

South Centre Publications January 2025



RESEARCH PAPERS

International Regulation of Industrial Designs: The TRIPS Agreement in the Light of European Union Law (Research Paper 212, 9 January 2025)

By Adèle Sicot

This paper analyzes the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) on industrial designs, and the manner in which the narrow aspects dealt with by the Agreement have been addressed by European Union (EU) legislation. The paper highlights the absence of a definition of protectable subject matter, and the considerable flexibility left to the member countries of the World Trade Organization to determine the framework of protection, notably on the basis of copyright. The paper also notes certain areas in which European legislation is more elaborate, and others which could be considered incompatible with the TRIPS Agreement.

<https://www.southcentre.int/research-paper-212-9-january-2025/>

Application of the Bolar Exception: Different Approaches in the EU (Research Paper 214, 15 January 2025)

By Dmytro Doubinsky

This Research Paper addresses the growing problem of access to essential medicines, focusing on the role of intellectual property rights, particularly patent rights, in restricting access by enabling pharmaceutical market monopolies that keep drug prices high. The paper explores the Bolar exception, a legal mechanism designed to allow generic drug manufacturers to seek regulatory approval before a patent expires, thus preventing the de facto extension of patent monopolies. The study examines the transformation of the Bolar exception from a specific legal case into a significant tool of intellectual property, commercial, and pharmaceutical law. The paper analyzes key international legal frameworks and European directives related to the Bolar exception and highlights divergent interpretations of the Exception in German and Polish case law. Through this comparative analysis, the paper argues for the broader implementation of Bolar exceptions to improve access to affordable medicines and reduce healthcare costs.

<https://www.southcentre.int/research-paper-214-15-january-2025/>

Assessing Five Years of the African Continental Free Trade Area (AfCFTA): Proposals on Potential Amendments (Research Paper 215, 23 January 2025)

By Kiiza Africa

On 30th May 2024, the African Continental Free Trade Area (AfCFTA) celebrated its fifth anniversary, which legally implied that the agreement is up for review for possible amendments. To kickstart this review, the Thirty-Seventh Ordinary Session of the African Union Summit (held in February 2024) directed the AfCFTA Secretariat to take necessary measures for the start of the review of the Agreement. This review comes at a moment when the AfCFTA implementation and its vehicle, the Guided Trade Initiative (GTI), have been fraught with challenges. Broadly, these challenges include the slow submission of tariff liberalization schedules by State Parties, infrastructure deficits, persistent non-tariff barriers and trade wars in regional economic communities, and overlapping regional trade commitments. Thus, the upcoming AfCFTA review provides an opportunity to assess progress, identify implementation bottlenecks, and propose actionable amendments. This paper examines these challenges through a comprehensive analysis of the AfCFTA's state of play, illuminating the progress while highlighting the slow momentum registered for the past five years of its operation. Proposals for the agreement's amendment revolve on accelerating infrastructure development, harmonizing rules of origin, integrating labor rights, and fostering industrial diversification. By moving beyond liberalization as its *raison d'être* and prioritizing the scaling up of State Parties' productive capacities, the AfCFTA can evolve from a mere trade liberalization agreement into a transformative driver of Africa's economic

renaissance. It is hoped that this timely assessment underscores the urgency of reorienting the AfCFTA to unlock its full potential for propelling intra-Africa trade.

<https://www.southcentre.int/research-paper-215-23-january-2025/>

POLICY BRIEFS

The WIPO Development Agenda: Progress and Challenges in 2025 (Policy Brief 134, 28 January 2025)

By Nirmalya Syam

The World Intellectual Property Organization (WIPO) Development Agenda (DA), adopted in 2007, seeks to align intellectual property (IP) policies with the development priorities of member States. Enduring challenges persist despite some progress including the adoption of treaties to facilitate access to copyright protected works for visually impaired and print disabled persons, and the recent treaty on IP, genetic resources and associated traditional knowledge, and the adoption of several projects for implementing different DA recommendations. DA projects, however, have had limited impact on mainstreaming a development orientation in WIPO, there is limited promotion of use of IP flexibilities for development, and WIPO's technical assistance continues to lack a development orientation. There is also a sustained absence of consideration and reporting of development related issues across WIPO bodies. Divergent interpretations of "development", weak coordination and monitoring systems, and governance inequities have hindered the DA's transformative potential. This brief examines these issues and advances recommendations to address the challenges to establish an effective DA.

<https://www.southcentre.int/policy-brief-134-28-january-2025/>

OTHER PUBLICATIONS

Combatting overcompliance with unilateral coercive measures – Discussions from South Centre Consultation (South Centre Report, January 2025)

By Yuefen Li and Danish

In view of the severe negative impacts of unilateral coercive measures (UCMs) on targeted countries and the international community, and at the request of South Centre Member States, the South Centre organized a meeting on 18 November 2024 with the participation of senior diplomats from a number of developing countries, several of whom have been targeted by UCMs. The meeting focused on the trends and main drivers of overcompliance with UCMs among multinational firms and financial institutions, and the strategies that can be employed to mitigate overcompliance, especially in relation to humanitarian exemptions.

<https://www.southcentre.int/south-centre-report-ucms-overcompliance-consultation-january-2025/>

Submission by the South Centre to the Office of the United Nations High Commissioner for Human Rights on Inputs for the comprehensive report on ensuring access to medicines, vaccines and other health products (HRC resolution 50/13) (January 2025)

The South Centre has provided input for the OHCHR report on new developments and challenges in ensuring access to medicines, vaccines and other health products.

<https://www.southcentre.int/sc-submission-to-ohchr-for-hrc-resolution-50-13-january-2025/>

SOUTHVIEWS

Contract-based Arbitration: Lessons Learned from Bolivia's Extractives Industries (SouthViews No. 281, 31 January 2025)

By Daniel Uribe Teran

Bolivia has undergone a significant shift in its approach to investment dispute resolution, moving away from reliance on Bilateral Investment Treaties (BITs) and international arbitration towards domestic mechanisms and contract-based arbitration. This shift, driven by a desire to assert greater state sovereignty over natural resources, seeks to align dispute resolution with national development priorities while reducing the costs associated with international arbitration. The recent *Shell Bolivia Corporation v. YPF Bolivia* case highlights the complexities inherent in contract-based arbitration within the extractive sector, emphasizing the need for meticulous contract drafting and a clear definition of arbitrable disputes within the framework of Bolivian law.

This article analyses Bolivia's transition from reliance on international investment treaties and arbitration to a domestic, contract-centred approach for resolving disputes in its extractive industries. The article examines how the legal framework adopted by Bolivia highlights the role of contract-based arbitration in addressing disputes related to investment, production, technology transfer, environmental and social impacts, labour relations, and contract interpretation. The article draws lessons from other developing countries' experience, recommending that Bolivia further strengthen its investment framework by adopting clear protection standards, prioritizing fair administrative procedures, and emphasizing domestic remedies. This approach seeks to balance attracting responsible investment with protecting state sovereignty and promoting sustainable development in Bolivia's extractive industries.

<https://www.southcentre.int/southviews-no-281-31-january-2025/>

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