

Third World Network Statement on Exceptions and Limitations (28 July 2015)
WIPO Standing Committee on the Law of Patents (22nd Session)

Thank you Madam Chair

We take this opportunity to express our concern on the efforts of developed countries to limit policy space with regard to the exceptions and limitations of intellectual property rights in general and patents in particular.

Developed countries have been using free trade agreements to limit the policy space on determining the limitations and exceptions. The leaked text of the Trans-Pacific Partnership Agreement (TPP) clearly shows that there are proposals to prevent countries from rejecting patents on the grounds of lack of enhanced efficacy. The TPP text also contains language to make it obligatory to provide patents on new uses of known medicines. Further, it also contains language for patent term extension.

Of late, pharmaceutical transnational corporations, like Eli Lilly, have used the Bilateral Investment Treaty (BIT) to seek compensation against the rejection of their patents in Canada. This use of BITs is against the use of public interest limitations and exception contained in various national laws and may bring a chilling effect which has the potential to prevent other countries from taking such steps.

Apart from these efforts, developed countries are using political pressure to prevent the developing countries from using TRIPS flexibilities. Use of Special 301 reports in the United States of America is a case in point.

In this regard we would like to bring to Member States' attention the recommendations of the Human Rights Council's social forum on access to medicines. The social forum recommended:

“TRIPS flexibilities and compulsory licensing should be used to their fullest and resort to political pressure to undermine these tools or impose TRIPS plus provisions in trade agreements must be regarded as a violation of human rights obligations, calling for accountability in the universal periodic review. The legally binding petitions procedure under the Optional Protocol to the Convention on Economic, Social and Cultural Rights, provides a means for interpretation and enforcement of the right to health”.

Therefore we recall all Member States to respect their Human Rights obligations on access to medicines and the right to use the benefits of science and its applications, and to desist from using legal or political pressure to prevent other countries from using TRIPS flexibilities.

Against this background it is of utmost importance for the SCP to carry out a robust work program on limitations and exceptions. In this regard two proposals submitted by Brazil are very much relevant. Both phase two and phase three of the Brazilian original proposal are important to have a good understanding as well as improving the actual use of exceptions and limitations.

Therefore it is also of utmost importance for the SCP to approve the work program mentioned in SCP/19/6 i.e. assess what exceptions and limitations are effective to address development concerns and what are the conditions for their implementation.

Thank you