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# THE IMPLICATIONS OF BILATERAL AND REGIONAL INVESTMENT AGREEMENTS ON INTELLECTUAL PROPERTY

**Keerthi Kumburuhena<sup>1</sup>**

<sup>1</sup>*LL.M in International Commercial Law (Aberdeen), Magistrate/ Additional District Judge, Bandarawela, Sri Lanka.*

## ABSTRACT

*Investment Treaties on Intellectual Property (IP) are agreements between countries to attract foreign direct investment<sup>1</sup> by exploiting IP, while providing benefits which are subject to the agreed terms and conditions upon them. In other words, investment treaties encourage investments between states and non-governmental organisations.<sup>2</sup> There are many types of investment treaties including bilateral, multilateral and regional ones. This article discusses the implications of Bilateral Investment Treaties (BITs) and Regional Investment Treaties (RITs) on IP.*

*BITs are made between two countries, whereas RITs are made among several countries within a region. The latter may sometimes have been referred to as investment chapters of Regional Trade Agreements (RTAs). BITs could sometimes exist in the form of a Free Trade Agreement (FTA) such as the 1994 US-Canada North American Free Trade Agreement (NAFTA) or the Canada-European Union Comprehensive Economic and Trade Agreement (CETA). Although intellectual property rights are territorial, investment treaties could lift them up to create bilateral and regional economic relationships to have competitive advantages by mutual exploitation of innovations.*

**KEYWORDS:** *investment treaties, non-governmental organisations, Free Trade Agreement*

## INTRODUCTION

Investment Treaties on Intellectual Property (IP) are agreements between countries to attract foreign direct investment<sup>3</sup> by exploiting IP, while providing benefits which are subject to the agreed terms and conditions upon them. In other words, investment treaties encourage investments between states and non-governmental organisations.<sup>4</sup> There are many types of investment treaties including bilateral, multilateral and regional ones. This article discusses the implications of Bilateral Investment Treaties (BITs) and Regional Investment Treaties (RITs) on IP.

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Sri Lanka has become party to number of investment treaties on IP, including 2001 India-Sri Lanka Free Trade Agreement (FTA), 1993 USA-Sri Lanka BIT on Encouragement and Reciprocal Protection of Investment, 1991 USA-Sri Lanka BIT

on Agreement on the Protection and Enforcement of Intellectual Property Rights (IPR), 1982 Japan-Sri Lanka BIT on Concerning the Promotion and Protection of Investment. In addition, we are party to several Regional Economic Integration Treaties such as the 2006 Agreement on South Asian Free Trade Area, 2004 Framework Agreement on the BIMST-EC Free Trade Area, 1989 Global System of Trade Preferences among developing countries, 1985 Charter of the South Asian Association for Regional Cooperation and 1976 First Agreement on Trade Negotiations among developing member countries of the Economic and Social Commission for Asia and the Pacific.

### **BENEFITS ACCRUABLE FROM INVESTMENT TREATIES ON IP**

There are many benefits of Investment Treaties on IP for both developed and developing countries. For instance, if USA and Sri Lanka have a BIT on a patented pharmaceutical drug, the latter could seek price benefits, while the former could insist on prohibiting compulsory licences during the agreed period. Compulsory licensing is a process where a third party may obtain a non-exclusive licence from the Director General of IP to exploit a patent. According to Section 86 (2) (a) of the IP Act 2003 of Sri Lanka, 'Any person, body of persons, a government department or a statutory body may make an application to the Director General for the purpose of obtaining a licence to exploit a patent...'<sup>5</sup>

According to Section 86 (2) (b) of the said Act, 'Upon the receipt of such application, the Director General may issue a licence for exploitation if he is satisfied that the applicant has made efforts to obtain approval from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time'.<sup>6</sup>

A similar feature could be seen within the compulsory licensing system in the UK. Accordingly, if the applicant of a patent had not commercialised the patented product over the last three years, he is prevented from enjoying the exclusive rights on it because a compulsory licence could be granted to a third-party applicant.<sup>7</sup>

The developed countries could use BITs not only including the provisions based on Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS) 1994 (as amended in 2017), but also 'TRIPS-plus' provisions to maintain a higher standard in which they are interested in<sup>8</sup> and bring in significant revenue by exporting IP.<sup>9</sup> Then, the developing and the Least Developed Countries (LDC) could achieve significant benefits from investment treaties, as they depend on many innovations generated in the developed world to satisfy their basic needs such as public health, agriculture and genetic resources.<sup>10</sup>

On the other hand, innovations are created by using inventors' resources<sup>11</sup> by following specific

inventive steps.<sup>12</sup> Therefore, it would not be unreasonable for developing countries to accept any reasonable terms and conditions in BITs in order to gain access to essential IP products and services in developed countries. Although investment treaties are mainly focused on patents, they could also be created to exploit copyrights as the right holder could outsource the publishing work<sup>13</sup> to a publisher abroad and generate royalty.

Furthermore, when considering the effects of free movement in European Union (EU), it is apparent that it may conflict with territorial IP rights. Investment treaties could provide a solution to this by providing certain restrictions or exemptions among the members. In addition, when considering the health sector, such treaties could support more for developing an effective vaccination on diseases such as Ebola, which has substantially affected many LDCs. When considering the RITs in African countries, they provide numerous benefits among members by expanding market and resources.<sup>14</sup> Not only developing countries, but also developed countries could use investment treaties to create protection of IP for different areas. For instance, in the case of *Anheuser-Busch, Inc v Budvar*, the advantages of a BIT between Austria and Czechoslovakia in terms of protecting a trademark were considered in depth.<sup>15</sup>

### **NEGATIVE IMPLICATIONS**

There would be no significant issues if all investment treaties contained only minimum standards laid down by TRIPS. Unfortunately, it does not seem to happen at the moment, because most of the developed countries tend to include 'TRIPS-plus' provisions, such as providing exclusivity for data, extending patent terms, creating links between patents, prohibiting parallel importation and restricting compulsory licences.<sup>16</sup> For instance, most of the FTAs between EU and the developing countries contain provisions to extend patent terms for medicines.<sup>17</sup> Under these circumstances, three main negative implications could be identified in the area of investment treaties on IP such as the implementing of substantially higher economic standards, the adverse impacts on the harmonization of IP and the impact upon the public health among member countries.

First, these treaties may maintain substantially higher economic standards, which would adversely influence even the non-signatories of those treaties. Consequently, importance of multilateral negotiations under the umbrella of World Trade Organisation (WTO) could be undermined.<sup>18</sup> In addition, despite long term economic disadvantages, there is a tendency that many developing countries accept BITs including 'TRIPS-plus' provisions due to short term benefits.<sup>19</sup> For instance, EU and USA have imposed higher patent protection on LDCs in Africa, by including 'TRIPS-plus' provisions in investment treaties.<sup>20</sup>

According to the 'Most Favoured Nation (MFN)' principles for the purpose of IP protection, with regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a WTO member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other members.<sup>21</sup> In other words, this principle equalises the granting of privileges among member nations.<sup>22</sup> For instance, if USA and Sri Lanka is to sign a BIT on IP protection, the same benefits should be offered to other WTO members, subject to terms and conditions provided in the agreement. When considering the General Agreement on Tariffs and Trade (GATT) 1947 (as amended in 1994) and The General Agreement on Trade in Services (GATS) 1995, both contain the MFN principle along with an exemption to it.<sup>23</sup>

However, TRIPS does not expressly provide many exemptions to the MFN principle, although it was formulated to achieve the principles of GATT.<sup>24</sup> The exemptions provided in the Article 31 *bis* have a limited application. Therefore, such 'TRIPS-plus' investment treaties may lead to spread economically higher terms and conditions among countries which are not signatories to those treaties. For instance, a string of investment treaties signed by developed states such as the USA and EU could establish new IP standards which consequently prevent the developing countries and LDCs relying on the flexibilities provided by TRIPS. This is not what was truly expected from the mandate of TRIPS. For instance, in terms of compulsory licensing in copyrights, the licensee has the right to deny payments on grounds of unfair terms in the licence.<sup>25</sup> A BIT containing a higher economic standard may sometimes deprive such rights and open a forum for unfair terms. Consequently, entities such as 'Patent Trolls'<sup>26</sup> may sometimes attempt to obtain advantage from conflicts arising out of BITs.

Furthermore, it could be harmful if a BIT was created in a manner that it could prevent the application of domestic competition laws. As a result, a set of anti-competitive terms and conditions such as unfair price fixing, limiting of production, avoidance of selling to potential buyers could be included in the BIT. In addition, there could also be a substantial adverse impact if such BIT falls within the scope of Technology Transfer Block Exemption (TTBE), which provides exemption to the agreed parties to avoid any effect from the competition law.

Secondly, investment treaties could have an adverse impact upon the harmonization of IP. The TRIPS agreement has taken an effort to globalize the general principles of IP. According to TRIPS, a balance must be struck between the right holders and the beneficiaries when protecting and enforcing IP.<sup>27</sup> For instance, compulsory licences could be granted if the patentee refuses to issue a licence on reasonable commercial terms and conditions.<sup>28</sup> In addition, although the patentee has a right of commercial

exploitation of patent, once the patent expires, anyone can exploit it. These general principles have been established by the TRIPS to enable flexibility in the process of harmonization of International IP Law.

However, investment treaties which contain 'TRIPS-plus' provisions, could significantly damage the fundamental character of the aforesaid general principles of IP laid down by TRIPS. For instance, a 'TRIPS-plus' agreement might contain a provision to extend the duration of a patent beyond twenty years, which would ultimately, prevent public interest in exploiting the patent after the statutory prescribed period mentioned under Section 83 (1) of the IP Act No.36 of 2003 which says '...a patent shall expire twenty years after the filing date of application for its registration'.<sup>29</sup> The purpose of patent law is not to provide an eternal absolute monopoly, but to offer a time limited exclusive right to the patentee to commercially exploit the patent<sup>30</sup> and conclude licensing contracts<sup>31</sup> and assignments<sup>32</sup> subject to a public disclosure.<sup>33</sup> This limited monopoly is a type of reward<sup>34</sup> to encourage him. Therefore, it is expected that the public has the right to commercially exploit the patent without any restriction from the patentee after the patent expires. However, that objective could not be achievable in case where a BIT had 'TRIPS-plus' provisions, which could give discretion to a state to extend the patent continuously and dominate the market as long as they expected. Consequently, such an imbalance status of IP protection would be extended as a global standard because of MFN principles.<sup>35</sup>

Thirdly, investment treaties could negatively affect public health among member countries. The right to access essential medicine is a part of a human right of physical and mental health.<sup>36</sup> However, due to 'TRIPS-plus' investment treaties, a negative impact had been created against this human right. For instance, although there is a scarcity of essential medicine in Sub-Saharan Africa, they are not contemplating upon the flexibility provided by TRIPS. This could be attributed to political pressure and risk of economic sanctions.<sup>37</sup>

In terms of public health, a compulsory licensing system has become a vital component of IP, especially in the case of LDCs and also in the developing world. Although TRIPS has not provided specific limitations for issuing compulsory licenses, BITs have created rigid limitations. For instance, in US-Vietnam BIT, compulsory licensing is limited to emergency situations, antitrust remedies and public non-commercial use.<sup>38</sup> This is not compatible with the Doha Declaration,<sup>39</sup> which has given absolute freedom to determine the grounds upon granting compulsory licences. For instance, in the UK, a compulsory licence could be granted if the patentee had not exploited the patent within a period of three years from the grant.<sup>40</sup> In India, in *Natco Pharma Ltd v Bayer Corporation*, Court upheld the decision of the patent controller granting compulsory

licence to Natco Pharma to commercially utilize the sale of a drug for cancer patients in India.<sup>41</sup> The ground for granting this licence was a refusal made by Bayer Corporation to issue a licence to Natco on their request.

Thus, if a developing country or a LDC become a party to a BIT with a developed country, then such country has to follow the conditions set out by the BIT which would sometimes ultimately restrict the IP rights of the latter to keep the former in a dominant position. This has become a noteworthy issue, especially when importing patented pharmaceutical products because BITs could sometimes unfairly prevent or control the access to essential medicine.<sup>42</sup> In addition, certain long-term BITs could define highly restrictive conditions with respect to the compulsory licensing of drugs. Consequently, this would create an unfair monopoly and always keep the developed country in an unapprovable dominant position.

Generally, LDCs tend to seek benefits by adopting at least the minimum standards of TRIPS while developing countries preferred to adopt it with minor modifications. For instance, in India, an innovation is patentable only if it is remarkably different in terms of properties with regard to efficacy.<sup>43</sup> Whereas the Section 3 (d) of the Indian Patent Act says, 'the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant'.<sup>44</sup>

The rationale behind such provision is to increase the availability and accessibility of medicine to the large number of population. In the case of *Novartis v Union of India*, Court held that when designing the patent law, a special reference must be given to the economic conditions of the country, scientific and technological advancement and its future needs.<sup>45</sup> This approach is consistent with basic patentability standards<sup>46</sup> laid down in TRIPS.

However, such flexibility could be diminished by investment treaties if they seek to force the implementation of higher economic standards preferred by developed countries to keep them in a dominant position. This situation could have been different only in case where the patent is owned by a developing country which holds the upper hand. However, it could be rare because most of the developing countries in general, need to adhere to the terms and conditions imposed by developed countries in order to have access to a preferential market.

### **A DESIRABLE PRACTICE**

Over control or less control over IP could cause problems.<sup>47</sup> Therefore, a balance must be struck between the agreed parties in investment treaties. According to David Vaver, 'although

balance is not a universal solvent, it emphasizes the need for equal treatment and respect'.<sup>48</sup> This point must be considered when preparing investment treaties on IP. When considering the pharmaceutical industry, investment treaties should not impose high restrictions on compulsory licensing, especially on Anti-Retroviral Drugs, as such licences are an effective method which could open the doors to those drugs without any hindrance.<sup>49</sup> Investment Treaties should not restrict the 'Principle of Exhaustion'<sup>50</sup>, because this principle could assist developing countries to enjoy the benefits of parallel importing of IP, especially in the realm of essential medicine.<sup>51</sup> A sound example is the African Regional Trade Agreement (RTA) which has significantly improved the parallel importing of drugs within the designated free trade zone.<sup>52</sup>

In order to achieve a successful balance between intellectual property rights and public interest, investment treaties should be streamlined. For instance, desirable practices such as MPI Principles 2012 introduced by Max Planck Institute for Innovation and Competition (MPI) may be of assistance in this regard.<sup>53</sup> According to these principles, parties to investment treaties should develop their 'own proactive agenda' and 'evaluate the impact' of it against the public interest.<sup>54</sup> This would be a significant strategy for a developing country such as Sri Lanka, to do an impact assessment about the long-term implications to the status of our national economy and the public health sector, especially in terms of the pharmaceutical industry. MPI principles insist that the terms and conditions of an investment treaty should go through a 'public negotiation process'<sup>55</sup> and the agreement should be subjected to previous 'international obligations'.<sup>56</sup>

One of the main issues in respect of investment treaties was the effect to public health, because of higher limitations on compulsory licensing and restrictions on parallel imports. Such issues could be avoided by applying the MPI principles, because it guides to be consistent with the general principles laid down by TRIPS on Public Health.<sup>57</sup> In addition, if more MFN exemptions could be introduced within TRIPS, it could then avoid the adverse effects of BITs over non-signatories of those treaties. Further, it would also avoid spreading higher economic 'TRIPS-plus' standards throughout the world. The TRIPS flexibilities such as parallel trade and compulsory licensing could be put forward by the RTAs between Sri Lanka and other developing countries to achieve a balance between public interest and pharmaceutical patent holders.

### **CONCLUSION**

Despite the prospects of many benefits for both developed and the developing world by being a party to investment treaties on IP, one cannot overlook the disadvantages as well. The negative impact has reduced the value of flexibilities provided by TRIPS, and therefore has an adverse effect upon

the developing countries and the LDCs rather than developed countries. It is necessary to strike a balance between the rights holder and public interest as a solution to utilize investment treaties in a more effective manner. In this regard, providing compulsory licences, parallel importing of IP and the principle of exhaustion are significant. Finally, MPI principles may be used as a sound set of guidelines, which are likely to assist in striking a balance between the intellectual property rights and the public interest.

## END NOTES

<sup>1</sup> Y. Mupangavanhu, 'African Union rising to the need for continental IP protection? The establishment of the Pan-African Intellectual Property Organization' (2015) 59 (1) Journal of African Law 1, 3.

<sup>2</sup> *Republic of Ecuador v Occidental Exploration and Production Company* [2005] EWHC 774 (Aikens J).

<sup>3</sup> Y. Mupangavanhu, 'African Union rising to the need for continental IP protection? The establishment of the Pan-African Intellectual Property Organization' (2015) 59 (1) Journal of African Law 1, 3.

<sup>4</sup> *Republic of Ecuador v Occidental Exploration and Production Company* [2005] EWHC 774 (Aikens J).

<sup>5</sup> Intellectual Property Act No. 36 of 2003 of Sri Lanka, s 86 (2) (a).

<sup>6</sup> *ibid* s 86 (2) (b).

<sup>7</sup> The Patents Act 1977 UK, s 48.

<sup>8</sup> Manoranjan, 'FTAs knitting a web of higher intellectual property standards globally?' (2015) 37(2) European Intellectual Property Review 97.

<sup>9</sup> Carsten Fink, Patrick Reichenmiller, 'Tightening TRIPS: Intellectual Property Provisions of U.S. Free Trade Agreements' in Richard Newfarmer (eds.) 'Trade, Doha, and Development: A Window into the Issues' (2nd edn, IBRD 2006) 289.

<sup>10</sup> Commission for Intellectual Property Right 'Integrating Intellectual Property Rights and Development Policy' (CIPR 2002) 10.

<sup>11</sup> Charlotte Waelde, Graema Laurie, Abbe Brown, Smita Kheria and Jane Cornwell, *Contemporary Intellectual Property Law and Policy* (3rd edition, OUP 2013) 7, para 1.23.

<sup>12</sup> Intellectual Property Act No.36 of 2003 of Sri Lanka, s 63; and Patents Act 1977 UK, s 1 (1) (b).

<sup>13</sup> David Bainbridge, *Intellectual Property* (8<sup>th</sup> edn, Pearson 2010) 31, [1].

<sup>14</sup> Olasupo Owowe, 'The TRIPS Agreement and regionalism: free trade and access to medicines in Africa;' (2015) 37(4) E.I.P.R 232, 238. as cited in (S.J. Powell and T. Low, "Is the WTO Quietly Fading Away? The New Regionalism and Global Trade Rules" (2011) 9 Georgetown Journal of Law & Public Policy 261, 267).

<sup>15</sup> [2011] E.T.M.R. 31.

<sup>16</sup> Manoranjan, 'FTAs knitting a web of higher intellectual property standards globally?' (2015) 37(2), European Intellectual Property Review 97.

<sup>17</sup> Daniel Acquah, 'Extending the limits of protection of pharmaceutical patents and data outside the EU - is there a need to rebalance?' (2014) 45(3) International Review of Intellectual Property and Competition Law 256.

<sup>18</sup> N.S. Gopalakrishnan, 'Principles for intellectual property provisions in bilateral and regional agreements - reflections on the ongoing negotiations of an EU-India FTA'(2013) 44(8) International Review of Intellectual. Property and Competition Law 920.

<sup>19</sup> *ibid* 920.

<sup>20</sup> Thaddeus Manu, 'Essential medicines and the complexity of implementing nationally based compulsory licensing: on the need for a regional system of compulsory licensing in sub-Saharan Africa' (2014) 36 (1) European Intellectual Property Review 39, 40.

<sup>21</sup> Agreement on Trade-Related aspects of Intellectual Property Rights (TRIPS) (as amended on 23 January 2017), art 4.

<sup>22</sup> Peter Drahos, 'BITS and BIPS, Bilateralism in Intellectual Property (2001) 4 Journal of World Intellectual Property 791, 802.

<sup>23</sup> General Agreement on Tariffs and Trade (GATT)1947 (as amended in 1994), art I ; and General Agreement on Trade in Services (GATS) 1995, art II

<sup>24</sup> TRIPS, preamble (a).

<sup>25</sup> Lionel Bently, Brad Sherman, *Intellectual Property Law* (4<sup>th</sup> edition, OUP 2014) 302, para 7.1.

<sup>26</sup> Sujitha Subramanian, 'Patent trolls in thickets: who is fishing under the bridge?' (2008) 30 (5) European Intellectual Property Review 182.

<sup>27</sup> TRIPS, art 7.

<sup>28</sup> *ibid* art 31 and art 31 *bis*.

<sup>29</sup> Intellectual Property Act No.36 of 2003 of Sri Lanka, s 83 (1).

<sup>30</sup> TRIPS, art 28 (1) (a) and (b); and Intellectual Property Act No.36 of 2003 of Sri Lanka, s 84 (1) (a).

<sup>31</sup> TRIPS, art 28(2); and Intellectual Property Act No.36 of 2003 of Sri Lanka s 84 (1) (c); and Patent Act 1977 of UK, s 30 (4).

<sup>32</sup> Intellectual Property Act No.36 of 2003 of Sri Lanka, s 84 (1) (b); and Patent Act 1977 UK, s 30 (2).

<sup>33</sup> Intellectual Property Act No.36 of 2003 of Sri Lanka, s 71 (3); and Patent Act 1977 UK, s 14 (3) and s 72 (1) (c) and (d).

<sup>34</sup> Charlotte Waelde, Graema Laurie, Abbe Brown, Smita Kheria and Jane Cornwell, *Contemporary Intellectual Property Law and Policy* (3rd edition, OUP 2013) para 1.31.

<sup>35</sup> Manoranjan, 'FTAs knitting a web of higher intellectual property standards globally?' (2015) 37(2), E.I.P.R 97, 99.

<sup>36</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), art 12.

<sup>37</sup> Thaddeus Manu, 'Essential medicines and the complexity of implementing nationally based compulsory licensing: on the need for a regional system of compulsory licensing in sub-Saharan Africa' (2014) 36 (1) *European Intellectual Property Review* 39, 40.

<sup>38</sup> Carsten Fink, Patrick Reichenmiller, 'Tightening TRIPS: Intellectual Property Provisions of U.S. Free Trade Agreements' in Richard Newfarmer (eds.) 'Trade, Doha, and Development: A Window into the Issues' (2nd edn, IBRD 2006) 289, 290.

<sup>39</sup> WTO Ministerial Conference in Doha on November 14, 2001.

<sup>40</sup> The Patents Act 1977, s 48 (1) and 48 (A).

<sup>41</sup> *Bayer Corporation v Union Of India* (Bombay High Court), (Writ Petition No. 1323 of 2013) Judgment dated 15 JULY 2014 (Sanklecha CJ); and *Bayer Corporation v Union of India* (special leave petition-(Supreme Court), Order dated 12 December 2014.

<sup>42</sup> Manoranjan, 'FTAs knitting a web of higher intellectual property standards globally?' (2015) 37(2), *E.I.P.R* 97, 98.

<sup>43</sup> The Patent Act 1970 of India (as amended in 2005), s 3 (d).

<sup>44</sup> *ibid* s 3 (d).

<sup>45</sup> *Novartis AG v India (Supreme Court of India)* Civil Appeal No 2706-2716 of 1 April 2013 (Novartis case), [38] [Aftab Alam J]; AIR 2013 SC 1331.

<sup>46</sup> TRIPS, art 27 (2), (3).

<sup>47</sup> Graham M. Dutfield and Uma Suthersanen, 'the innovation dilemma: intellectual property and the historical legacy of cumulative creativity' (2004) 4 *IPQ* 379, 421.

<sup>48</sup> D Vaver, 'Intellectual property: still a "bargain"?' (Editorial) *E.I.P.R.* 2012, 34(9), 579, 586.

<sup>49</sup> Horace E. Anderson, 'We Can Work it Out: Co-Op Compulsory Licensing as the Way Forward in Improving Access to Anti-Retroviral Drugs', (2010) 16 *B.U. J. Sci. & Tech. L.* 167.

<sup>50</sup> TRIPS, art 6.

<sup>51</sup> Olasupo Owoeye. 'Access to medicines and parallel trade in patented pharmaceuticals' (2015) 37(6), *E.I.P.R.* 359.

<sup>52</sup> Olasupo Owoeye, 'The TRIPS Agreement and regionalism: free trade and access to medicines in Africa,' (2015) 37(4) *E.I.P.R* 232.

<sup>53</sup> Jeremy De Beer, 'Applying best practice principles to international intellectual property law making' (2013) 44(8) *IIC* 884, 886.

<sup>54</sup> Rochelle Cooper Dreyfuss, 'The Max Planck principles as an aspect of global administrative law' (2013) 44 (8) *IIC* 906, 909.

<sup>55</sup> MPI principles 2012, para 17.

<sup>56</sup> *ibid*, para 20.

<sup>57</sup> MPI principles 2012, para 21.

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