

## IP NEGOTIATIONS MONITOR

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*The IP Negotiations Monitor summarizes the latest developments in multilateral and regional fora where intellectual property negotiations are taking place, and informs on upcoming meetings and events.*

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## **WORLD TRADE ORGANIZATION (WTO)**

### **The Council on TRIPS**

The meeting of the TRIPS Council was held on **11-12 June 2013**. The most significant decision of the meeting was that the WTO members agreed to extend until 1 July 2021 the transition period under Article 66.1 for least developed countries to protect intellectual property under the WTO TRIPS agreement, with the possibility of further extensions in the future.

The transition period is grounded on the recognition that LDCs do not yet have a sound and viable technological base. LDCs were not granted the extension on the terms that they had requested, until the moment when they graduate from LDC status. However, the TRIPS Council decision IP/C/64 marks an improvement over the previous extension of the transition period by granting an extension for eight years. It also does not oblige LDCs not to roll back the level of implementation of the TRIPS Agreement. The decision includes a best endeavour commitment to preserve and continue progress towards implementation of the TRIPS Agreement.

Other decisions of the TRIPS Council are summarized as below:

### **Intellectual Property, Climate Change and Green Technology**

Ecuador presented a proposal (document [IP/C/W/585](#)), that was circulated in February and introduced at the last TRIPS Council meeting in March, calling on members to examine whether intellectual property protection could obstruct technology transfer and make green technologies more expensive. Among a list of proposals is the possibility of amending the TRIPS Agreement to reduce the term of patents on green technologies.

Ecuador also suggested members might consider a declaration to be issued at the WTO Ministerial Conference to be held in Bali in December, highlighting the flexibilities available in the TRIPS Agreement, along the lines of the [2001 Doha Ministerial Declaration on TRIPS and Public Health](#).

The proposal by Ecuador was supported by Cuba, Indonesia, China, Bolivia, India, Bangladesh, Nepal, Rwanda and Brazil.

Developed countries, including the US, Japan, the EU, Canada, Switzerland, Australia and New Zealand, were of the view that intellectual property protection encourages the development of environmentally sound technologies, at accessible prices, as well as technology transfer.

### **Intellectual Property and Cost-effective Innovation**

This non-permanent agenda item was introduced at the request of the United States. Canada, Chile, the EU, the Republic of Korea, Switzerland, Chinese Taipei and the US described cases where intellectual property protection has helped cost-effective or frugal innovation, which can make major contributions to development.

New Zealand and Australia noted they are cooperating on patent registrations partly to maintain or improve the quality of patents, because declining quality is a cause of increasing costs.

Brazil noted that intellectual property protection has a role to play but is only one contributor to innovation, and because of the monopoly involved it has to be balanced against other interests.

India and Ecuador objected to the repeated inclusion of innovation on the TRIPS Council's agenda and questioned whether this is part of the mandate of the TRIPS Council.<sup>1</sup>

### **The EU's Proposed Revised Directive on Tobacco**

Under "other business" Nicaragua and Cuba raised objections to the revised EU directive on tobacco products being considered by EU, which would include tougher labelling conditions, such as larger health warnings and the possibility of individual member states introducing plain packaging regulations.

Nicaragua and Cuba presented their objections against Australian plain packaging measures. They contended that the regulations restrict trade unnecessarily and deprive producers of the right to use intellectual property such as trademarks and geographical indications. They objected to both the [proposed revision](#) and a draft report from the European Parliament's [tobacco products directive rapporteur Linda McAvan](#). They also criticized Ireland's announced plan to introduce plain packaging.

The Dominican Republic, Honduras and Zimbabwe also supported Nicaragua and Cuba.

In response, the EU said that the proposal was prepared by the EU Commission, and has now moved to the European Council and Parliament, where it has over a thousand amendments under consideration. The EU said it therefore cannot

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<sup>1</sup>

[http://www.wto.org/english/news\\_e/news13\\_e/trip\\_11jun13\\_e.htm#minutes](http://www.wto.org/english/news_e/news13_e/trip_11jun13_e.htm#minutes).

comment further. Australia and New Zealand supported the EU.

### **Non-Violation and Situation Complaints**

The present “moratorium” on non-violation disputes in intellectual property (i.e. WTO members agreeing not to bring disputes against each other under the TRIPS provisions), will expire in December. Member States’ positions remain unchanged, with no agreement on a definite solution to the issue. To date, the moratorium has repeatedly been extended. The chairperson decided to hold more consultations aimed at enabling the TRIPS Council to agree on its recommendation to the [Bali Ministerial Conference](#) on this issue when it meets again in October.

### **Dispute Settlement: TRIPS Disputes**

#### ***Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging***

Cuba notified the WTO Secretariat on 3 May 2013, of a request for consultations with Australia on the Australian Tobacco Plain Packaging Act of 2011 that regulates the appearance and form of retail packaging used in connection with sales of cigars, cigarettes and other tobacco products.<sup>2</sup>

Cuba challenged the Tobacco Plain Packaging Act 2011 and the related regulations, and the Trade Marks Amendment of Australia, for the reason that Australia's measures appeared to be inconsistent with its obligations under TRIPS, TBT and GATT.

During the two weeks following the request, a number of countries have requested to join the consultation. Subsequently, Australia informed the DSB that it had accepted the requests of Brazil, Canada, the Dominican Republic, the European Union, Guatemala, Honduras, New Zealand, Nicaragua, Norway, Ukraine and Uruguay to join the consultation.

#### **WHO-WIPO-WTO Joint Technical Symposium on “Medical Innovation – Changing Business Models”**

The World Health Organization (WHO), World Intellectual Property Organization (WIPO) and World Trade Organization (WTO) will hold a

technical symposium on “Medical Innovation – Changing Business Models” on **5 July 2013** at the World Intellectual Property Organization in Geneva.<sup>3</sup>

### **Future WTO Meetings**

The next meeting (regular) of the Council for Trade-Related Aspects of Intellectual Property (TRIPS) will be held on **10-11 October 2013**.

The next meeting of the WTO Dispute Settlement Body will be held on **30 August and 25 September, 2013**.

The Ninth Ministerial Conference will be held from **3-6 December 2013**, in Bali, Indonesia

### **WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)**

#### **Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)**

#### **IGC 24th Session**

The 24th session of the IGC was held from **22-26 April, 2013**. This session was chaired by Ambassador Wayne McCook of Jamaica.

The IGC is mandated to intensify negotiations to conclude the text(s) of an international legal instrument(s) which will ensure effective protection of Genetic Resources (GR), Traditional Knowledge (TK) and Traditional Cultural Expressions (TCEs).

Focusing on traditional knowledge, the 24th session of the WIPO IGC focused on four fundamental issues: defining “traditional knowledge”; identifying the beneficiaries of protection; framing the scope of rights; and defining appropriate exceptions and limitations.

Following a review of the draft articles on TK in plenary, the IGC established an informal expert group with up to six experts per region and two indigenous experts, which worked on the core issues with a view to reducing the number of options and streamlining the text.

The most recent draft text of an international legal instrument on intellectual property and traditional knowledge was reviewed by the plenary on Friday, 26 April, and will be transmitted to the

<sup>2</sup>

[http://www.wto.org/english/news\\_e/news13\\_e/ds458rfc\\_03may13\\_e.htm](http://www.wto.org/english/news_e/news13_e/ds458rfc_03may13_e.htm).

<sup>3</sup>

[http://www.wto.org/english/news\\_e/news13\\_e/trip\\_14jun13\\_e.htm](http://www.wto.org/english/news_e/news13_e/trip_14jun13_e.htm).

WIPO General Assembly, which will meet from 23 September to 2 October 2013. The General Assembly will take stock of progress made and decide on convening a diplomatic conference.

Three additional texts were tabled by groups of developed countries, including two recommendations on genetic resources and associated TK, and on the use of databases for TK protection, and terms of reference for a study on the merits of mandatory disclosure requirements. These proposals were contested by developing countries as attempts to side-track negotiations on the draft articles.

WIPO IGC 24 was preceded by a three-day indigenous expert workshop, co-organized by the WIPO Secretariat and the UN Permanent Forum on Indigenous Issues. The WIPO Voluntary Fund for Accredited Indigenous and Local Communities is in need of new contributions to facilitate the participation of indigenous peoples and local communities to the IGC.

### **IGC 25th Session**

The Twenty Fifth Session of the WIPO Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore (IGC) WIPO IGC 25, was held from **15-24 July 2013** in Geneva. The session focused on negotiations on the text for an international legal instrument on Traditional Cultural Expressions (TCE). It included an additional three days for stocktaking of the text, as well as the texts of the international legal instruments ensuring the effective protection of traditional knowledge (TK) and genetic resources (GRs).

The renewal of the two-year mandate of the IGC was one of the main decisions to be taken by the Committee at the 25th session. The IGC could not agree on a recommendation on the future work of the committee to be transmitted the WIPO General Assembly in September. Instead, a report will be transmitted to the Assembly with the expectation that this high level committee will reach an agreement.

The major issue of contention is the convening of a diplomatic conference, the last stage when a new treaty is concluded, in the 2014-2015 biennium. Developing countries insist that only the setting of a date for a diplomatic conference will create the necessary political will for effective engagement by developed countries, while developed countries are of the view that setting the date is premature.

### **Standing Committee on Copyright and Related Rights (SCCR)**

#### ***Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities***

On **17-28 June 2013**, some 600 delegates from among the 186 Members of WIPO joined the debate leading to the adoption of the treaty in the Kingdom of Morocco, which hosted the Diplomatic Conference to conclude a treaty to facilitate access to published works by visually impaired persons and persons with print disabilities.

The Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled<sup>4</sup> is expected to serve as a tool to address the “book famine” by requiring its contracting parties to adopt national law provisions that permit the reproduction, distribution and making available of published works in accessible formats through limitations and exceptions to the rights of copyright right holders.

On **June 28, 2013**, 51 member states signed the treaty and 129 signed the final act of the treaty. Signing the treaty at the end of the Diplomatic Conference does not necessarily bind a country to its provisions. It is however a strong indication of intent by the signatory to join the treaty. The treaty enters into force once it has received 20 ratifications.

### **The Program and Budget Committee (PBC)**

The Twentieth Session of the Program and Budget Committee (PBC) was held on **8-20 July** in Geneva.

The PBC reviewed the Program Performance Report (PPR) for 2012 and the Financial Overview for 2012-13 submitted by the WIPO Secretariat. The PBC also discussed the draft Program and Budget for the 2014-15 biennium and also reviewed the budgetary process applied to projects proposed by the CDIP for implementation of the Development Agenda Recommendations.

Member States reviewed the PPR and made specific comments and suggestions on various WIPO programs. The PBC agreed to recommend the approval of the PPR to the WIPO General Assembly, subject to the comments, concerns and suggestions for improvement made by Member States being included in the Annex to the PPR

<sup>4</sup>

[http://www.wipo.int/meetings/en/doc\\_details.jsp?doc\\_id=241683](http://www.wipo.int/meetings/en/doc_details.jsp?doc_id=241683).



and the report of the PBC. The decision text also recognized the nature of the PPR as a self-assessment by the Secretariat. The PBC also took note of the Financial Overview for 2012-13.

The PBC reviewed the draft Program and Budget for 2014-15 and requested the Secretariat to submit a revised proposal for the Program and Budget for consideration of the PBC at its 21st Session in September. The revised proposal should reflect the changes that have been discussed in the PBC. The Secretariat was also asked to submit a revised proposal for the program on SMEs and innovation, considering all the concerns and issues raised by Member States and taking into account the alternatives proposed and the comments made during the discussions on this issue in the PBC.

The Secretariat was also requested to circulate an information paper prior to the September session of the PBC on the issue of establishing external offices, in response to questions and requests for information made in this PBC session.

The PBC discussed the review of the budgetary process applied to projects proposed by the CDIP for the implementation of the Development Agenda Recommendations and recommend the Assemblies of the Member States of WIPO to take note of this document. It also requested the Secretariat to ensure that Development Agenda projects, including subsequent phases of on-going projects approved by the CDIP, will continue to be fully funded in accordance with the mechanism approved by the Assemblies in 2010.

The PBC also took note of testing the proposed new definition of “development expenditure” against the proposed draft Program and Budget for 2014-15. The PBC clarified the significant differences between the current and proposed definitions and decided to continue discussions on this issue in the Twenty-First Session of the PBC.

The Program and Budget Committee (PBC) will have its Twenty-First Session from **9-13 September 2013** in Geneva, Switzerland.

### **Future WIPO Meetings**

The 20th session of the Standing Committee on the Law of Patents (SCP) will tentatively be held during the week of December 9, 2013 in Geneva.

The Fifty-First Series of Meetings of the WIPO Assemblies will be held from September 23 to October 2, 2013. The assemblies include the WIPO General Assembly and other nineteen assemblies of WIPO administered treaties, and the WIPO Coordination Committee.

The Assemblies of the Member States of WIPO will have its Fifty-First Series of Meetings from **September 23 to October 2, 2013**, Geneva, Switzerland.

## **INTERNATIONAL UNION FOR THE PROTECTION OF PLANT VARIETIES (UPOV)**

### **UPOV Council<sup>5</sup>**

The next Council meeting will take place on **24 October, 2013**, Geneva, Switzerland.

### **Administrative and Legal Committee**

The next Administrative and Legal Committee meeting will take place on **21-22 October, 2013**, Geneva, Switzerland.

### **Consultative Committee**

The next Consultative Committee meeting will take place on **23 October, 2013**, Geneva, Switzerland.

## **WORLD HEALTH ORGANIZATION (WHO)**

### **Sixty-sixth World Health Assembly (WHA)**

The Sixty-sixth session of the World Health Assembly (WHA) took place in Geneva during **20-28 May 2013**, concluded with agreement on a range of new public health measures and recommendations aimed at securing greater health benefits for all people, everywhere.<sup>6</sup>

The Session approved by consensus a Resolution A66/46 on the “Agreement between the World Health Organization and the South Centre”, serving as the framework under which the South Centre will be able to officially observe and contribute institutionally to the work of the WHO and its bodies as an intergovernmental observer organization, on par with other intergovernmental organizations.

The agreement aims to strengthen cooperation between WHO and the South Centre in all matters arising in the field of health that are connected with the activities and commitments of the two organizations, including access to medicines and other technologies.

<sup>5</sup> [http://www.upov.int/meetings/en/details.jsp?meeting\\_id=28344](http://www.upov.int/meetings/en/details.jsp?meeting_id=28344).

<sup>6</sup> [http://www.who.int/mediacentre/news/releases/2013/world\\_health\\_assembly\\_20130527/en/index.html](http://www.who.int/mediacentre/news/releases/2013/world_health_assembly_20130527/en/index.html).

### **Consultative Expert Working Group on Research and Development: Financing and Coordination (CEWG)**

The Sixty-sixth Session of the WHA was held on **20-27 May 2013** in Geneva. The Member States adopted a resolution (A66/32<sup>7</sup>) on the Follow-up of the report of the Consultative Expert Working Group on Research and Development: Financing and Coordination. This resolution was recommended by an Open-ended Meeting of the Member States of WHO on the Follow-up of the Report of the CEWG held on 26-28 November 2012 in Geneva. The resolution recommended that the WHO Secretariat hold a more extensive observer role and that a few pilot projects in the field of research and development should be launched which meet the health needs of poorer countries. However, contrary to the recommendation made by CEWG in May 2012, it did not support the creation of a binding global research and development agreement (R&D Treaty).

The 66th World Health Assembly approved this resolution with an extra decision point<sup>8</sup> that was unexpectedly introduced by the US and supported by the EU. This decision point proposes a process for rapidly identifying research and development (R&D) demonstration projects. It recognises de-linking the price of the product from the cost of research, as well as open knowledge innovation, as guiding principles.

The resolution would establish a global health R&D observatory, set up demonstration projects, and develop norms and standards to better collect data on health R&D.<sup>9</sup>

Under the decision, a 2-3 day technical consultative meeting will be held by the end of this year. Although open to all member states, health R&D experts will lead the discussion. The WHO Director General Margaret Chan will select the technical experts in consultation with the regional directors.<sup>10</sup>

### **Open-ended Working Group to Identify the Actions, Activities and Behaviours that result in Substandard/spurious/falsely-labelled/falsified/counterfeit Medical Products**

The Open-Ended Working Group (OEWG) was

<sup>7</sup> [http://apps.who.int/gb/ebwha/pdf\\_files/WHA66/A66\\_23-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHA66/A66_23-en.pdf).

<sup>8</sup> <http://www.ip-watch.org/weblog/wp-content/uploads/2013/05/CEWG-decision-point-May-2013.pdf>.

<sup>9</sup> <http://www.ghctoalition.org/RD-resolution-passes-at-World-Health-Assembly.php>.

<sup>10</sup> [http://www.southcentre.org/index.php?option=com\\_content&view=article&id=1986%3Asb74&catid=144%3Asouth-bulletin-individual-articles&Itemid=287&lang=en](http://www.southcentre.org/index.php?option=com_content&view=article&id=1986%3Asb74&catid=144%3Asouth-bulletin-individual-articles&Itemid=287&lang=en).

established by the first meeting of the Member State Mechanism (MSM) on Substandard/Spurious/Falsified/Falsely labelled/Counterfeit (SSFFC) medical products in November 2012.

The Working Group met during **23-24 July 2013** in Geneva. Discussions were based on a “non-paper” by Brazil.<sup>11</sup> The Working Group adopted a Report of the OEWG, with an Annex containing a non-exhaustive list on actions, activities and behaviours that result in SSFFC medical products.

According to the Annex, the list is based on the guiding principle “to prevent and reduce the risk to public health from SSFFC medical products, ensuring that only medical products meeting the national and/or regional regulatory authority’s requirements are manufactured, imported, distributed and supplied”. It also states that the list “could be subject to revisions and adjustments in the future”.

Issues for further discussion include, among others, advertising that misleads the public or purchasing entities; corruption and conflict of interest; and lack of effective labeling of medical products.

The agreed list will be handed over to the MSM meeting in November for further action.<sup>12</sup>

### **Consultation on Access to HIV Medicines in Middle-income Countries**

The WHO and UNAIDS organized a consultation on access to HIV medicines in middle-income countries on **10-12 June 2013** in Brasília, Brazil. Representatives of WIPO and WTO also participated in the consultation. A background paper for the consultation was prepared by WHO in collaboration with the Medicines Patent Pool entitled *Data on prices, regulatory status, tariffs, and the intellectual property situation of key HIV treatments*.

Various WHO publications find positive benefits of the use of compulsory licensing as a tool for governments to promote access to affordable medicines, including for HIV/AIDS. In contrast, the background paper by the WHO and Medicines Patent Pool cautions that “producing a generic medicine locally under a compulsory license requires appropriate knowledge, technical capacity, and access to a reliable source of active ingredients. Such knowledge and capacity beyond

<sup>11</sup> [http://apps.who.int/gb/ssffc/pdf\\_files/WG1b/A\\_MSM\\_WG1\\_2-en.pdf](http://apps.who.int/gb/ssffc/pdf_files/WG1b/A_MSM_WG1_2-en.pdf).

<sup>12</sup> [http://twinside.org.sg/title2/intellectual\\_property/info.service/2013/jpr.info.130708.htm](http://twinside.org.sg/title2/intellectual_property/info.service/2013/jpr.info.130708.htm).

what is disclosed in a patent cannot be obtained through a compulsory license as the patent holder would not share such information in this case." The paper states that "the impact of data exclusivity in countries where it is in place on the regulatory status of ARVs remains unknown. Country studies would be necessary to identify its possible impact on the regulatory status of ARVs."

However, various WHO publications have highlighted the positive benefits of compulsory licensing and the negative implications of data exclusivity for access to medicines. The Report of the Commission on Intellectual Property Rights, Innovation and Public Health (CIPRH) recommended that "Developing countries should provide in their legislation for the use of compulsory licensing provisions ... as one means to facilitate access to cheaper medicines through import or local production." It also recommends that countries with manufacturing or export capacity should take necessary legislative steps to allow compulsory licensing for export. The CIPRH report also observed that there is unlikely to be a justification for data exclusivity in markets with a limited ability to pay and little innovative capacity. Thus, it recommended that "developing countries should not impose restrictions for the use of or reliance on such data in ways that would exclude fair competition or impede the use of flexibilities built into TRIPS."

### **Future WHO Meetings**

The **Annual meetings of WHO Regional Committees** will be held from **2 September to 30 October 2013** to set policy and approve budgets and programs of work for each of the six WHO regions.

The **Regular Meeting of the Member State Mechanism on Substandard/spurious/false-labelled/falsified/counterfeit Medical Products** will be held in **November 2013** in Geneva.<sup>13</sup>

## **FOOD AND AGRICULTURE ORGANIZATION (FAO)**

### **Commission on Genetic Resources for Food and Agriculture (CGRFA)**

The CGRFA was established in 1983 to deal with issues related to plant genetic resources. In 1995, the FAO Conference broadened the Commission's mandate to cover all components of biodiversity of relevance to food and agriculture.<sup>14</sup>

The Commission normally holds one regular session each biennium. It may also decide to convene extraordinary sessions as necessary, subject to the approval of the FAO Council. Between 2001 and 2007, the Commission acted as the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture.

The fourteenth session was held on **15-19 April 2013**, in Rome, Italy and marked the Commission's 30th anniversary. The Commission addressed a series of sectorial and cross-sectorial issues under its Multi-Year Programme of Work (MYPOW), including: the preparation of state of the world reports on biodiversity for food and agriculture, and on forest, animal and aquatic genetic resources (GR); targets and indicators; climate change; access and benefit-sharing (ABS) arrangements for genetic resources for food and agriculture (GRFA); biodiversity and nutrition; and various issues related to plant, forest, animal and aquatic GR, and micro-organisms and invertebrates. It also reviewed its relationship with the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) and cooperation with other international instruments and organizations.

WIPO reported on the on-going negotiations on intellectual property and genetic resources, traditional knowledge and traditional cultural expressions.<sup>15</sup>

The Commission's Fifteenth Regular Session would be held on **19-23 January 2015**.

### **Resumed Meeting of the Third Ad Hoc Technical Advisory Committee on the Standard Material Transfer Agreement (SMTA) and the Multilateral System**

The Committee met on **12 April, 2013** in Rome, Italy. The Committee gave consideration to options for reflecting clarifications or interpretation of SMTA.<sup>16</sup>

### **First Meeting of the Compliance Committee**

The meeting was held during **20-22 April, 2013** in Rome, Italy. At its Fourth Session, the Governing Body assigned a number of tasks to the Compliance Committee for the inter-sessional period and made interim arrangements for the membership of the Committee, with a view to electing members for full terms at the Fifth Session.

<sup>13</sup> [http://apps.who.int/gb/ebwha/pdf\\_files/WHA66/A66\\_22-en.pdf](http://apps.who.int/gb/ebwha/pdf_files/WHA66/A66_22-en.pdf).

<sup>14</sup> <http://www.fao.org/nr/cgrfa/cgrfa-about/cgrfa-history/en/>.

<sup>15</sup> <http://www.iisd.ca/vol09/enb09600e.html>.

<sup>16</sup> [http://www.planttreaty.org/sites/default/files/gb5i14\\_Record\\_of\\_Compliance\\_Committee.pdf](http://www.planttreaty.org/sites/default/files/gb5i14_Record_of_Compliance_Committee.pdf).



## **Future International Treaty on Plant Genetic Resources for Food and Agriculture Meetings**

The High-level Policy Dialogue on the International Treaty was held on **1 July, 2013** in *Bandung*, Indonesia.

The Third High-level Roundtable on the International Treaty was held on **2 July, 2013** in *Bandung*, Indonesia.

The Fifth Session of the Governing Body will be held on **24-28 September 2013** in Muscat, Oman.

## **CONVENTION ON BIOLOGICAL DIVERSITY (CBD)**

### **Expert Meeting to Develop a Draft Strategic Framework for Capacity-building and Development in Support of the Effective Implementation of the Nagoya Protocol on Access and Benefit-sharing**

The Nagoya Protocol on Access and the Fair and Equitable Sharing of Benefits Arising from their Utilization (hereafter Nagoya Protocol) was adopted by the Conference of the Parties to the CBD at its 10th meeting in 2010. The Protocol will enter into force on the 90th day after the date of deposit of the 50th instrument of ratification, acceptance, approval or accession. The Protocol has been signed by 92 countries, and ratified by 19 countries. The most recent country to ratify the Protocol was Honduras, on 12 August 2013.

Upon request of the Conference of the Parties at its eleventh meeting, upon recommendation by the second meeting of the Open-ended Ad Hoc Intergovernmental Committee for the Nagoya Protocol, the Expert Meeting was held on **3-5 June 2013** in Montreal, Canada.

The experts exchanged relevant experiences and lessons learned in the implementation of capacity-building and development initiatives and bilateral cooperation related to access and benefit-sharing, and developed a draft strategic framework for capacity building and development in support of the effective implementation of the Nagoya Protocol.<sup>17</sup> The draft strategic framework will be submitted for consideration by the Intergovernmental Committee at its third meeting in February 2014 in the Republic of Korea.

### **Future CBD Meetings**

The Expert Meeting on Article 10 of the Nagoya Protocol on Access and Benefit-sharing will be

held on **17-19 September 2013**, Montreal, Canada.

## **UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)**

### **Bonn Climate Change Conference**

The second session of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP 2) took place from **29 April to 3 May 2013** in Bonn, Germany.

The thirty-eighth sessions of the Subsidiary Body for Implementation (SBI 38) and the Subsidiary Body for Scientific and Technological Advice (SBSTA 38), as well as the second part of the second session of the Ad Hoc Working Group on the Durban Platform for Enhanced Action (ADP 2-2) was held from **3-14 June 2013** in *Bonn*, Germany.

### **Technology Executive Committee**

#### ***The Fifth Meeting***

The fifth meeting of the UN Framework Convention on Climate Change (UNFCCC) Technology Executive Committee (TEC) took place in Bonn, Germany, from **26-27 March 2013**.

At the meeting, TEC members discussed, inter alia: outcomes of COP 18 and implications for the work of the TEC; linkages between the TEC and the Climate Technology Centre and Network (CTCN) and other arrangements under and outside of the Convention; technology roadmaps; a new thematic dialogue on research development and demonstration; and work and support for activities relating to technology needs assessments. Plans were also made to begin work on at least three new technology briefs.<sup>18</sup>

#### ***The Sixth Meeting***

The Technology Executive Committee (TEC) of the UN Framework Convention on Climate Change (UNFCCC) held its sixth meeting (TEC 6) from **26-28 June 2013**, in Bonn, Germany.

In addition to the aforementioned thematic dialogue, TEC members: heard updates on the results of the first Climate Technology Centre and Network (CTCN) board meeting and from the UN Environment Programme (UNEP) and the UNFCCC Secretariat regarding on-going work

<sup>17</sup> <http://www.cbd.int/doc/meetings/abs/absem-sfcb-01/official/absem-sfcb-01-03-en.pdf>.

<sup>18</sup> <http://www.iisd.ca/climate/tec/tr-tec5/html/crsvol205num5e.html>.

and support for activities relating to technology needs assessments (TNAs); discussed nascent and possible future TEC collaborations with other relevant institutional arrangements under and outside the Convention; and discussed two technology brief drafts on technology roadmaps (TRMs), and on results of TNAs and the integration of TNAs with nationally appropriate mitigation actions (NAMAs) and national adaptation plans (NAPs).

Outcomes of the meeting included a decision to submit letters inviting collaboration to the Global Environment Facility (GEF), the Least Developed Countries Expert Group (LEG), and the Consultative Group of Experts on National Communications from Parties not included in Annex I to the Convention (CGE). Participants also decided that a letter should be sent to the Green Climate Fund (GCF) Board after its current meeting, during which decisions on the GCF's collaboration with other relevant institutional arrangements under the Convention are being taken.

The TEC also: agreed to begin collaborating with the Adaptation Committee on an adaptation technology brief; set up a task force on long-term financing mandated to, inter alia, review existing work on long-term finance issues as they relate to technology; agreed to revise the draft technology briefs based on feedback from the meeting; and hold a workshop at TEC 7 to discuss TNA-related matters.<sup>19</sup>

### **Future UNFCCC Meetings**

The Warsaw Climate Change Conference - the 19th session of the Conference of the Parties to the UNFCCC and the 9th session of the Conference of the Parties serving as the Meeting of the Parties to the Kyoto Protocol will take place from **11-22 November 2013** in Warsaw, Poland.<sup>20</sup>

The Seventh TEC Meeting will be held on **4-7 September 2013** in Bonn, Germany

## **UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)**

### **Commission on Science and Technology for Development (CSTD)**

CSTD is a subsidiary body of the Economic and Social Council (ECOSOC) which provides the

<sup>19</sup>

<http://www.iisd.ca/climate/tec/tec6/html/crsvol205num6e.html>.

<sup>20</sup>

[http://unfccc.int/meetings/warsaw\\_nov\\_2013/meeting/7649/php/view/workshops.php](http://unfccc.int/meetings/warsaw_nov_2013/meeting/7649/php/view/workshops.php).

General Assembly and ECOSOC with high-level advice on relevant science and technology issues. UNCTAD is responsible for the substantive servicing of the Commission.<sup>21</sup>

### **CSTD Sixteenth Session**

The Sixteenth Session of CSTD was held on **3-7 June 2013** in Geneva with two main themes:

- Science, technology and innovation for sustainable cities and peri-urban communities; And
- Internet broadband for an inclusive digital society (World Summit on Information Society).

On the 7th June, the Commission recommended the following draft resolutions for adoption by the Economic and Social Council:

- Draft resolution on Science, Technology and Innovation for Development;
- Draft resolution on Assessment of the progress made in the implementation of and follow-up to the outcomes of the World Summit on the Information Society.

### **First Meeting of the Working Group on Enhanced Cooperation (WGEC)**

A Working Group has been established to examine the mandate of the World Summit on the Information Society (WSIS) to build Enhanced Cooperation, as contained in the Tunis Agenda for the Information Society concluded in 2005.

Paragraph 69 of the Tunis Agenda recognizes the need for enhanced cooperation in "the future, to enable governments, on an equal footing, to carry out their roles and responsibilities, in international public policy issues pertaining to the Internet, but not in the day-to-day technical and operational matters, that do not impact on international public policy issues."

The WGEC was created by the Chair of the CSTD, pursuant to Resolution 67/195 adopted by the UN General Assembly in December 2012.

The WGEC consists of twenty-two member states and respectively five representatives from the private sector, civil society, technical and academic communities, and intergovernmental and international organizations.<sup>22</sup>

During the first meeting of the group on 30-31 May 2013 in Geneva, participants developed a questionnaire to seek inputs from governments primarily, but open to business, civil society and

<sup>21</sup> <http://unctad.org/en/Pages/cstd.aspx>.

<sup>22</sup>

<http://unctad.org/en/Pages/MeetingDetails.aspx?meetingid=330>.

other stakeholders, to help define the agenda for Enhanced Cooperation, how these should be addressed and solutions for improvement or further development. The questionnaire is open for submission of responses until 31 August 2013.

The second meeting of the WGEC will be held during **6-8 November 2013**, Geneva.

## **INTERNATIONAL TELECOMMUNICATION UNION (ITU)**

### **ITU World Telecommunication/ICT Policy Forum (WTPF)**

The forum, a regular multi-stakeholder event designed to stimulate debate around hot topics affecting the fast-evolving technology sector, was held on **14 May 2013** in Geneva.<sup>23</sup>

In the run-up to the meeting, there was understandable concern that the schisms that emerged during the World Conference on International Telecommunications (WCIT) in Dubai would re-emerge at the WTPF, particularly given the theme of the WTPF. While this did not happen, it is clear that many governments, particularly in developing countries, remain concerned about the framework for Internet governance. It seems likely that the question about the role of governments (and, by extension, the ITU) in the multi-stakeholder Internet model will be the crux of the Internet policy dialogue for the coming 14 to 18 months.<sup>24</sup>

### **World Summit on the Information Society Forum (WSIS)**

The World Summit on the Information Society Forum 2013 was held from **13-17 May 2013** at the ITU Headquarters in Geneva. This year the Forum attracted more than 1800 WSIS stakeholders from more than 140 countries.

High level dialogues with government ministers and representatives from business and civil society examined the themes of:

- Women's empowerment in the information society: systematic, scalable strategies;
- Smart climate change monitoring: expanding access to information on weather, climate and water;
- ICT innovations and standards: creating

- technology for the next three billion;
- Securing cyberspace in a borderless world: Vision 2015 and beyond;
- Information and communication technologies (ICTs) and post 2015 goals;
- Youth and ICTs<sup>25</sup>

## **WORLD CUSTOMS ORGANIZATION (WCO)**

### **Global Congress on Combating Counterfeiting and Piracy**

The 7th Global Congress on Combating Counterfeiting and Piracy was held from **24-26 April, 2013** in Istanbul, Turkey. Along with the WCO, the Congress was convened by INTERPOL and WIPO in cooperation with the world's business community represented by the International Chamber of Commerce (ICC) through its Business Action to Stop Counterfeiting and Piracy (BASCAP) initiative, and the International Trademark Association (INTA).

Under the theme "Evolving challenges – innovative responses", discussions at the Global Congress covered a broad range of issues including counterfeit trade trends and patterns, the latest initiatives in building respect for IPR, an inclusive approach to addressing the transnational organized crime dimension, new approaches adopted by developing markets and efforts to address internet sales, as well as the impact of new technologies on law enforcement practices.

### **Future WCO Meetings**

The 4th WCO Technology & Innovation Forum will be held from **12-14 November 2013** in Buenos Aires, Argentina.

## **INTERNET CORPORATION FOR ASSIGNED NAMES AND NUMBERS (ICANN)**

The ICANN is a US-based non-profit that plays a key role in issues relating to Internet domain names. A number of significant developments have taken place with regard to its generic top-level domains (gTLDs) program.<sup>26</sup>

During the 47th ICANN public meeting held in Durban, South Africa, from **14-18 July 2013** the Arabic word for "web" or "network" (.shabaka), the Russian words for "online" and "network" and the

<sup>23</sup>

[http://www.itu.int/net/pressoffice/press\\_releases/2013/22.aspx#.UfjvG42nB5B](http://www.itu.int/net/pressoffice/press_releases/2013/22.aspx#.UfjvG42nB5B).

<sup>24</sup> <http://www.internetsociety.org/doc/internet-society-wrap-itu-2013-world-telecomict-policy-forum>.

<sup>25</sup> <http://www.un-ngls.org/spip.php?article4291>.

<sup>26</sup> The idea of the gTLD Program is to allow new domains beyond the current standard ending such as ".com", ".edu" and ".org". There are roughly two dozen now but with the launch of ICANN's program there will soon be hundreds.

Chinese word for “game” became the first signed agreements with ICANN. These new gTLDs are expected to go live by the end of 2013.<sup>27</sup> Additionally, in early July, New York City became one of the first cities to get key approval for its own top-level domain: .nyc.<sup>28</sup>

The public interest implications of this program have also been seen particularly with regard to geographical names. Brazil and Peru had lodged formal complaints with ICANN regarding the US e-commerce giant Amazon’s bid for the domain name “.amazon”. During the 47th ICANN Meeting, government representatives agreed that Amazon’s application for “. Amazon” should be rejected and transmitted this “consensus advice” to the ICANN Board which is obliged to take this strongly into account in its decision. Similarly, Argentina had objected to the name “.Patagonia”, underlining that Patagonia was an important region of Argentina and of particular importance to the economy. The sports equipment vendor, Patagonia has now withdrawn its application.

Other objections which have been raised by governments include “.islam” by India and United Arab Emirates who objected on the grounds that this would be inappropriate and offensive and “.shangrila” by China. Aside from these public interest issues, entities such as the Author’s Guild and the Association of American Publishers have also raised concerns regarding “anti-competitive practices” with respect to Amazon’s application to control domains such as “.book”, “.author” and “.read”. Trademark holders have also issued concerns stating that it will be difficult to defend against infringement on many new websites in hundreds of new gTLDs.

The next ICANN public meeting (ICANN48) will take place in Buenos Aires, Argentina from **17-21 November 2013**.

## **UN ECONOMIC AND SOCIAL COUNCIL – ANNUAL MINISTERIAL REVIEW**

The substantive sessions of the United Nations Economic and Social Council (ECOSOC) were held in Geneva from **1 to 25 July, 2013**.

The High-Level Segment of ECOSOC was held at the United Nations Office in Geneva on **1-4 July 2013**. The UN Secretary-General’s report<sup>29</sup> on

<sup>27</sup> <http://www.ip-watch.org/2013/07/16/arabic-tld-first-to-go-live-who-does-what-in-multi-stakeholder-internet-self-governance/>.

<sup>28</sup> New York becomes first U.S. city to get unique Web domain, CNET News, 03 July, 2013 [http://news.cnet.com/8301-1023\\_3-57592080-93/new-york-becomes-first-u.s-city-to-get-unique-web-domain/](http://news.cnet.com/8301-1023_3-57592080-93/new-york-becomes-first-u.s-city-to-get-unique-web-domain/).

<sup>29</sup> The Report of the Secretary-General on “Science, technology and innovation, and the potential of culture, for

*“Science, technology and innovation, and the potential of culture, for promoting sustainable development and achieving the Millennium Development Goals”* was prepared for the consideration of the Annual Ministerial Review (AMR)<sup>30</sup> held during the High-Level Segment. Organisations such as WIPO, WTO, and the World Bank also provided their inputs to the Report.

The focus of the AMR for 2013 was the role of science, technology and innovation (STI), and the potential of culture—and related national and international policies—in promoting sustainable development and achieving the MDGs. The Report discussed issues such as the creation of an enabling environment for the transformative change towards sustainable development through STI; policies to foster research, development and the global context of STI; internationalisation of R&D and the importance of South-South cooperation.

The Report states that “science, technology and innovation can play a critical role in each and every MDG, including by: fostering access to knowledge; increasing productivity, industrialization, economic growth and the creation of decent jobs; promoting health and access to essential drugs; achieving food security through sustainable, equitable agricultural systems and by raising production and incomes, especially of smallholder farms; promoting renewable energy technologies in order to respond to the dual challenge of reducing energy poverty while mitigating climate change”<sup>31</sup>

Some commentators have noted that the report does not adequately address the adverse impact that IP protection and enforcement may have on development and promotes an IP maximalist approach.<sup>32</sup>

The High-Level Segment also included a thematic debate on “The contribution of the Economic and Social Council to the elaboration of the post-2015 development agenda as a principal body for policy review, policy dialogue and recommendations on issues of economic and social development and for the follow-up to the Millennium Development Goals” and a high-level policy dialogue.

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promoting sustainable development and achieving the Millennium Development Goals” for the 2013 Annual Ministerial Review can be found here: [http://www.un.org/en/ecosoc/docs/adv2013/13\\_amr\\_sg\\_report.pdf](http://www.un.org/en/ecosoc/docs/adv2013/13_amr_sg_report.pdf).

<sup>30</sup> At the 2005 World Summit, Heads of State and Government mandated the Economic and Social Council with ensuring the follow-up of the outcomes of the major United Nations conferences and summits, including the internationally agreed development goals, and to hold annual ministerial-level substantive reviews (AMRs) to assess progress.

<sup>31</sup> <http://www.un.org/en/ecosoc/newfunc/amr2013.shtm>.

<sup>32</sup> <http://www.twinside.org.sg/title2/unsd/2013/unsd130609.htm>.



## **TRANS-PACIFIC PARTNERSHIP AGREEMENT (TPP)**

### **17th Round of Talks**

The 17th round of Trans-Pacific Partnership Agreement talks was held in Lima, Peru on 15-24 May 2013. The Trans-Pacific Partnership (TPP) is a proposed regional free trade agreement (FTA) being negotiated among twelve countries including the United States, Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam and most recently, Japan.

Since the start of the negotiations in 2010 no official text has been released to the public. According to the USTR, "through the TPP, the United States is seeking to advance a next-generation trade and investment agreement that will enhance US competitiveness, expand US trade in the Asia-Pacific region, and support the creation and retention of US jobs, while at the same time promoting labour rights, environmental protection, and transparency."

The negotiating groups during the 17th round of talks focused on services, government procurement, sanitary and phytosanitary standards, trade remedies, labour, and dispute settlement. Work on other legal texts, included technical barriers to trade, e-commerce, rules of origin, investment, financial services, intellectual property, transparency, competition, environment and other issues.

Intellectual property, competition, and environment have been identified as challenging areas by the negotiators. A lack of consensus is particularly seen in the area of intellectual property and pharmaceuticals. Internet "TRIPS plus" issues such as on anti-circumvention liability are also a key area of disagreement. Questions have also been raised whether the recent proposal for copyright reforms in the US will be compatible with the US position with regard to parallel importations restrictions.

According to the MSF Access Campaign, the current negotiations include a number of United States proposals that "would extend monopoly protection on high-priced pharmaceuticals and delay the entry of affordable generic medicines." In addition, several of the provisions being pushed by the US facilitate the practice of so-called 'evergreening,' where pharmaceutical companies undermine access to affordable medicines by using a variety of tactics to extend monopoly protection on drugs beyond the initial 20-year patent period.

### **18th Round of Talks**

The 18th round of TPP negotiations took place in Kota Kinabalu, Malaysia from 15-24 July, 2013. In an important development, Japan formally began its participation in the Trans-Pacific Partnership (TPP) talks, making it the 12th member—and second-largest economy—in the group. With Japan's entry, TPP countries now account for nearly 40 per cent of global GDP and about one-third of all world trade.

Additionally, in talks parallel to the TPP negotiations, Japan and the US discussed bilateral issues relating to automobile trade and nine nontariff barriers, including insurance, intellectual property and investment.

In its statement on the 18th Round of Trans-Pacific Partnership Negotiations, the USTR said that "during the latest round of negotiations, 13 negotiating groups discussed investment, competition, and market access, rules of origin, technical barriers to trade and financial services, among other issues, according to the ministry. They also found common ground on issues that allowed them to make progress in the negotiating groups covering intellectual property, competition, and environment.

A spokeswoman for the Office of the US Trade Representative strongly signalled that US negotiators would not offer any new formal proposals on the issues of the protection of pharmaceutical intellectual property (IP) and a safe harbour from litigation for tobacco regulation. However, it was also reported that US negotiators were actively working to promote a 12-year data exclusivity period for biologic drugs in the Trans-Pacific Partnership (TPP).

Although the TPP talks are officially slated to conclude by the end of the year, it is expected that an agreement will only be reached in 2014.

In an open letter to TPP countries, Médecins Sans Frontières (MSF), expressed "serious concern over provisions under negotiation in the Trans-Pacific Partnership Agreement (TPP) that threaten to restrict access to affordable medicines for millions of people, especially in low- and middle-income countries." It also urged countries to "reject provisions that will harm access to medicines and ensure that the final text is aligned with relevant global public health commitments."

In another development, China has expressed its interest in knowing more details about the largely secretive TPP negotiations. China has however not formally said it intends to join the TPP negotiations.



## Future TPP Dates

The 19th round of TPP negotiations will take place in Bandar Seri Begawan, Brunei from **August 23 to 30, 2013**.

## FREE TRADE AGREEMENTS

### EU – US FTA (Transatlantic Trade and Investment Partnership)

The first round of the trade and investment talks, for the Transatlantic Trade and Investment Partnership (TTIP) between the US and EU took place in Washington, D.C. between **8 and 12 July 2013**. The discussion centred on the approaches and ambitions for covering the 20 or so topics to be included in the agreement which is the biggest bilateral trade deal ever negotiated.

According to the EU Trade Commission it is expected that every year an average European household would gain an extra €545 and the economy would be boosted by around 0.5% of GDP, once the deal was fully implemented.<sup>33</sup> Overall, it is expected that the deal would add €119 billion and €95 billion annually to the EU and US economies respectively.

The EU mandate to commence negotiations was almost blocked when France called for the exclusion of movies and digital media (audio-visual works), also known as the “cultural exception” from the negotiating table in order to protect its film industry from foreign competition.

The second round of negotiations will take place in the week of **7 October 2013**, in Brussels where discussions are expected on the more substantive trade issues.

### India – EU Free Trade Agreement

An intergovernmental meeting in Delhi from 13-15 May, 2013 failed to iron out differences and ensure progress towards striking a deal in the India-EU FTA. The proposed deal would have an impressive scale as India is currently the 9th most important trading partner of the EU; whereas the EU is India's largest trading partner.

The negotiations which began in 2007, and have included 17 rounds of talks covering not only preferential and duty-free access provisions but also intellectual property rights protection which has proved to be a hurdle. In particular, there are fears that The European Union's push for increased IP rights protection would have a major

<sup>33</sup> <http://ec.europa.eu/trade/policy/in-focus/ttip/>.

impact on pharmaceutical patents. India, a major producer of generic pharmaceuticals, has sought increased market access in this sector. These negotiations are played out against the backdrop of the Indian Supreme Court's recent rejection of a patent application for the drug Glivec by Swiss-based Novartis. According to sources, India has made it clear to the EU that it cannot go beyond the parameters of the TRIPS Agreement and the IP laws of India in the on-going negotiations.<sup>34</sup>

Other issues which have been holding up the negotiations include tariff cuts on automobiles, government procurement and foreign direct investment (FDI) limit in the insurance sector.<sup>35</sup>

Commentators have also criticized the negotiations for its lack of transparency as no official text has been released to the public.

### EU – Thailand Free Trade Agreement

EU and Thai officials have completed the first round of negotiations for a Free Trade Agreement. The Meeting was held in Brussels from **27-31 May, 2013** and topics for negotiation included trade in goods, rules of origin, intellectual property rights, customs and trade facilitation.

As in most free trade negotiations, intellectual property rights protection related to access to medicines have been raised as a sensitive issue.

The FTA is due to be concluded by 2015.

The EU Trade Commission has stated that the ultimate objective is to negotiate a region-to-region agreement with ASEAN in the future.<sup>36</sup>

## NATIONAL DEVELOPMENTS

### United States: Non Patentability of Human Genes

A ruling on **13 June, 2013** by the US Supreme Court in *Association for Molecular Pathology v. Myriad Genetics, Inc.*, on the patenting of human genes ended the monopoly held by Myriad Genetics on testing two key genes related to breast and ovarian cancer, BRCA1 and BRCA2. The Court unanimously ruled that parts of Myriad Genetics Inc. patents on genes linked to breast and ovarian cancer improperly covered natural phenomena and thus could not be patented.

<sup>34</sup> <http://www.thehindu.com/todays-paper/tp-business/indiaeu-fta-talks-gain-momentum/article4625368.ece>.

<sup>35</sup> [http://articles.timesofindia.indiatimes.com/2013-03-21/europe/37902323\\_1\\_india-eu-fta-negotiations-free-trade-agreement-leena-menghaney](http://articles.timesofindia.indiatimes.com/2013-03-21/europe/37902323_1_india-eu-fta-negotiations-free-trade-agreement-leena-menghaney).

<sup>36</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=908>.

In its decision, the Court held that “a naturally occurring DNA segment is a product of nature and not patent eligible merely because it has been isolated, but synthetic complementary DNA (“cDNA”) is patent eligible because it is not naturally occurring.”<sup>37</sup> In other words, the Court struck down patent claims on genomic DNA that has been merely “isolated” from the body. Other parts, the court said, involve enough human intervention to be eligible for legal protection.<sup>38</sup>

This in part heralds a victory for Doctors' groups, supported by the American Civil Liberties Union and the Public Patent Foundation who had taken their legal challenge against all patents on genomic DNA to the Supreme Court. However, health advocates are still worried that the Supreme Court's allowance of patents on another type of genetic material which is laboratory-created cDNA, and not present in nature, is indeed patentable subject matter. This means that Myriad can still stop competitors from offering specific types of tests relating to the genes. In fact, Myriad has already filed two new lawsuits that seek to block the companies Ambry Genetics and Gene by Gene from administering their own BRCA tests, on the grounds that they violate other patents that Myriad holds.

It is however still hoped that one of the positive implications of the decision would be the increase in the number of companies offering tests for the BRCA genes and thus the reduction of prices for patients. The American Medical Association (AMA), which joined with other health care organizations to file an amicus brief in the case, indicated in its statement that the group welcomed an end to human gene patents. Noting that it “has long advocated for a clear prohibition against human gene patents,” the AMA called the Court's “unanimous rejection of patenting human genes . . . a clear victory for patients that will expand medical discovery and preserve access to innovative diagnosis and treatment options.”<sup>39</sup>

### **US Supreme Court Rules in Favour of Monsanto in Seed Patent Exhaustion Case**

On **May 13, 2013**, the US Supreme Court in another ruling decided that patent exhaustion did not permit a farmer to reproduce patented seeds through planting and harvesting without the patent holder's permission. The Court in *Bowman v. Monsanto*<sup>40</sup> said that a farmer who bought

patented seeds from the agro industry giant Monsanto may not reproduce them through planting and harvesting without the right holder's permission.

The case arose as the result of a farmer (Mr Bowman) replanting Monsanto's patented Roundup Ready® soybean seed. In 1999, Mr Bowman had acquired a mix of commodity soybean seeds from a local grain elevator containing Monsanto patented seeds, planted the seeds, then sprayed them with the herbicide glyphosate to which Monsanto “Roundup Ready seeds” are resistant.

In 2007, the Monsanto sued Bowman who had argued that Monsanto's patent on the seeds was exhausted by the initial sale of its soybean seeds. However, Monsanto said that if such interpretation were true then there would be no commercial incentive for Monsanto to produce agriculture technology. Chief Justice John Roberts also agreed and during oral argument had asked, “Why in the world would anybody spend any money to try to improve the seed if as soon as they sold the first one anybody could grow more and have as many of those seeds as they want?”<sup>41</sup>

The unanimous Supreme Court ruling stated that “The exhaustion doctrine does not enable Bowman to make *additional* patented soybeans without Monsanto's permission (either express or implied)”. Therefore, because Mr Bowman reproduced Monsanto's patented invention, the opinion concludes that the exhaustion doctrine does not protect him. However, the Court limited its opinion to the situation in question and did not issue a sweeping decision on patents involving self-replicating products.

This case which is seen to be a victory for intellectual property rights will have implications for both consumers and small farmers as the costs of planting crops will rocket. Further implications could also be seen for aspects of modern agriculture and for businesses based on vaccines, cell lines and software.<sup>42</sup> Some commentators have also questioned whether seeds should be subject to patent protection at all.

<sup>37</sup> <http://www.ip-watch.org/2013/06/14/myriad-case-decided-natural-human-genes-not-patentable-in-us/>.

<sup>38</sup> <http://arstechnica.com/tech-policy/2013/07/myriad-fresh-off-supreme-court-loss-keeps-on-suing-over-gene-patents/>.

<sup>39</sup> <http://www.patentdocs.org/2013/07/reaction-to-supreme-courts-decision-in-amp-v-myriad.html>.

<sup>40</sup> [http://www.supremecourt.gov/opinions/12pdf/11-796\\_c07d.pdf](http://www.supremecourt.gov/opinions/12pdf/11-796_c07d.pdf).

<sup>41</sup> <http://www.geneticliteracyproject.org/2013/05/14/scotus-rules-indiana-farmer-is-a-seed-thief-unanimously-upholds-monsantos-seed-patents/#sthash.E8s2zoT5.dpuf>.

<sup>42</sup> [http://www.nytimes.com/2013/05/14/business/monsanto-victorious-in-genetic-seed-case.html?\\_r=0](http://www.nytimes.com/2013/05/14/business/monsanto-victorious-in-genetic-seed-case.html?_r=0).