**Theme 5: Global Cooperation for IP and Development: The Role of WIPO and Other Key Actors**

**Speaking Points for the DSG**

Intellectual property (IP) rights systems may make an important contribution to the creative and innovative sectors of a country's economy by encouraging investment in research and development. This creates an intrinsic link between intellectual property and development. Article 7 of the TRIPS Agreement emphasizes that

"The protection and enforcement of intellectual property rights 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."

In other words, IP protection should not be considered an end in itself, but should act as an instrument for technological development for the benefit of society as a whole, through enhanced trade, investment, technology transfer and productive capacity building.

How an IP protection benefits an economy depends on the level of a country's development, the availability of skilled labor force and technological infrastructure. Least developed countries and other developing countries with a very low absorptive capacity, underdeveloped technological infrastructure and limited skilled labour force do not drive benefit from stronger IP protection as good as developed countries. Yet, the IP system can encourage investment and innovation when it is designed in a balanced manner, taking into account the domestic socio-economic factors. Small and medium sized enterprises (SMEs) competing in a domestic market, would likely invest more, expand and grow if they can benefit from the protection of their trademarks, utility models, trade secrets, copyright works and the good will associated with their business. At the same time SMEs in developing countries may find it difficult to access new technologies protected under a strong IP system.

Hence, development practitioners have long recognized that IP is important not only for commercial objectives, but, as a cross-cutting policy issue, also has importance for wider development objectives. For example, IP rights become relevant to developing countries in the achievement of the Sustainable Development Goals (SDGs), such as SDG 17 on "'revitalizing the global partnership for sustainable development" and its target to access science, technology and innovation and to enhance knowledge sharing on mutually agreed terms. This can only be achieved through global partnerships between the South and the North, and, as SDG 17 reminds us, through improved coordination among existing mechanisms, in particular at the United Nations level. One of the targets (Target 3.b) of SDG 3 underlines the importance of the 2001 Doha Declaration on TRIPS and Public Health for developing countries to meet key health objectives.

UNCTAD has been the leading UN agency for the integrated treatment of IP and development issues since its Third Ministerial Conference at Santiago de Chile in 1972. UNCTAD on several occasions contributed its expertise to the work of WIPO. In 1975, UNCTAD, WIPO and the UN Department of Economic and Social Affairs published a joint report on "The role of the patent system in the transfer of technology to developing countries".[[1]](#footnote-1) After the adoption of the TRIPS Agreement, WIPO requested UNCTAD to prepare a study on the implications of TRIPS for developing countries, which resulted in the UNCTAD 1997 report on "The TRIPS Agreement and Developing Countries".[[2]](#footnote-2) In 2005, UNCTAD and the International Centre on Trade and Sustainable Development (ICTSD) published the "Resource Book on TRIPS and Development", providing a development-oriented interpretation of each provision of the TRIPS Agreement.[[3]](#footnote-3) More recently, Recommendation 40 of the WIPO Development Agenda requests WIPO "to intensify its cooperation on IP related issues with United Nations agencies, according to Member States’ orientation, in particular UNCTAD, UNEP, WHO, UNIDO, UNESCO and other relevant international organizations, especially the WTO in order to strengthen the coordination for maximum efficiency in undertaking development programs".[[4]](#footnote-4) UNCTAD received its current mandate to work on IP and development from its thirteenth ministerial Conference at Doha in 2012. The Doha Mandate reiterates WIPO's leading role in IP rights issues in the UN system and requests UNCTAD to continue its work on IPR as it relates to trade and development.[[5]](#footnote-5)

What has made our work on IP more relevant than ever before is the development in recent years of a wide consensus that IP rights cannot be limited to a technical issue for legal experts alone, but that IP rights are of cross-cutting nature and potentially affect everyone's everyday life. Among the most prominent examples in this regard are (1) The role of patents in pharmaceutical innovation and in access to affordable medicines; (2) The promotion and protection of biodiversity and the fair and equitable sharing of benefits arising from the commercialization of products derived from genetic resources and traditional knowledge; and (3) The role of standard-essential patents in the development of information and communication technology. UNCTAD has focused its technical cooperation activities on the first two of these issues.

The "comparative advantage" of our technical cooperation lies in the fact that we do not focus exclusively on one aspect of IP, such as its relationship to trade, health, or how it is enforced by right holders. Instead, we adopt a cross-cutting approach, analyzing ways of using IP regimes as tools to promote public development objectives such as the local production of pharmaceuticals in developing countries or the conservation and promotion of biodiversity. For this reason, typical requests for technical assistance from developing countries concern cross-cutting issues, such as:

* Intellectual property, technology transfer, and access to educational materials;
* Genetic resources, traditional knowledge and intellectual property;
* Using intellectual property rights to stimulate local pharmaceutical production and access to medicine;
* The Interface between Intellectual Property Rights and Competition Law, among others.

**In the area of IP and health for instance,** we combine the objectives of facilitating access to medicines and promoting local industrial development. UNCTAD's work aim at addressing how intellectual property, industrial, trade, health, and innovation policies should be coherently implemented to promote access to medicine and pharmaceutical manufacturing. Industrial policy aims at developing a competitive local industry. Intellectual property protection aims at rewarding innovation Health policy, on the other hand, aims at promoting access to quality, safe and effective medicine by all.

* Some industrial policy tools, such as investment incentives, government procurement and trade facilitation can ensure the viability and competitiveness of local pharmaceutical production;
* In other instances, especially in the area of tariffs, UNCTAD's work has revealed a number of policy incoherence, such as cases where countries exempt finished pharmaceutical formulations from import tariffs and other taxes that can benefit access to medicine but impose high tariffs on imports of raw materials for local manufacturing.
* Equally, measures that affect importation of medicine, such as restriction on parallel importation under patent laws, affects access to medicine, with limited role to promote industrial policy in countries with weak or no pharmaceutical manufacturing capacity.
* Finally, industrial policy need to respond to medicine regulatory requirements, such as ensuring the safety, quality and efficacy of medicine, compliance with Good Manufacturing Practice, control of subs-standard products from entering the market.

In the last two years, UNCTAD undertook capacity building workshops to assess key policy coherence issues and the means to address them. The capacity building workshops were conducted, at national level, in Ethiopia, Ghana, Kenya, Tanzania and Uganda, and at regional level in East African Community. The capacity building workshops were designed to facilitate discussion between and among the private sector, medicine regulatory agencies, customs officials, intellectual property offices, competition regulation authorities, investment finance providers, research organizations, and policy makers, which usually includes ministries responsible for health, trade and industry. Often, the regulatory agencies, policy makers, pharmaceutical manufacturers and researchers were meeting for the first time to discuss polices and measures to ensure coherence between the objectives of access to medicine, intellectual property and other industrial policies.

Participants of our capacity building programmes have provided very positive feedback in this regard. For example, one participant at a regional workshop on IP and local pharmaceutical production for South-East Asia stated that due to the workshop she now has a more comprehensive understanding of patents and their implications for a country's public health policies, and is able to make more balanced decisions in the context of her work.[[6]](#footnote-6) Another example relates to a recent workshop for Thailand and Vietnam, which has generated increased coordination among government ministries in favor of local pharmaceutical production. Accordingly, the Thai Food and Drug Administration (FDA) of the Ministry of Health and the Ministry of Industry after the workshop decided to work together to increase the tax exemption benefit for local pharmaceutical investment.[[7]](#footnote-7)  Finally, the work undertaken by UNCTAD in Ethiopia on promoting coherence among health, IP, trade and investment policies has resulted in UNCTAD's further active involvement in Ethiopia's second Growth and Transformation Plan (GTP II) and more particularly its national strategy on local pharmaceutical production. Ethiopia's pharmaceutical market is estimated at more than $ 400 million, at an annual growth rate of 25 per cent.[[8]](#footnote-8) The national strategy on local production seeks to use this momentum to generate growth and access to medicines in Ethiopia.

**The second focus of UNCTAD's work on intellectual property concerns the conservation of biodiversity.** UNCTAD undertakes capacity building programme on biodiversity and intellectual property in developing countries at regional and national level, for the benefit of government agencies responsible for biodiversity conservation, intellectual property offices, and representatives of traditional communities, academia and civil society. The programme focuses on

* promoting better coherence on the preservation and sustainable use of biodiversity and
* enhancing the understanding of the interface between access and benefit sharing and the intellectual property regimes;
* building capacity of developing countries in negotiations for access to genetic resources and traditional knowledge (ABS) agreements.

UNCTAD's work programme is delivered via blended learning course, consisting of distance learning and face to face workshops. During distance learning part of the capacity building programme, participants cover:

* International instruments, including principles of the Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization;
* The means for the recognition and protection of traditional knowledge;
* the debate and current developments on patent laws to require patent applicants to disclosure the source and origin of genetic resources and associated traditional knowledge, as well as the role of traditional knowledge digital library;
* The potential for use of trademarks, collective marks, and certification marks, as well as geographical indications as a means to preserve traditional knowledge; and
* Terms and conditions of ABS agreements.

During a face to face workshop, UNCTAD undertakes simulation exercise on negotiation of ABS agreements, training on patent search and identification of the use genetic resources and traditional knowledge in patent applications, and facilitates exchange of experience and review of recent case law.

So far UNCTAD has undertaken capacity building at regional level for Central and Latin American countries (2015 and 2016), South Asian region (2014) and members of Association of Southeast Asian Nations (ASEAN, 2013), and at national level for Cambodia (2015) and Peru (2016).

**Based on the experience of UNCTAD so far, there are some challenges associated with harnessing IP for development that requires better international cooperation.**

* WIPO members have succeeded in adopting the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled. The Treaty emanates from the WIPO Development Agenda, under which UNCTAD is indicated as potential partner for WIPO. However, there are other norm-setting issues recognized under the WIPO development agenda awaiting progress. In this regard, the one area of concern is the unfulfilled task of developing international instruments for the protection of traditional knowledge. UNCTAD closely follows the negotiations at the WIPO's intergovernmental committee on intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.
* The other area of concern is the way the intellectual property system benefits and affects innovation at global scale. Much of the technologies that the world needs to tackle climate change are yet to be developed. Although intellectual property remain an incentive, rapid deployment of technologies beneficial to mitigate climate change, or provide communities the means to adapt to climate change remain critical. In relation to this, and in order to support the sustainable development goals, world leaders have also agreed to establish a Technology facilitation mechanism.[[9]](#footnote-9) The mechanism comprises of a United Nations inter-agency task team on science, technology and innovation for the sustainable development goals. Both UNCTAD and WIPO participate in the UN interagency task force. Realizing the goals of SDGs, the Technology facilitation mechanism, and international cooperation on climate change would need a robust cooperation at international level, to enable the technology transfer promise of the intellectual property system.

The SDGs, being multifaceted issues, have added impetus to the need for improved coordination between UN sister organizations with expertise on the issues of IP and development. Underlying the SDGs, through which developing countries have spelled out their vision for the future, is the notion that developing countries have the prerogative to ask any competent organization to assist them with the implementation of the SDGs. In order to respond effectively to the call by developing countries, the UN agencies and programmes need to do better than to engage in disputes over exclusive mandates and competition over donor resources. The SDGs, including in the area of IP, will require that organizations like WIPO and UNCTAD cooperate effectively.

In this regard, UNCTAD continues to be very committed to assisting WIPO and to contribute its expertise. We gratefully acknowledge the willingness of WIPO Secretariat to involve UNCTAD in important activities such as the annual WIPO/WTO advanced course on IP for Government officials, to which UNCTAD's Intellectual Property Unit has been contributing over the last years, including in March of this year. An example of effective cooperation in technical assistance between our agencies is the Rwanda Intellectual Property Policy of 2009, which was jointly developed by UNCTAD and WIPO.[[10]](#footnote-10) Another example is the 2008 trilateral study prepared jointly by UNCTAD, WIPO and the Secretariat of the Convention on Biological Diversity (CBD) on "The Role of Intellectual Property Rights in Technology Transfer in the Context of the Convention on Biological Diversity".[[11]](#footnote-11) Moreover, UNCTAD invited WIPO to provide comments on what has become our main reference in the provision of technical advisory and capacity building services in the area of IP and access to medicines, i.e. UNCTAD's 2011 "Reference Guide to Using Intellectual Property Rights to Stimulate Pharmaceutical Production in Developing Countries".[[12]](#footnote-12) Finally, UNCTAD contributed its expertise to various technical events organized by WIPO, such as in the area of the protection of pharmaceutical test data[[13]](#footnote-13) and the issue of incremental innovation.[[14]](#footnote-14)

Building on this existing cooperation, I would encourage increased coordination among our agencies in the context of both the Development Agenda and the SDGs to explore further synergies of work. This could be achieved through increased sharing of information on technical cooperation activities and making available speaking slots for each other. The multi-faceted nature of IP requires technical cooperation providers to combine their strengths. Otherwise, developing countries may not get the full picture of what IP means for their development. I am convinced that WIPO's experience in the management of IP rights and the administration of international IP treaties and UNCTAD's expertise in analyzing the interfaces between IP, trade, investment and technology can do a lot to assist developing countries in realizing their vision for the future.

1. TD/B/AC.11/19/Rev.1 [↑](#footnote-ref-1)
2. <http://unctad.org/en/docs/ite1_en.pdf> [↑](#footnote-ref-2)
3. <http://www.iprsonline.org/unctadictsd/ResourceBookIndex.htm> [↑](#footnote-ref-3)
4. <http://www.wipo.int/ip-development/en/agenda/recommendations.html> [↑](#footnote-ref-4)
5. See Paragraph 65 (j) of the Doha Mandata: "Acknowledging that WIPO has the lead in IPR issues in the United Nations system, UNCTAD will continue its work on IPR as it relates to trade and development." [↑](#footnote-ref-5)
6. Regional Workshop on IP and Local Pharmaceutical Production for South-East Asia, December 2012, Nusa Dua, Indonesia. Participant's response in workshop evaluation questionnaire. [↑](#footnote-ref-6)
7. Workshop on Policy Coherence for Local Pharmaceutical Production and Access to Medicines: The Experiences of Thailand and Vietnam, September 2015, Hua Hin, Thailand. Personal communication from Thai FDA staff. [↑](#footnote-ref-7)
8. <http://www.bloomberg.com/news/articles/2016-01-21/54-capital-plans-ethiopian-pharma-factory-after-30-million-deal> [↑](#footnote-ref-8)
9. https://sustainabledevelopment.un.org/topics/technology/facilitationmechanism [↑](#footnote-ref-9)
10. <http://www.wipo.int/edocs/lexdocs/laws/en/rw/rw003en.pdf> [↑](#footnote-ref-10)
11. <https://www.cbd.int/tech-transfer/techstudyIP.shtml> [↑](#footnote-ref-11)
12. <http://unctad.org/en/pages/PublicationArchive.aspx?publicationid=437> [↑](#footnote-ref-12)
13. WIPO Symposium on the Evolution of the Regulatory Framework of Test Data – *From the Property of the Intellect to the Intellect of Property*, 8 February 2011; and WIPO/Stockholm Network Life Sciences Symposium: *Intellectual Property and Life Sciences Regulation*, 16 November 2007. [↑](#footnote-ref-13)
14. Seventh Annual WIPO Forum on IP and SMEs in OECD countries, 14 September 2009. [↑](#footnote-ref-14)