



Bridges Trade BioRes

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INTELLECTUAL PROPERTY

“Disclosure of Origin” Source of Contention in WIPO Negotiations

Intergovernmental negotiations on protecting traditional knowledge, traditional cultural expressions (TCEs), and genetic resources from misappropriation hit a roadblock last week, when talks at the World Intellectual Property Organisation were marred by considerable disagreement over the negotiating process and the participation of indigenous peoples.

Discussions in the 9-13 May session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) also saw sharp disagreement over whether inventors should be required, when applying for a patent, to disclose the use of any genetic resources.

The IGC's penultimate meeting before WIPO's annual General Assembly in September was meant to move ahead with text-based negotiations on an “international legal instrument (or instruments)” to protect traditional knowledge and TCEs, as well as to speed up talks on genetic resources, where divisions over the aim and objectives of an agreement have prevented members from producing a draft negotiation text. WIPO members had agreed to launch the text-based negotiations at their General Assembly in 2009, following difficult negotiations in which developed countries pushed back against calls by several Latin American and Asian nations for negotiations on a treaty (see [Bridges Weekly, 7 October 2009](#)). This autumn's assembly was to determine whether to proceed to a “diplomatic conference” to adopt any agreements.

Genetic resources: split over mandatory disclosure

From the outset, the talks on genetic resources have witnessed disagreement over a key potential objective of an international legal instrument: mandatory requirements in patent applications for the disclosure of origin of any genetic resources used in an invention. Developing countries have sought the introduction of such requirements, arguing that it is necessary to prevent biopiracy.

In March of this year, experts discussed options for intellectual property and genetic resources on the basis of three clusters: A) defensive protection, B) disclosure requirements, C) options in mutually agreed terms.

Last Thursday, members clashed over disclosure once again. South Africa, speaking on behalf of the African Group and supported by Brazil, made clear that they were “not prepared to discuss cluster A and C if it did not come with a strong disclosure proposal.” India later backed this assertion, arguing that “mandatory disclosure is a must – everything else can follow.”

The US expressed great “concern and sadness” about the debate, underlining that in their view the objective was not a “mandatory disclosure requirement up front” but rules ensuring that the “system does not grant erroneous patents.”

“If an exclusive focus on mandatory disclosure is what some countries are proposing, then maybe we should take a break,” the US delegate said.

This prompted angry responses from several countries. “If we cannot agree that a mandatory disclosure requirement [...] is necessary for ensuring fair benefit sharing, then maybe we should take a break,” said the delegate from Namibia.

Australia and New Zealand received a similar reaction when they suggested further studies on national disclosure systems.

The African Group and Zimbabwe countered that there was no need for further studies and South

Africa argued that the necessity of disclosure requirements had been “proven.”

Zimbabwe added that talks in the IGC were “about preventing misappropriation.” Preventing patents from being granted erroneously was the work of WIPO Standing Committee on Patents. “In the [Nagoya Protocol] negotiations you objected to discussing disclosure there. Now we are at WIPO – and you cannot object to it again.”

Disagreement over the role of the “Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization,” which parties to the Convention on Biological Diversity adopted last October, affected last week’s talks. While developing countries expressed hope that the agreement on the protocol would speed up talks at WIPO (in particular on issues such as definitions and scope), a number of developed countries object to any direct reference to the Nagoya Protocol in favour of a more narrow substantive scope at WIPO. This is particularly true for the definition of genetic resources, which lies at the heart of the misappropriation discussion.

Indigenous peoples: No collaboration, no consent

Thursday’s talks were also marked by anger from indigenous peoples’ groups, after proposals they made with backing from Venezuela and others were deleted from a working document during a Tuesday night meeting of an informal drafting group that had only been supposed to “clean text.”

Under the protection of “simplifying text,” indigenous peoples have been made mere observers, one representative said.

“Our continued presence in IGC-18 in no way can be taken to say that Indigenous Peoples have collaborated in the drafting of these documents in this session,” indigenous peoples’ representatives said in a joint statement. “Nor can our observation of this process be inferred as giving any consent to the results of any process in which Indigenous Peoples have not been actively involved.”

Venezuela, Bolivia and Guatemala likewise criticised the process, noting that limited numbers of delegates made it impossible for developing countries to participate in all meetings. It was therefore unacceptable, they argued, that countries present would simply delete text proposed by others.

Traditional Knowledge – The whos, whats and hows

The main focus of discussions on traditional knowledge, which are proceeding based on a draft text that still contains multiple options for most of the articles for the potential future agreement, rested on who “holds” traditional knowledge.

The discussion was coloured by different national experiences and concepts. Barbados, supported by other small island states and India, asked for “nations” to be added to the list of “holders,” explaining that their traditional knowledge was held by the whole nation which did not qualify as either “local community” or “indigenous peoples.”

Iran, on the other hand, suggested including individuals and families, although it noted that the state should be a “place holder” where the original holder could not be identified.

The protection of “secret knowledge” was also disputed by several states articulating concern over guaranteeing the protection of something that is unknown.

Finally, in the context of patent applications, the United States suggested protecting “independent discovery” of what might be traditional knowledge to some communities.

The current text continues to provide for various alternative options for most provisions.

Way ahead

As the genetic resources negotiations continue to lag behind, the question is now whether members split the process and move ahead with TCEs and potentially traditional knowledge or continue with the three parallel tracks. Sri Lanka and the African

Group requested more effort – reflected in time allocation – on genetic resources on this regard.

In July, the IGC will meet one last time before WIPO’s General Assembly. It remains charged with submitting a draft text to WIPO’s top decision-making forum, which will then decide on convening a diplomatic conference. It remains to be decided whether any instrument – or instruments – produced would be legally binding agreements or simple declarations, although most countries favour the former option.

ICTSD Reporting.

FORESTS

Indonesia, Liberia Sign Timber Trade Pact with EU

The EU and Indonesia on 4 May finalised an agreement on monitoring bilateral trade in timber products in order to halt trade in illegal resources. The deal is the by far the most significant Voluntary Partnership Agreement (VPA) the EU has signed, in terms of volume of timber traded bilaterally. Liberia followed suit last week, signing a similar deal with Brussels.

Once ratified, the VPA will require all timber, as well as forest products such as pulp and paper, exported to the EU to be audited by an independent body and certified to come exclusively from legally felled trees. VPAs lie at the core of the European Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan, the EU’s response to a call for action at the 2002 World Summit on Sustainable Development in Johannesburg, South Africa.

The two deals mark the fifth and six such agreements to be finalised. Recent bolstering of EU and US legislation aimed at legitimising their timber imports has created incentives for timber exporting countries, including Indonesia and Liberia, to finalise the agreements.

The US federal “Lacey” Act was amended in 2008 to ban illegal timber from entering the country. Meanwhile, the EU’s Timber Regulation, which will require all timber imports to be legally certified, is set to go into effect in March 2013 (see Bridges Trade BioRes [25 June 2010](#)).

“VPAs are currently the most effective international tool to keep forests standing or to reduce emissions from deforestation,” said Saskia Ozinga of the Brussels-based non-governmental organisation FERN,

First Asian VPA

Timber trade between the EU and Indonesia amounts to over US\$1.2 billion a year, and comprises 15 percent of Indonesia’s total timber exports.

“Indonesia is not only the first Asian country to conclude VPA negotiations with the EU, but also by far the largest timber exporter to enter into such an agreement,” said EU Trade Commissioner Karl de Gucht after the accord was signed on 4 May.

In order to enforce the regulation in Indonesia - where 40 percent of annual timber trade is estimated to be illegal - the certification scheme will identify timber as legal or not through a monitored system of log tagging.

Ozinga warned that simply signing an agreement was not enough: the accord’s effectiveness at halting illegal trade will hinge on how stringently it is enforced. “Only if the VPA will be properly implemented will it significantly reduce illegal logging,” she told Bridges. “We should work towards effective implementation.”

A US\$44.7 million “capacity building” programme that will run parallel to the VPA is intended to improve the trade and investment climate in Indonesia and fight elements, such as corruption, that could paralyse the accord’s effectiveness.

If legislators in both the EU and Indonesia ratify the agreement in September, the VPA will be fully implemented in 2013.

Liberia

The EU-Liberia FLEGT-VPA, signed on 9 May, is expected to strengthen and support forest governance in the West African country, whose 14-year civil war that ended in 2003 was funded in part by logging.

Liberia enacted major revisions in forestry law and legal certifications for timber upon the removal of UN sanctions against the country’s timber exports 5 years ago.

“The agreement builds on the reforms that are ongoing in Liberia to ensure accountability and good governance in the sector,” Luis Riera Figueras, the EU’s chief negotiator for the VPA, said. “We want the forest sector to contribute to the country’s recovery.”

Liberia’s timber industry faced a radical 30.4 percent reduction in exports in 2010 with only 100,247 pieces exported in the third quarter. According to the Central Bank of Liberia, the drastic reduction was a result of bad weather and poor roads.

The VPA could represent a light at the end of the tunnel for legal logging in the country.

“Demand could increase given the growing movement in consumer countries to require proof that wood and wood-product exporters are dealing only in legal timber,” said the European Forest Institute, a research body based in Finland.

Liberia contains half of West Africa’s tropical rain forest, which is a naturally biodiverse habitat and greenhouse gas sink.

Along with Indonesia and Liberia, the EU has also finalised VPAs with the Central African Republic, Ghana, Cameroon and the Republic of Congo (see Bridges Trade BioRes, [19 September 2008](#), [15 May 2009](#), and [14 May 2010](#)).

“Logging off”, THE ECONOMIST, 5 May 2011; “EU, Indonesia sign agreement to end illegal logging”, THE JAKARTA POST, 5 May 2011; “Indonesia, EU Commit to Increase Trade to \$50b”, JAKARTA GLOBE, 5 May 2011; “Jakarta

fighting illegal loggers in EU deal”, FINANCIAL TIMES, 4 May 2011; “Liberia Signs Accord With EU to Protect Forests, Stop Illicit Timber Trade”, BLOOMBERG, 9 May 2011.

SUSTAINABLE DEVELOPMENT

Rio+20 Expectations Unclear as CSD 19 Ends on Sour Note

The nineteenth session of the UN Commission on Sustainable Development (CSD 19) concluded in frustration and disappointment on Saturday as governments abandoned plans to produce a final outcome text. In the end, parties were unable to establish a consensus, despite a week’s worth of discourse.

As the last session before the UN Conference on Environment and Development (Rio+20) the failure of governments to reach accord calls into question the ability of governments to effectively address sustainable development issues. Overall, observers say the failure is the result of a plethora of issues that plague the CSD structure as well as the issues it attempts to address surrounding Rio +20 agenda themes: a green economy in the context of sustainable development and the institutional framework for sustainable development.

“This session may signal the end of CSD as a negotiating body,” one delegate told Earth Negotiations Bulletin.

Breaking points for the CSD

A variety of issues are being blamed for the failure of CSD 19. First, the inability of CSD 19 to attract ministers of economy, finance, and trade left the lion’s share of discourse up to environment ministers, despite the need for engagement from an array of other ministries.

For example, the roundtable on sustainable consumption and production was reportedly overflowing with senior representatives from environment industries, while participants for

roundtables on transport and mining – typically the realm of industry and commerce ministries – were scarce.

Waning confidence in the value of decisions made by the CSD was another factor that reportedly contributed to ineffectiveness at the conference. With no enforcement mechanism for the decisions made at CSD, most are outweighed by nation specific interests of individual governments.

“CSD decisions are another problem,” one observer told ENB. “With few exceptions, they resemble a do-it-yourself guide on any number of issues.”

Frustration mounting over the format of the sessions themselves also played a role at CSD 19. A process that was once open and conducive to ongoing debate has been reduced over the past years to bureaucratic jargon, observers said.

The death of the 10YFP?

Possibly the worst casualty of the breakdown in talks was the 10-Year Framework Programme (10YFP) on Sustainable Consumption and Production. The 10YFP had major support going into CSD 19 – the EU was a particularly strong advocate, considering it to be the single most important deliverable outcome that could have been produced.

UN Secretary-General Ban Ki-Moon spoke at CSD 19 describing the importance a 10YFP would play in garnering momentum for Rio +20.

“Without changing consumption production patterns – from squandering natural resources to the excessive life-styles of the rich – there can be no meaningful realization of the ‘green economy’ concept,” Ban said.

Many successful agreements had been reached for the 10YFP, most notably texts on transport, waste management and mining. But all of the significant achievements were cast aside with the termination of negotiations.

Semantics

Ultimately, the conference was brought to a standstill over references to peoples' rights in occupied territories transitioning to a cleaner and more resource-efficient economy and means of implementation.

Disagreements in language over realising "rights of peoples living under foreign occupation" in the CSD 19 draft were vehemently opposed by nations of the Arab Group.

The Arab Group preferred the CSD 17 language on "the rights peoples living under colonial and foreign occupation, which are incompatible with the dignity and worth of the human person and which must be combated and eliminated".

The CSD was created at the 1992 Rio Earth Summit to address the three pillars of sustainable development: environment, social, and economic. It has served as a forum for discourse of issues not included in specific branches of the UN system as well as a collaborative means of piecing together issues divided between institutions.

It has also been considered one of the only locations in the intergovernmental community where the links between the three pillars of sustainable development are specifically identified and analysed.

The second Intersessional Meeting for UNCSD will take place from 15-16 December at UN headquarters in New York.

ICTSD Reporting, "Summary of the Nineteenth Session of the Commission on Sustainable Development: 2-14 May 2011," EARTH NEGOTIATIONS BULLETIN, 16 May 2011.

SUSTAINABLE AGRICULTURE

Food Price Swings Prompt Calls for Biofuel Reform

Several farm commodities, particularly sugar, began a sharp downward price correction recently, surprising analysts. Wheat, corn and soy, also witnessed modest declines. Nevertheless, prices remain at levels that are high by historical standards. Swings in the prices of agricultural commodities have had some topsy-turvy effects, such as helping to turn Brazil, the world's leading ethanol producer, into a major importer of the fuel.

Sugar prices set records in February, though they have since declined somewhat. ElMamoun Amrouk, a sugar expert at the UN Food and Agriculture Organization (FAO), believes that "prices have gone much higher than the fundamentals would suggest," implying that financial market factors might have played a role.

Estimates of a good crop in Thailand and recovering production in Brazil, the two largest sugar producers, may help satisfy demand in international markets. Thai officials are speculating that output in the country could even be a third higher than projected in December, says Amrouk. He added that replenishing depleted domestic stocks is likely to be the first step for large producers, with exports to foreign markets coming in second.

Food prices

A new UN [report](#) described agricultural commodity prices as essentially stable in April. The FAO's [food price index](#), a composite basket of agricultural commodity prices, is now only five points lower than its 2010 peak, and well above the levels reached during an earlier price spike in 2008.

Noting that it was important to understand the "real causes" of the recent price fluctuations, Concepcion Calpe of the FAO explained that current volatility may be related to large financial

actors moving “in and out” of the market for commodities.

She emphasized that there was no new information for many of the crops experiencing swings in prices. The situation for wheat and corn remained “tight,” she said. However, prices for the commodities have fluctuated in the last few days. Reports from the Financial Times indicate that the northern hemisphere wheat crop has yet to receive enough rainfall.

Even a substantial plunge in sugar prices is unlikely to bring the FAO’s food price index down, if prices for other commodities remain high, according to Calpe. The commodity makes up only seven percent of the total index, whereas meat, dairy and cereals, make up nearly three-fourths.

The World Bank, FAO and others have warned that high food prices are likely to drive millions more into [hunger](#).

US ethanol policy

In the US, biofuels — principally corn-based ethanol — are heavily subsidised, protected by high tariffs, and benefit from federal blending mandates. Recent proposals in the US Congress seek to link biofuel production to the price of oil, providing ethanol subsidies only when the fossil fuel’s price falls below a certain threshold. Bruce Babcock of Iowa State University described it as a “potentially politically viable way of eliminating” the ethanol subsidy programme.

Babcock and Brian Wright of the University of California have independently argued that mandates requiring the use of a minimum percentage of biofuels in automobile fuel, such as those in the US for ethanol, help drive food prices higher, particularly for corn.

[Proposals](#) by Senators Chuck Grassley (Republican-Iowa) and Kent Conrad (Democrat-North Dakota) cut tax credits to the biofuel industry over the next two years and phase in a link to oil prices. A competing [proposal](#) by Senators Dianne Feinstein (Democrat-California) and Tom Coburn (Republican-Oklahoma) would

completely eliminate tax credits and import tariffs, opening the market up to international competition by the end of the year.

Brazilian ethanol imports

Brazil, an agricultural powerhouse, bet during the oil crisis of the 1970’s that it could produce enough sugarcane based ethanol to run a significant part of its economy, instituting blending mandates. Although the policy sputtered at times, with supply shortfalls in the 1980’s, recent years have seen the country described as the “Saudi Arabia of biofuels.” As the price of oil has increased over the past decade, ethanol has become an increasingly viable alternative.

Plentiful land, water and labor allow the country to grow cheap sugarcane that is considered to generate far fewer greenhouse gas emissions over its life-cycle than grain based ethanol produced elsewhere. Although the Brazilian government does not provide subsidies for ethanol, a blending mandate helps ensure strong demand for the fuel.

Brazil’s imports of ethanol have skyrocketed due to a combination of poor sugarcane harvests, high world sugar prices encouraging domestic mills to turn cane into sugar rather than ethanol, and the considerable appreciation of the Brazilian real compared to the US dollar. Brazil imported 70 million litres of ethanol from the US in 2010, up from 1 million litres in 2009 according to the Financial Times.

The Brazilian real has soared by 50 percent against the dollar over the last two years, as foreign capital has surged into the country in pursuit of a booming domestic market and some of the highest real interest rates in the world. Meanwhile, ultra-loose monetary policy in the US, aimed at stimulating growth and employment, has made the dollar relatively weak. The effect has been to make US exports of ethanol far cheaper in Brazil than they used to be.

Experts such as Marcelo Moreira of the Instituto de Estudos do Comércio e Negociações Internacionais (ICONE) argue that the growth in Brazil’s ethanol imports has not been the result of currency and commodity price swings alone. He

also blamed a lack of investment in the capital-hungry crop as well as record sales of flex-fuel vehicles that have driven a surge in demand. Ethanol has not been competitive with petrol in much of the country for the past two months because of this, according to Moreira. He added that a seasonal oscillation in supply, coupled with low stocks, has led to a “price boom rather than a shortage” and expects prices to come down soon since the sugar harvest has just started in parts of the country.

Tellingly, imports of ethanol from the US are going largely to the north eastern part of Brazil. Moreira explains that is due largely to seasonal and climatic variability. The country does not have a system of stocks or reserves that can supply the huge demand. The government is moving to create such a system and has reportedly floated proposals to tax sugar exports.

The Ministry of Energy has set targets to increase the share of Petrobras, the state owned energy firm, in the production and distribution of ethanol. The targets are not binding law but merely a direction in policy. Currently the firm produces approximately five percent of the country’s ethanol, a figure that the government would like to see increase to 50 percent, according to Moreira.

Speaking to Bridges, David Laborde of the International Food Policy Research Institute, suggested that low profit margins for sugar meant that it drew relatively less foreign direct investment than other farm sectors, such as soy and livestock. In addition, he noted that hefty short-term returns from other segments of the Brazilian economy had made the agriculture sector less of a destination for investment than it might otherwise have been.

Although trade policies play a significant role in framing incentives for the production of ethanol, sugar and other agricultural commodities, Babcock surmised that the proposed changes in US policy were “not going to do much for Brazil” on ethanol if prices remain high.

Others, such as Amrouk, suggested that the “biofuel market is a distorted market,” one where

the “law of supply and demand is amplified by public intervention.”

ICTSD reporting; ‘Wheat farmers pray for rain,’ FINANCIAL TIMES, 20 April 2011; ‘Success fuels ethanol subsidy changes,’ FINANCIAL TIMES, 5 May 2011.

ANALYSIS

Meaningful Technology Transfer to the LDCs: A Proposal for a Monitoring Mechanism for TRIPS Article 66.2

By Suerie Moon

Technology and innovation play an increasingly important role in the global economy, and can potentially contribute to meeting urgent human needs for improved health, food security, water and energy, among others.

The role of technology in development has attracted increased attention in recent years, particularly around the question of how to bridge the technological gap between countries with different levels of industrial capacity. Considerable debate has centred on the impact of the 1994 World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) on technology transfer – especially, whether TRIPS has helped or hindered the flow of technology to developing countries and their capacity to generate technological innovation.

The Least Developed Countries (LDCs) have attracted special consideration in these debates, in recognition that TRIPS implementation would put an additional burden on the LDCs, with few perceived benefits in exchange. In general, WTO Members agreed that the protection and enforcement of intellectual property rights (IPRs) should contribute to the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of producers and users of technological

knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

Special consideration was given to LDCs in the TRIPS Preamble and Article 66.2, which requires developed country WTO Members to provide incentives to induce technology transfer to LDC Members, in order to enable them “to create a sound and viable technological base.”

However, analysts and developing country Members have raised concerns that the impact of Article 66.2 has been rather limited, and that the existing reporting system is insufficient for monitoring.

The question of whether TRIPS can be implemented in a manner conducive to technology transfer is becoming more urgent as the end of the transition period for LDCs to implement the Agreement is rapidly approaching in 2013 - 2016 for pharmaceutical patents. Unless the technology gap between the least and most developed countries can be narrowed, LDCs risk becoming increasingly marginalised in the global economy.

Against this backdrop, it seems timely to revisit the question of TRIPS, technology transfer to LDCs and the implementation of obligations under TRIPS Article 66.2.

Country submissions to the TRIPS Council

TRIPS Article 66.2 establishes a mandatory, binding, positive legal obligation on “developed country” Members of the WTO, as follows: “developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.”

Developed country Member governments are obligated to provide incentives to their “enterprises and institutions” - private-sector entities, non-profits and public-sector entities - to

encourage technology flows to LDC Members. It has been argued that Article 66.2 obligates developed countries not only to provide incentives for technology transfer, but also to ensure the effective functioning of such incentives.

From a purely legal perspective, there may be some disagreement on the extent to which countries are responsible for the impact of the incentives they provide. However, from a practical and development-oriented perspective, it is critical to understand how well the incentives are functioning, how they can be improved, and how Article 66.2 can be made into a more effective instrument for technology transfer.

Programmes and technology transfer

Technology transfer is interpreted in this report broadly to include training, education and know-how, along with any capital component – a definition submitted to the TRIPS Council by New Zealand.

Despite adopting a broad definition of technology transfer, many of the policies and programmes reported by developed countries to encourage technology transfer either barely targeted or did not at all target LDCs. While LDCs may have benefited from technology transfer as a result of broader policies covering all developing countries, under Article 66.2 LDCs should receive targeted action.

Furthermore, we found that many of the programmes or policies were either not technical in nature or did not include a technology transfer component. Of the 128 programmes that specifically targeted LDC WTO Members, about one-third qualified as technology transfer according to the definition we adopted.

If we consider the full set of 384 programmes listed by the reporting developed countries, only 11 percent met the criteria of targeting an LDC WTO Member with a programme or policy that encourages technology transfer.

Building a monitoring mechanism

The results of this analysis suggest that a more robust monitoring mechanism for Article 66.2 is required – as was stipulated by the 2001 Doha Ministerial Declaration, yet still not established. The objectives of such a mechanism would be twofold: first, to improve our capacity to assess how well Article 66.2 is achieving its intended purpose, and second, to improve technology flows to LDCs as a result.

Moreover, this analysis suggests that the existing reporting mechanism also clearly falls short of an effective monitoring system.

In order to improve the operation in practice of Article 66.2, the establishment of a Monitoring Mechanism Group (MMG) is proposed. The MMG could include individuals from WTO delegations with a few seats reserved for independent experts.

The MMG would have two primary functions. First, an informational function that would track the provision of incentives over time based on a uniform reporting format – that is, measuring outputs. Second, an evaluative function that would assess how effectively the incentives were functioning to achieve the desired objective – that is, measuring outcomes.

The work of the MMG would be informed by input from governments, experts, non-governmental organisations, enterprises and institutions in both LDCs and developed countries, along with other concerned stakeholders. In particular, it would seek input from those with first-hand experience in transferring or receiving technology.

The wide variation in developed country Article 66.2 reports makes it difficult to detect trends over time and to monitor implementation. As an essential first step, a uniform reporting format should be agreed upon that would make monitoring efforts both more feasible and meaningful. Next, it will be necessary to agree on which countries are obligated by Article 66.2 to provide incentives, and to clarify what types of

incentives should qualify as fulfilling the obligation.

Because the WTO does not formally classify countries as “developed” there is difficulty in deciphering who is accountable under Article 66.2. Given a persistent difficulty in agreeing on a specific, concrete definition, the most practical way forward may be to generate a positive and negative list of incentives that should and should not qualify as fulfilling Article 66.2 obligations. Such a list could be developed by the MMG.

It will be critical to regularly monitor the functioning of list of incentives to assess the extent to which they contribute meaningfully to the intended purpose of Article 66.2. However, the text of Article 66.2 does not specify what level of activity would satisfy its requirements, and there is no clear and objective way to set that yardstick.

LDCs should play a central role in articulating needs and assessing performance. They should clearly identify priority areas in which they need improved access to technology. Such priorities could emphasise areas of particular importance to human development, such as medicines, food security, clean water, housing or energy.

International organisations, non-governmental organisations, experts and others may provide technical assistance to LDC governments in identifying priorities and needed technologies, as well as in assessing gaps and the functioning of existing incentives.

Developed countries should shape their incentives in response to these needs and assessments.

LDCs could then submit periodic reports to the TRIPS Council specifying their priorities and gap assessments with respect to technology transfer while also contributing independent assessments of how well existing incentives from developed countries are functioning. These assessments can be used by the MMG to carry out a global evaluation of how well Article 66.2 is functioning, and to generate improved practices over time.

Compliance

The MMG should seek to improve the quality and user-friendliness of the information provided by reporting countries, and to evaluate the effectiveness of provided incentives. The MMG would not and could not assess developed country compliance with Article 66.2, a function reserved for the WTO Dispute Settlement Body (DSB). It may become necessary to assess compliance formally if, even after the establishment of the MMG, it becomes clear that developed countries are not putting in place effective incentives and technology is not flowing to LDC Members.

Further analysis is required on how non-compliance might be determined, and what effective remedies might be available. If an LDC decides to proceed with such a complaint to the WTO DSB, legal assistance with the case may also be needed. However, no LDC has ever brought a TRIPS-related complaint to the DSB.

Conclusions

This updated analysis of developed country reports has found little evidence that TRIPS Article 66.2 has resulted in significant additional incentives beyond business-as-usual for transferring technology to LDC Members.

It also concludes that the existing reporting system does not function as an effective monitoring mechanism, and should be reviewed by the TRIPS Council. In order to operationalise Article 66.2 more effectively, the TRIPS Council should establish an effective monitoring system, the broad outlines of which have been sketched in this policy brief.

Knowledge and technology are playing an increasingly important role in addressing global development challenges, yet gaps in technological capacity and access between rich and poor countries remain vast. Developing countries and LDCs have pressed for enhanced technology transfer in a variety of forums, such as the WTO, WIPO (in the context of the Development Agenda), and in multilateral environmental agreements such as the UNFCCC.

At the same time, promises and commitments by developed countries in this area have played a critical role in helping to reach international agreement on difficult issues such as climate change. The credibility of such promises and commitments is essential. Building an effective global system for genuine, meaningful technology transfer is therefore in the interests of all countries, and the case of TRIPS Article 66.2 is a compelling place to begin.

Suerie Moon is an Instructor at the Harvard School of Public Health, an Associate Fellow in the Sustainability Science Program at Harvard's Center for International Development/Kennedy School of Government, and an Advisor to the Medicines Patent Pool. This article has been adapted from a longer policy brief, which can be accessed [here](#).

IN BRIEF

UK Latest to Help Fund Developing Country Carbon Markets

The UK government has committed US\$11 million to a global scheme aimed at helping to establish carbon markets in developing countries. A number of developing countries – including China, Chile, Indonesia, Mexico, Thailand, and Ukraine – have already expressed interest in the World Bank's Partnership for Market Readiness (PMR), which was launched at the UNFCCC's Sixteenth Conference of the Parties (COP 16) in Cancun.

The UK joins pledges by Australia (US\$10.6 million), the European Commission (US\$7.1 million), the United States (US\$5 million), Norway (US\$5 million), and Germany (US\$7 million). Japan, Switzerland, The Netherlands, and Spain have also said they will help finance the project. The World Bank aims to secure a total of US\$100 million for the project, which will set up market-based policies including better international crediting systems and domestic trading schemes.

“The UK Government will support the World Bank’s Partnership for Market Readiness to help developing countries set up their own carbon trading systems to cut emissions,” the UK said in a statement. “This will allow more investment in green technologies across the world and help stimulate private sector low carbon investment opportunities.”

The UK says carbon trading is an essential element of cost-effective emissions cutting, with the potential for cutting the costs of meeting the Copenhagen Accord commitments by 25 percent. It further argues that the initiative will help build capacity and improve development.

“Establishing their own carbon trading mechanisms will allow developing countries to play their own role in reducing their carbon emissions,” said Andrew Mitchell, the UK’s secretary of state for international development. “By better harnessing the innovation of the private sector, developing countries will have the tools to create jobs and develop local solutions that will increase access to clean energy and improve the lives of the world’s poorest people.”

The goal of the PMR is to increase the number of market-based carbon scheme experts in 10-15 developing countries. These countries will be selected by a partnership committee made up of developed and developing countries involved in the project.

The Bank hopes to initiate the project this year and have pilot market schemes in place in a minimum of 5 developing countries by 2015.

Currently, the most common way for companies and governments in the developing world to participate in the carbon market is through the Kyoto Protocol’s Clean Development Mechanism (CDM). According to UK estimates, over US\$3 billion flowed to the developing world through the global carbon market in 2009.

As these flows are primarily connected to CDM projects, some are concerned that the uncertain future of the Kyoto Protocol could negatively impact the industry. Projects like the PMR are

intended to offer increased stability to the markets.

ICTSD Reporting.

New Study finds LDCs Better Equipped for Green Economy

Least developed countries (LDCs) are better prepared than other countries to transition to a green economy due to their lack of dependence on fossil fuels, according to a new UN study.

Not only are they better equipped than their Western counterparts to participate, the report says, but in fact have the potential to be at the forefront of the transition. The study was released jointly by the UN Conference on Trade and Development (UNCTAD), the UN Environment Programme (UNEP), and the UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLS) at last week’s Fourth United Nations Conference on the Least Developed Countries (LDC-IV) in Istanbul, Turkey.

While developed economies must first face the economic and social costs of the “decarbonisation” process, the 48 least developed countries (LDCs) are already low-carbon and resource efficient. This is largely due to their continued reliance on traditional activities, such as labour intensive agriculture and community-based forestry – both economically sustainable.

By upholding and invigorating their current sustainable activities, the report says, LDCs can harness opportunities in the green economy for economic and human development, catapult themselves to sustainable growth, and meet their Millennium Development Goals (MDGs).

“The shift to a global green economy can put LDCs in an opportune position if the right enabling policies are put in place nationally and internationally,” said Achim Steiner, UNEP’s executive director.

According to the report, historical investment policies have undervalued the importance of traditional economic sectors of those living in poverty. LDCs have been encouraged to depend on limited access to energy and low economic diversification.

Thus, new policy initiatives must target investment in sustainable sectors such as renewable energy, agriculture, forestry, tourism and enhanced ecosystem services in order to properly support LDCs' green economic growth potential.

For a successful transition, the report recommends that international trade be embraced to create markets for LDC green exports and effective mechanisms for green technology transfer be explored alongside new investment regimes.

The report is released in preparation for the 2012 UN Conference on Sustainable Development (Rio +20), where the central theme will be "green economy in the context of sustainable development and poverty eradication."

LDC participation in the green economy has been a recurring point of contention at official meetings of UN Commission on Sustainable Development (UNCSD), with LDC member states insisting that they are ill-equipped to effectively participate in the green economy (see Bridges Trade BioRes, [24 January 2011](#)).

More information

The report, *Why a Green Economy Matters for the Least Developed Countries*, can be accessed [here](#).

ICTSD Reporting.

Uruguay Study Intensifies Debate around GM Crops

A recent study on the containment genetically modified (GM) crops in Uruguay has found that cross-fertilisation between biotech and non-biotech crops may be more common and more

difficult to control in a natural environment than previously predicted. In a sampling of five pairs of non-GM seedlings selected for the study, researchers found that three contained "transgenes" originating from GM crops. It is reportedly the first documented case of cross-fertilising in South America.

The findings of the research, which looked specifically at cross-fertilisation in maize crops, were published recently in the academic journal *Environmental Biosafety Research*.

The study looked at two separate commercial fields that were planted with GM crops and non-GM crops and separated by a distance of over 250 metres, a standard practice for preventing cross-fertilisation. Another guideline specifies that a gm crop field must comprise 10 per cent of non-gm crops in order to maintain a biodiversity.

Out of a sample of 5 pairs of seedlings that were selected, the researchers discovered in three 3 cases that the non-gm crops contained "transgenes" originating from the gm crops. Most traces of cross-fertilization were found in an area ranging 100 meters away from the GM crops, while in another case cross-fertilisation occurred even though Eucalyptus trees stood in between the two fields, and finally in a case where the two fields were set at a distance that exceeded 250 meters.

"To talk about 'regulated coexistence' without the necessary tools to make it viable is nothing more than rhetoric," the study's lead author Pablo Galeano said, implying that the current standards and rules do not actually isolate the non-gm crops.

Galeano was nonetheless careful not to extrapolate his analysis onto other cases of crops acknowledging that the process depends on a host of other parameters such as "topography, size and orientation of fields, type of maize, wind direction during the flowering time, temperature, and humidity."

Cross fertilisation has been at the centre of several legal disputes between biotech seed producers, such as Monsanto, which aggressively prosecute farmers and companies they believe are unlawfully

growing crops with their seeds. Many green groups have long argued that effectively preventing cross fertilisation of GM and non-GM crops is extremely difficult and that, in some cases, farmers have been wrongly accused.

However, some experts argue that the Uruguay study is problematic. Daniel Bayce, manager of Uruguay's National Seed Institute, criticised the results of the research, arguing that the scientists did not gather proper evidence to prove the case of cross-fertilisation risks. The method of the experiment was not sound and the concentration level of transgenes was poor, he said.

More information

The full report can be accessed [here](#).

ICTSD reporting; "GM maize contaminates non-GM crops in Uruguay," SCIDEV, 5 May 2011; "Mexican trial of GM maize stirs debate," SCIDEV, 18 April 2011.

EVENTS AND RESOURCES

Events

For a more comprehensive list of events for the trade and environment community visit the [BioRes online calendar](#).

Coming up in the next two weeks (16-30 May)

18-20 May, Incheon, Korea. CBD THIRD EXPOERT MEETING FOR SOUTH-SOUTH COOPERATION ON BIODIVERSITY FOR DEVELOPMENT. This meeting will seek to validate the process and roadmap for the adoption of the Multi-Year Plan of Action for South-South Cooperation on Biodiversity for Development at the eleventh meeting of the Conference of the Parties (COP 11) to the CBD. For more information, visit the [CBD website](#).

18-22 May, Berlin, Germany. ROUNDTABLE ON SUSTAINABLE BIOFUELS AND UNEP ADDRESS KEY CHALLENGES RELATED TO SUSTAINABILITY, TRACEABILITY AND COMPATIBILITY OF BIOFUELS. This Challenge Bibendum 2011 side event, jointly organised by RSB and the UN Environment Programme, will discuss the sustainability, traceability and compatibility of biofuels. For more information and to register for the event, visit the [event website](#).

19 May, Rome, Italy. EXPERT MEETING ON GOVERNANCE OF FORESTS AND REDD+. The FAO will host a meeting of experts to discuss various aspects of the REDD+ strategy for forest governance. Information available via the [FAO website](#).

22 May, Worldwide. INTERNATIONAL DAY FOR BIODIVERSITY 2011: BIODIVERSITY AND FORESTS. On the occasion of the 2011 International Year of Forests, the theme for International Day for Biodiversity in 2011 has been selected to be "Biodiversity and Forests." The global launch of the UN Decade on Biodiversity is also scheduled to take place on this date in Tokyo, Japan. To see what is happening in your country on International Day for Biodiversity, visit the [CBD website](#).

23-26 May, Washington DC, US. 40TH GLOBAL ENVIRONMENT FACILITY COUNCIL MEETING. This meeting will celebrate the 20th anniversary of the GEF as well as conduct its biannual review of activities and proposals for action. The meeting will be preceded by consultations with civil society organisations. A reception on 23 May will also mark the 20th anniversary milestone. For more information, visit the [GEF website](#).

23-27 May, Geneva, Switzerland. FOURTEENTH SESSION OF THE UN CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD) COMISSION ON SCIENCE AND TECHNOLOGY

DEVELOPMENT. This meeting, organised by UNCTAD, will bring together government representatives, civil society, international organisations, and the private sector to review the progress made in the implementation of the World Summit on the Information Society (WSIS) at the regional and national levels. The commission will focus on the themes of measuring the impact of information and communications technology for development and technologies that can address challenges in areas such as water and agriculture. For more information, visit the [event website](#).

30 May–3 June, Kathmandu, Nepal. BIOTRADE AND GREEN ECONOMY WEEK IN NEPAL. The UN Environment Programme (UNEP), in cooperation with GIZ and UNCTAD, will organise a biotrade and green economy week, as part of the Nepal Capacity Building for Biotrade project (CBBT). Organisers say the event will bring together participants from the private and public sectors as well as representatives from a variety of development cooperation agencies to discuss the potential for biotrade and green economy in Nepal and options to support the country in realising this potential. For more information, [click here](#).

Upcoming Events

6-10 June, Montreal, Canada. FIRST MEETING OF THE INTERGOVERNMENTAL COMMITTEE OF THE NAGOYA PROTOCOL ON ABS. The first meeting of the Intergovernmental Committee of the CBD Nagoya Protocol on access to genetic resources and fair and equitable benefit-sharing is organised by the CBD Secretariat. The agenda includes issues related to capacity building, awareness-raising and compliance procedures. It will be preceded by a capacity-building workshop on the Nagoya Protocol, organised by the CBD Secretariat, to be held from 4-5 June 2011. More information on this meeting can be found [here](#).

14 June, Worldwide. LATIN AMERICAN AND CARIBBEAN REGIONAL ONLINE CONFERENCE ON SOCI-ECONOMIC CONSIDERATIONS REGARDING LIVING

MODIFIED ORGANISMS. Organised by the Secretariat of the Convention on Biological Diversity, this regional online real-time conference will focus on the impact of living modified organisms (LMOs) on the conservation and sustainable use of biological diversity on a regional basis and identify possible issues for further consideration. Representatives from parties, other governments and relevant organisations are invited to nominate representatives through the Biosafety Clearing House no later than 30 May. For more information, visit the [CBD website](#).

29 June–1 July, Chisinau, Moldova. FOURTH SESSION OF THE MEETING OF THE PARTIES TO THE AARHUS CONVENTION. This meeting is a follow up to the Aarhus Convention, which focused on access to information, public participation in decision-making, and access to justice in environmental matters. It will seek to provide an opportunity to discuss the procedure for accession to the Convention by states from outside the UN Economic Commission for Europe (UNECE) region and the role of the Aarhus Convention in promoting sustainable development. The meeting is expected to adopt the draft Chisinau Declaration on the role of the Aarhus Convention in promoting sustainable development as a its contribution to the preparatory process for the UN Conference on Sustainable Development (RIO+20). For more information, visit the [event website](#).

Resources

If you have a relevant resource (books, papers, bulletins, etc.) you would like to see announced in this section, please forward a copy for review by the BioRes Team to biores@ictsd.ch.

CONTROLLING ILLEGAL LOGGING: CONSUMER-COUNTRY MEASURES. Published by Chatham House (15 March 2011). The authors contend that consumer countries contribute to the problems of illegal logging by importing timber and wood products without ensuring that they are legally sourced. Over the last few years, the authors say, a series of measures

have been taken by consumer countries to try to ensure that they exclude illegal timber products from their markets. They go on to find that the bilateral voluntary partnership agreements negotiated between the EU and timber-producing countries, offer potentially effective controls coupled with support to tackle underlying governance failure, but will be slow to establish and will not cover the entire trade. More information and the brief itself can be found [online](#).

INTRODUCTION TO THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE. The first edition of the educational module published by the UN Food and Agriculture Organisation. The Secretariat of the Treaty on Plant Genetic Resources for Food and Agriculture is developing a series of educational modules to strengthen stakeholders' capacities for the operation of the International Treaty and to enhance information and raise awareness among other interested parties. More information and an electronic copy of the module can be found [here](#).

INTERNATIONAL WATERS: REVIEW OF LEGAL AND INSTITUTIONAL FRAMEWORKS. Published by the UN Development Programme (April 2011). This global review looks at the legal and institutional frameworks for 28 transboundary surface water, groundwater and marine water systems covering the Americas, Europe, Africa and Asia. It also considers climate change adaptation knowledge in the various water basins analyzed. The global review is available [here](#).

FIND ME THE MONEY. Published by the Center for Global Development (April 2011). In this paper, the authors recommend that willing governments utilise a modest portion of their existing Special Drawing Rights (SDR) allocations to capitalise a third-party financing entity. This entity would offer bonds on international capital markets backed by its SDR reserves. The proceeds would back private investment in climate-mitigation projects in developing countries that might otherwise lack adequate financing. The authors say this approach could mobilise up to

US\$75 billion at little or no budgetary cost for contributing governments. The paper can be downloaded from the official [website](#).

COP17 DURBAN WEBSITE. The city of Durban, South Africa has overhauled and re-launched its website for the Seventeenth UN Framework Convention on Climate Change Conference of the Parties (UNFCCC COP 17). The website has regular updates leading up to the meeting as well as a increased information regarding the historical accomplishments of the convention, its agenda for the upcoming meeting, and information about Durban itself. The website can be accessed [here](#).