOVE Fund and Principles (SouthViews No. 242, 4 November 2022)

By Daniel Bradlow

This article argues that the current arrangements for restructuring sovereign bonds do not meet Africa's needs. African states and their supporters should create a DOVE (Debts of Vulnerable Economies) Fund that can purchase the bonds of African sovereign debtors in distress and commit to restructure them in accordance with the DOVE Fund Principles. This Fund can help interrupt inter-creditor dynamics and push the bondholders to be more open to innovative approaches to debt restructuring. This article, after briefly considering some of the problems with the current process for restructuring sovereign bonds, discusses the DOVE Fund and the DOVE Fund Principles.

<https://www.southcentre.int/southviews-no-242-4-november-2022/>

International Clean Technology Diffusion: Pathways and Prospects (SouthViews No. 243, 15 November 2022)

By Wenting Cheng

International clean technology diffusion is essential to mitigate and adapt to climate change, while fast and optimal diffusion can be prevented by the paywall of patents. This article examines three pathways to foster international clean technology diffusion: through restriction of intellectual property, including imposing external restraints in environmental law; striking an internal balance in maximizing TRIPS flexibilities; and keeping the status quo. It finds that the first two treaty-based pathways may not work, and an operable pathway to promote clean technology diffusion is to maximize and consolidate TRIPS flexibilities in national laws. This option challenges the popular proposal of a "Doha-like" declaration on TRIPS and climate change due to the paralysed multilateral trade mechanism, asymmetrical negotiation power of developing countries, prolonged negotiation process, and categorization problem in treaty negotiations.

<https://www.southcentre.int/southviews-no-243-15-november-2022/>

Graduating from the LDC Group: Challenges Facing Bangladesh (SouthViews No. 244, 31 January 2023)

By Mustafizur Rahman

A significant number of LDCs will be graduating in the near term future. On graduation these countries will face formidable challenges as they will lose the benefits accruing from LDC-specific international support measures. Bangladesh is the first major LDC which is slated for graduation, to take place in November 2026. This article examines the various graduation challenges facing Bangladesh, and articulates some of the strategies that the country needs to pursue in order to graduate with momentum and make graduation sustainable.

<https://www.southcentre.int/southviews-no-244-31-january-2023/>

Towards a WTO Anchored in SDGs (SouthViews No. 245, 27 February 2023)

By Mohan Kumar

The WTO faces an existential crisis, despite a reasonable outcome at the Twelfth Ministerial Conference. The one way by which the WTO can resuscitate itself is to make sure that the negotiating agenda is anchored in the SDGs rather than in the narrow interests of its most powerful members. The changing role of the State must also be factored in by the WTO.

<https://www.southcentre.int/southviews-no-245-27-february-2023/>

Preserving Regulatory Space for Sustainable Development in Africa (SouthViews No. 246, 5 April 2023)

By Roslyn Ng'eno

Investment has an important role for achieving sustainable development in developing countries. Although international investment agreements (IIAs) can serve as instruments to promote such objective, protection oriented IIAs have undermined the ability of States to regulate in the benefit of the community. Likewise large financial reparations imposed by arbitral tribunals have increased the

threat of regulatory chill in the face of major global challenges. Strengthening the right to regulate of States and addressing regulatory chill are key matters to consider in the reform of IIAs and the international investment regime.

<https://www.southcentre.int/southviews-no-246-5-april-2023/>

UN Model Tax Convention Article 26: Inequitable Exchange of Information Regime – Questionable Efficacy in Asymmetrical Bilateral Settings Africa (SouthViews No. 247, 29 May 2023)

By Muhammad Ashfaq Ahmed

The United Nations Model Tax Convention between Developed and Developing Countries (UN MTC) Article 26 charts out an exchange of information (EOI) regime “between developed and developing countries,” feigning that it is more favorable to the latter set of nations. Contrarily, the Organisation for Economic Cooperation and Development (OECD) MTC Article 26 is professedly geared to protect and promote interests of OECD members – “the club of the rich.” Even a cursory comparative look at the two MTCs intriguingly reveals lack of dissimilarities, and irresistibly leads to the conclusion that materially both provisions are identical. The situation gives rise to a paradox whereby developing countries that are completely at different levels of development have broken governance structures, convoluted fiscal and criminal justice systems and struggling tax administrations, have been yoked into a multilayered EOI regime, which stemmed from an intra-OECD statecraft imperative and is predominantly beneficial to developed countries. The new normal contributes towards enhancement and deepening of the embedded inequities in the neocolonial economic order. The paper seminally dissects the strains generated by absence of dissimilarities between the two MTCs vis-à-vis Article 26, and posits that, in fact, this fundamentally being a developed country project, developing countries have been exploited as ‘beasts of burden’ merely to promote economic interests of dominant partners in the relationship, and by doing so, sheds light on and galvanizes the unjustness latent in the international taxes system – an inherently unequal and lopsided affair. It also delves deeper into an axiological normative evaluation of the extant EOI regime, and finding it untenable, urges a larger paradigm shift. In fact, the UN’s meek convergence with the OECD on EOI regime, ditching developing countries and leaving them to fend for themselves in this critical area of international taxation, is the scarlet thread of the paper.

<https://www.southcentre.int/southviews-no-247-29-may-2023/>

The United Nations Intergovernmental Process – An Opportunity for a Paradigm Shift (SouthViews No. 248, 31 May 2023)

By Kuldeep Sharma and Raunicka Sharma

Efforts are underway to strengthen the inclusiveness and effectiveness of international tax cooperation so that the current tax structures consider the equitable interests of developing countries. This is necessitated as a section of developing countries has lost confidence in the OECD and there is a lingering doubt whether OECD has developing countries’ best and equitable interests in mind. As a result, the United Nations General Assembly has launched intergovernmental talks to enhance international tax cooperation and draft a UN Tax Convention that aims to establish inclusive norms for transparency and tax cooperation, that leads to development of an acceptable and frictionless worldwide tax policy.

<https://www.southcentre.int/southviews-no-248-31-may-2023/>

Implementing wealth tax and wealth redistribution in Sub-Saharan Africa (SouthViews No. 249, 30 June 2023)

By Khanyisa Mbalati

Sub-Saharan Africa is one of the most unequal places in the world, with significant levels of social, gender, and income inequality. Several countries in the region have a tax structure that is heavily weighted towards consumption taxes, which can be regressive and inflict a significant burden on those with low and middle incomes. Implementing progressive tax systems, whereby those with higher earnings pay a larger share in taxes, is one way through which governments might optimize the impact of tax revenue on reducing inequality. The adoption of a wealth tax may facilitate wealth redistribution

in Sub-Saharan African nations and could help bridge the inequality gap in the region. High statutory wealth tax rates of between 5-8% are needed in order to have an effective tax rate of 3-5%.

<https://www.southcentre.int/southviews-no-249-30-june-2023/>

COVID-19, Future Pandemics and the Africa Care Economy Index (SouthViews No. 250, 10 August 2023)

By Salimah Valiani

In Africa, the care economy has long been unrecognised. At least since the last major pandemic in Africa, HIV-AIDS, caring work has been severely undervalued in the continent, and the redistribution of caring work, from females in the home and communities, is next to nonexistent. Undoing this structural inequality is crucial to improve health and wellbeing of girls and women in Africa, to be prepared for future pandemics, and to realise Africa's demographic dividend for the benefit of the majority. To achieve this, the Africa Care Economy Index is offered as a policy, advocacy, and accountability tool.

<https://www.southcentre.int/southviews-no-250-10-august-2023/>

Value Addition or Trade Misinvoicing: Coal Trading in the Asia-Pacific (SouthViews No. 251, 12 September 2023)

By Manuel F. Montes and Peter Lunenborg

Statistics on coal trade between India, Singapore and Indonesia suggest that trade misinvoicing is used as a vehicle for illicit financial flows. At present this practice is not well addressed by the Organisation for Economic Co-operation and Development's tax standards. Asia-Pacific countries should intensify cooperation on this issue. Other international organizations with a mandate in this area could also play a role, for instance the World Trade Organization. Ultimately, increased cooperation would help to achieve Sustainable Development Goal 16.4 which inter alia aims, by 2030, to significantly reduce illicit financial flows.

<https://www.southcentre.int/southviews-no-251-12-september-2023/>

The Right to Development: Principles, Realization and Challenges (SouthViews No. 252, 21 September 2023)

By H.E. Mr. Ali Bahreini

The main theme of the 54th session of the Human Rights Council revolves around economic, social, and cultural rights, with a particular focus on the right to development. This article addresses the importance of the right to development, the Iranian perspective on it, and the impact of various challenges on its full and effective realization.

<https://www.southcentre.int/southviews-no-252-21-september-2023/>

Harnessing Digital Technologies for Education in Developing Countries: Need for a Judicious Approach (SouthViews No. 253, 27 October 2023)

By Kishore Singh

Digital technologies are transforming the landscape of education. New models and ways of learning, digitally supported and virtual, are emerging with rapid pace, multiplying learning pathways and diversifying learning approaches. Digital technologies are impacting education at all levels and in all its forms, and renewal of education by dint of what is termed 'edu-tech' has become a buzz word. Harnessing digital technologies for education is enticing for developing countries.

However, the gaze on the dazzles of digitalization must not lose sight of their down side. Considering what has been termed as 'platform imperialism', a cautious and critical approach is needed. "Digital divide" is a crushing blow to the fundamental principle of equality of opportunity in education. Safeguarding education from forces of privatization and 'edu-business', fortified by digitalization in

education, is also a daunting challenge. We must ward off against deleterious, even dehumanizing effect of digital technologies, as they can be pernicious if they are not properly controlled and regulated.

<https://www.southcentre.int/southviews-no-253-27-october-2023/>

Digital Health Challenges in the South: Towards Better Integration of Digital Health Practices (SouthViews No. 254, 10 November 2023)

By Dr. Azeema Fareed and Ms. Farhana Saleem (COMSATS)

Much like any innovation, diffusion of digital health technologies in different countries depends on their level of development, availability of infrastructure, socio-economic conditions and indigenous strengths and weaknesses, political will and stability, demographics as well as social norms. Naturally for developing countries, social, economic, and technological set-backs make digital health adoption, implementation and mainstreaming more challenging. Using WHO's e-Health components, this article highlights key challenges impacting digital health adoption in developing countries in the light of COMSATS' experience.

<https://www.southcentre.int/southviews-no-254-10-november-2023/>

Climate crisis: anthropocene or corporatocene? (SouthViews No. 255, 6 December 2023)

By Dr S Faizi

The author argues that the term 'anthropocene' to denote the period of the modern environmental crisis is hollow and a political digression from the reality, and that the crisis is a product of corporate exploitation of the earth's system. Putting the blame on the entire human society for the environmental crisis is a Western ideological ploy to shield the corporate culprits who have caused the destruction on the strength of their capital and technology. He therefore proposes the term 'corporatocene' to mark the epoch of environmental crisis. If anything it is the Western colonization and the invention of the steam engine that are the markers of the start of the pandemic assault on the earth's natural systems. Obfuscating the debate on this by introducing politically motivated substitutes will only frustrate the efforts to forge meaningful solutions to the climate crisis.

<https://www.southcentre.int/southviews-no-255-6-december-2023/>

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