



## I. Introduction

The inclusion of TRIPS-plus intellectual property (IP) provisions in bilateral agreements between the United States (US) and several developing countries has been the focus of much concern over the past few years. As of March 1, 2007, the US has signed ten bilateral agreements containing such provisions, largely with countries from Latin America and the Middle East.<sup>1</sup> However, the geographic scope of US activity is small in comparison to that of the European Union.

Ending an informal moratorium<sup>2</sup>, the EU has begun in late 2006 to increase its activity in negotiating bilateral trade agreements and the European Commission has explicitly included a TRIPS-Plus mandate in its trade goals, stating that, “[t]he EU should seek to strengthen IPR [Intellectual Property Right] provisions in future bilateral agreements and the enforcement of existing commitments ... .”<sup>3</sup> The most significant set of negotiations that the EU is currently conducting is with the 76 member African, Caribbean and Pacific (ACP) group of countries under arrangements titled European Partnership Agreements (EPAs). These agreements will significantly change the traditional non-reciprocal trade preference relationship that existed between the EU and ACP group of countries. They have the potential to alter, in a single action, the entire landscape of international intellectual property. Countries that commit to certain standards and norms in bilateral agreements are likely to seek to have those same norms and standards enshrined in multilateral agreements at the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO) and other fora.

Initial public statements by the EU suggested that IP would not play a significant part in EPAs. They have consistently noted that the EU does not need market access to the ACP countries and that the goal of the EPAs is the development of the ACP countries. Thus, there would be no significant push by the EU to seek standards beyond those established by TRIPS. However, recent proposals, papers and statements from the EU, including the new EU Trade Policy review paper,<sup>4</sup> point in a different direction. These suggest that the EPAs are a crucial element of the EU’s global trade strategy and that, in particular, the EU is seeking higher IP standards. This brief aims to outline the statements and the positions that the EU has taken in its negotiations with the ACP and describes the approach of the EU to IP in the proposed EPAs. It concludes that the EU attaches central importance to IP in the EPA negotiations and suggests some reasons why.

## II. What are the European Partnership Agreements (EPAs) with the ACP?

### II.1 Background and Rationale of EPAs

The EPA negotiations result from the interaction of the Lome Conventions<sup>5</sup> and the Cotonou Agreement with the WTO Agreement. The Conventions, of which Cotonou was the last iteration, set up a system of non-reciprocal preferences between the EU and the ACP. This system of preferences was established in part to enable the economic development of the ACP countries by providing preferential access for their products to European markets as compared to other countries. The aims of the Cotonou Agreement included sustainable development, poverty eradication, and integration of ACP countries into the world economy.<sup>6</sup>

With respect to IP, the Cotonou Agreement (which entered into force in 2000) made very few demands on ACP countries and presented a very simple architecture, recognizing the need to ensure adequate protection for IPRs but not entailing an obligation to accede to any international agreements.<sup>7</sup> ACP countries remained free to decide for themselves what standards to implement according to their level of development.

### II.2 Objectives of EPAs

The basic objective of the EPAs is to make the trading relationship between the ACP and the EU compliant with WTO rules. However, the EU has transformed the Cotonou mandate into an ambitious package that aims to rationalize the regional relationships<sup>8</sup> between ACP countries, to liberalize trade,<sup>9</sup> and to implement the highest standards of IP protection and enforcement. For the purposes of the negotiations the EU has determined that it will negotiate with six groups: SADC (Southern Africa), ESA (East Africa), ECOWAS (West Africa), CEMAC (Central Africa), CARIFORUM/CARICOM (Caribbean) and the Pacific Forum (Pacific countries).<sup>10</sup> Negotiations with the groups began in 2002.

### II.3 The IP Mandate in EPAs

As in the Cotonou Agreement, IP was not initially envisioned as a significant element of the EPAs.<sup>11</sup> IP was subsumed under “Other Trade-related Measures” along with competition and investment - the issue had never been one of contention in the Cotonou context.

The Cotonou IP architecture, however, *has not been, and is still currently not, the subject of any preference regime*. The dispute that led to the need for the waiver was purely about the propriety of the EU preference regime with respect to *goods*. The exception for Free Trade Agreements (Article XXIV of GATT 1994) and the Understanding on the Interpretation of GATT 1994 are contained in Annex 1A, covering only multilateral agreements on trade in goods. The TRIPS Agreement, contained in Annex 1C, is a separate agreement from those covering goods. As such, exceptions and other provisions contained in Annex 1A *do not apply* to obligations in the TRIPS Agreement unless explicitly brought in, as in the manner of the obligations regarding dispute settlement in Annex 2. *The TRIPS agreement contains no exceptions to non-discriminatory Most Favored Nation treatment for regional free trade agreements, thus the EU and ACP countries have always extended Cotonou IP provisions to all WTO members*. There was never any problem of discriminatory treatment to the detriment of other countries. In addition, there is no direct mandate from the Cotonou Agreement for the inclusion and extension of IP in the EPAs. The EU argues that Article 46 of the Cotonou Agreement provides that mandate. However, the only direct mandate from the Cotonou agreement is that of strengthening further cooperation (Article 46.6). There is no mandate to negotiate higher standards than those contained in the TRIPS Agreement.

Thus, given that the inclusion of IP provisions is not required to comply with WTO rules and that there is no mandate under the Cotonou Agreement to do so, the inclusion of IP in the EPAs requires a different justification than for market access for goods. In reply, the EU argues that low (i.e. TRIPS) IP protections, along with other trade-related measures, constitute unnecessary barriers to trade, which is a novel approach to the concept, considering that intellectual property, by definition, restrains competition.

#### *II.4 The State of the EPA negotiations*

The Caribbean group is widely believed to be at the most advanced stage of negotiations with proposals for text on IP already developed, a response from the EU and a joint negotiating text. The ESA group has transmitted a proposed text and received a non-paper response from the EU in January 2007. The CEMAC and ECOWAS groups are still in the process of formulating texts. The SADC group remains committed to its refusal to negotiate “Other Trade-related Measures” (including IP) and the EU has responded in a formal communication in February to the proposed SADC framework. The EU’s responses are further elaborated below. The other ACP groups still appear to be at the stage of discussing the modalities of the matters to be included for negotiation, as in the case of the SADC and Pacific regions.<sup>12</sup> The EU, while apparently waiting for further proposals from these ACP groups, has

already made it clear that there are issues that must be included in the EPAs, one of which is IP.<sup>13</sup>

### **III. The EU Approach to IP in EPAs**

The clearest indication of the EU’s thinking on IP can be found in its first non-paper response to the Caribbean group proposals.<sup>14</sup> There are some provisions in the paper which suggest some consideration of the concerns of developing countries. For example, the paper maintains the transition period for LDCs to implement the TRIPS Agreement<sup>15</sup> and the flexibility for countries to determine their own regime on exhaustion.<sup>16</sup> Article 11.2 acknowledges the importance of the Doha Declaration on the TRIPS Agreement and Public Health and notes that the ACP countries are entitled to rely on the Declaration in interpreting and implementing patent rights and obligations. However, other provisions of the EU’s non-paper do give serious reasons for concern. In scope, the paper covers obligations on:

- Copyright and related rights (Article 7)
- Trademarks (Article 8)
- Geographical Indications (Article 9)
- Industrial designs (Article 10)
- Patents (Article 11)
- Plant Varieties (Article 12)
- Enforcement (All of Section 3)

The sheer scope of the subject matter is interesting given the relative size of the Caribbean economies to the EU, with Jamaica as possibly the largest. The EU’s ambition is clearly a comprehensive and complete chapter on intellectual property.

In copyright, the EU does not follow its usual pattern of asking countries to accede to the WIPO Copyright Treaty and the WIPO Performers and Phonograms Treaty. Instead, countries are asked to accede only to the substantive portions of these treaties leaving out the objectives and balancing statements contained in the preambles. In addition, the manner in which the texts are presented may also be aimed at avoiding the access and development elements contained in the agreed statements that modify the obligations on the scope of subject matter and retain the ability of developing countries to extend exceptions and limitations into the digital environment.

The paper also presents significant concern in other areas. For example, Article 9 on Geographical Indications extends protection to *all* products by requiring protection of any product (not just wines and spirits) that has protection in its home country. The protection is also absolute, excluding even statements indicating origin while using terms such as “kind”, “type”, “style”, and “imitation”.<sup>17</sup>

This expands protection far beyond anything that is required by TRIPS and essentially harmonizes with the EU standard of protection.

On patents, Article 11 requires the parties to adopt the main provisions of: the Patent Co-operation Treaty (Washington, 1970, last modified in 1984); the Patent Law Treaty (Geneva, 2000); and the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1977, amended in 1980). These are all procedural treaties that make it easier for outside actors to register patents in all areas, including genetically modified organisms and other genetic resources.

On plant varieties, the non-paper's Article 12 requires accession to UPOV 1991, but also makes provision for exceptions regarding farmers' rights to save, reuse and exchange seeds. However, the caveats and the requirement to sign up to UPOV 1991 may actually make the provision on exceptions primarily ineffective. In Article 13 on genetic resources, traditional knowledge and folklore, the EU refrains from making any substantive commitments to recognize or protect such knowledge, leaving all standards to national legislation. The EU makes no substantive commitments to transfer of technology other than to provide incentives to transfer technology to LDCs.

Of primary concern and indicative of the scope and ambition of the EU in the EPA agreements is the section on enforcement. Even a cursory reading shows that it is essentially a transposition of the EU Enforcement Directive.<sup>18</sup> This includes obligations on issues such as the presumption of authorship or ownership,<sup>19</sup> and the communication of banking, financial or commercial documents under the control of the opposing entity.<sup>20</sup> These provisions extend far beyond what is required by TRIPS and limit the policy space for ACP countries to design systems appropriate to their level of development and economic needs.

In approach, the non-paper pushes for TRIPS-plus standards in the EU's areas of interest, while ignoring any obligations of interest to ACP countries such as traditional knowledge, genetic resources, and folklore. In the context of what is meant to be a development agreement, the EU's pursuit of self-interest in this area suggests that higher IP standards are one of the major aims of the EU in the EPA negotiations. Most concerning is the presumption that compliance with the IP standards of the EU is appropriate for the small and developing economies that make up a majority of the Caribbean countries.

The most recent Joint Negotiating text that was agreed with the Caribbean group in November 2006, maintains most of the characteristics of the EC non-paper, with some changes that reflect the concerns of Caribbean countries.

While the discussions with the Caribbean group are the most advanced the EU has also responded with non-papers to other ACP negotiating groups.

The non-paper response to the proposal by the ESA group<sup>21</sup> states that the IP Chapter should, "include rules on e.g. copyright, trademarks, geographical indications, or designs."<sup>22</sup> The paper also proposes:

- compliance with the rules set by the WIPO Copyright Treaty (1996) and the WIPO Performances and Phonograms Treaty (1996);
- adherence to the Protocol to the Madrid Agreement;
- provisions on the protection of geographical indications, comprising the scope of protection, the rights conferred, the relationship with trademarks, etc.;
- provisions dealing with the protection of industrial designs, comprising the treatment of textile designs;
- On patents, the EU limits itself to hortatory language with respect to implementation in line with the Convention on Biological Diversity;
- provisions to encourage the preservation and promotion of genetic resources, traditional knowledge and folklore, without prejudice to the current relevant multilateral discussions;
- consideration of the possibility of the International Convention for the protection of New Varieties of Plants (UPOV) (no mention of which version to implement);
- Introduction of improved mechanisms in the area of IPR enforcement, such as extension of enforcement to other IP rights than copyright and trademarks, and in particular with regard to pharmaceutical products; the right of representation for rights management or other representatives; presumption of copyright ownership; the obligation to provide border measures for exports or goods in transit; etc.

In December 2006, the EU made an unofficial response<sup>23</sup> to the proposed framework by the SADC grouping proposing to exclude "other Trade Related measures". The EU has stated that it was unacceptable for trade-related measures, including IP, to be excluded from substantive obligations. The response noted that, "[t]hese issues are the essence of the EPA sustainable development package." However, in its 23 February 2007 response the EU reflected a more flexible approach. The strong stance of the SADC group on this question has resulted in some flexibility with respect to timeframes such that the EU proposed:

flexibility on timelines and specific issues, with the objective of promoting progressively regional integration in these areas, taking into account the different stages of development of ACP states and their capacity to engage in such issues.<sup>24</sup>

The IP subject matter, however, remains on the table as far as the EU is concerned. Given these responses, what can be concluded about the specifics of what the EU is seeking? The sections below outline the major areas.

### ***III.1 Copyright and Related Rights***

In this arena, the EU seems to be largely following the traditional, historical pattern of asking its partners to sign up to international agreements that reflect the highest international standards in the area. The response to the Caribbean proposal asks for an obligation to accede to both the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, which contain highly restrictive standards on access to knowledge and public interest exceptions, as well as addressing new subject matter. Nevertheless, the EU seems to be focusing much of its efforts in this arena on enforcement, rather than new substantive obligations.

### ***III.2 Enforcement***

The EU has placed a great amount of emphasis and political capital on the issue of IP enforcement. This has been reflected in its “Strategy for the enforcement of IP rights in third countries”<sup>25</sup> and the EU-US Action Strategy for the Enforcement of Intellectual Property Rights.<sup>26</sup> The EU views what it considers the lack of enforcement as a primary barrier to trade. The new EU trade strategy notes that, “FTAs should include stronger provisions for IPR and competition, including for example provisions on enforcement of IP rights along the lines of the EC Enforcement Directive.”<sup>27</sup> This is a departure for the EU which has not generally asked its partners (other than prospective member states) to implement legislation at the same level and scope as the EU itself. The EU Enforcement Directive has many provisions that go beyond TRIPS requirements, including the fact that it covers wider subject matter and creates new presumptions in favor of rightsholders.<sup>28</sup> The extensive provisions in the response to the Caribbean proposals, which closely track the EU’s Enforcement Directive, are a strong indication that the EU will likely require IP implementation at the same level and scope as the EU itself. It is probable that the EU will use its proposal to the Caribbean as a template for its position in negotiations with other groups. Given its concern for equal treatment and harmonization, the EU is likely to be very unwilling to make any changes to the template that would result in differing versions or levels of implementation amongst ACP regions.

### ***III.3 Geographical indications***

Based on the response to the Caribbean text, the EU is likely to seek to extend the existing protection for wines and spirits to all other goods potentially protectable by geographical indications. The aim will be to extend protection to all products that have protection in the EU. This

has been the goal of its approach at the WTO and it is likely to seek such protection as an element of its “removal of barriers to trade” strategy.

## **IV. Why is the EU seeking TRIPS-Plus IP provisions in EPAs?**

The EU has a long history of including IP in its bilateral agreements. Historically, the EU approach to IP has been to have its partners accede to agreements containing the highest international standards of IP. Most recently, the majority of the negotiated EU FTAs reflect undertakings to adopt higher standards of IP protection, i.e. “to provide,” or “to ensure,” “suitable and effective” or “adequate and effective levels of protection of IP rights in accordance with the highest international standards.”<sup>29</sup> While both the EU and US have been progressively pushing for higher levels of IP protection in their bilateral negotiations, their negotiations strategy has differed.<sup>30</sup> In the US, for example, FTAs appear to be negotiated on the basis of precedent agreements, i.e. model texts.<sup>31</sup> The EU on the other hand has generally relied on requiring accession to a set of multilateral agreements. The Lome Conventions and the Cotonou Agreement have generally been an exception to that global strategy, containing few if any obligations and relying on recognition of the importance of international IP standards. The proposed texts and responses from the EU suggest that the treatment of IP under the EPAs is more likely to converge with the practice of the US in its FTAs.

The EPAs are now part of the larger EU trade strategy. In particular, they form an integral part of its bilateral trade strategy which is the emphasis of the most recent trade strategy communication from the European Commission, “Global Europe – Competing in the World”.<sup>32</sup> The report emphasizes the importance of market access and IP both as tools for greater European advancement but also as means for the general economic development of the EU’s partners.<sup>33</sup> The key change in the new strategy is the focus on regulatory reform to create opportunities for EU firms to be treated on at least an equal basis as firms in trading partner countries, and in the case of IP, to require standards that approximate those of the EU, especially in enforcement. This approach is clearly converging with that of the US FTAs.

Part iii of Section 3.2 of the EU report relates to “Opening Markets Abroad” and states that the EU “will require a sharper focus on market opening and stronger rules in new trade areas of economic importance to us, notably IP . . .” Part ii of Section 4.2 relating to “Free Trade Agreements” states that, “FTAs should include stronger provisions for IPR and competition, including for example provisions on enforcement of IP rights along the lines of the EC Enforcement Directive.” Part v of the same section also states that, “[t]he EU should seek to strengthen

IPR provisions in future bilateral agreements and the enforcement of existing commitments in order to reduce IPR violations and the production and export of fake goods.”

An important issue to note is that the EU has an incentive to seek further IP provisions with the ACP. Those countries that signed significant IP provisions with the US are obligated to extend the same treatment to all WTO members, because there is no exception for regional free trade agreements in the TRIPS Agreement. The EU has therefore been able to free-ride on IP provisions that the US has imposed on its trading partners. This includes many of the most problematic provisions on public health and Access to Knowledge. The US has not signed any such agreement with ACP countries, and therefore the EU will have to seek its own IP deal with those countries. Of course, any IP provisions that ACP countries sign with the EU will have to be extended to the US, and all other WTO members as well.

The evidence that higher IP standards is a major goal of the EU in negotiating EPAs is buttressed by the specificity of demands it is making on ACP countries. For example, in its unofficial communication to the SADC group, the EU has stated that it insists on the inclusion of other trade-related measures in the framework, particularly IP.<sup>34</sup> The approach of the EU to IP is informed by the fact that its primary interest in the EPA negotiations is regulatory reform to ensure, at a minimum, similar or advantageous treatment for its firms in ACP markets. In IP this has manifested itself in the pursuit of higher, TRIPS-plus standards on enforcement, geographical indications and copyright and related rights. In particular, the EU approach has

converged with that of the US in that it is using the leverage of market access to make gains in areas that developing countries have largely managed to remove or block at the multilateral level and it is doing so based on a template, regardless of the level of development of the regions.

If all 76 countries in the ACP sign up to proposed European standards, the IP discussion in the international fora (especially WIPO and the WTO TRIPS Council) will be transformed. One consequence will be the destruction of strong alliances between developing countries built at the multilateral level. On the issues covered in the EPAs, especially enforcement, geographical indications and copyright, the shift of ACP countries to the EU position would leave a handful of Latin American and Asian countries as the only states opposing the expansion of international IP rights in fora such as WIPO and the WTO. This may also be another reason for the inclusion of TRIPS-plus IP obligations in the EPAs.

#### IV. Conclusion

While the EU has so far managed to publicly suggest that IP is not a significant element of the EPAs it is clear from its responses to the proposals from the ESA, SADC and the Caribbean groups that IP provisions are in fact one of the primary aims of the EU in these negotiations. As such, it is important that the profile of these issues is increased in the public discussion on EPAs and that ACP countries and civil society become aware of the possible bargaining power this may provide, as well as the possible positive demands that they can make on the EU.

#### Endnotes

<sup>1</sup> These include Australia, Bahrain, Central America and Dominican Republic, Chile, Colombia, Lao People's Democratic Republic, Morocco, Oman, Peru and Singapore. The US is seeking or negotiating bilateral agreements with Ecuador, Panama, Malaysia; Republic of Korea, Southern African Customs Union (SACU), Thailand and United Arab Emirates (UAE). (see [http://www.ustr.gov/Trade\\_Agreements/Section\\_Index.html](http://www.ustr.gov/Trade_Agreements/Section_Index.html)).

<sup>2</sup> Evenett, S “Global Europe: An Initial Assessment of the European Commission's New Trade Policy” forthcoming January 2007, in the *Aussenwirtschaft*. (available at <http://www.evenett.com/articles/ECNewTradePol.pdf>) 11

<sup>3</sup> European Commission “Global Europe: competing in the world” EC Policy Review, October 4, 2006 (available at [http://ec.europa.eu/trade/issues/sectoral/competitiveness/global\\_europe\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/competitiveness/global_europe_en.htm)), Section v.

<sup>4</sup> European Commission “Global Europe: competing in the world” EC Policy Review, October 4, 2006 (available at [http://ec.europa.eu/trade/issues/sectoral/competitiveness/global\\_europe\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/competitiveness/global_europe_en.htm)).

<sup>5</sup> The Lome Conventions are four successive agreements that governed trade between the EU and the ACP from 1975 to 1999.

<sup>6</sup> Cotonou Agreement, Article 1. (available at [http://ec.europa.eu/development/body/cotonou/agreement\\_en.htm](http://ec.europa.eu/development/body/cotonou/agreement_en.htm)).

<sup>7</sup> Article 46(1) states “[w]ithout prejudice to the positions of the Parties in multilateral negotiations, the Parties recognise the need to ensure an adequate and effective level of protection of intellectual, industrial and commercial property rights, and other rights covered by TRIPS including protection of geographical indications, in line with the international standards with a view to reducing distortions and impediments to bilateral trade.” In this case, recognition does not entail an obligation to accede to any agreements containing such international standards.

<sup>8</sup> European Commission, “Information Note from Commissioners Lamy and Nielson on Progress in EPA Negotiations” 21 October 2004, Brussels, Section 2.

<sup>9</sup> European Commission, "Information Note from Commissioners Lamy and Nielson on Progress in EPA Negotiations" 21 October 2004, Brussels, Section 1.

<sup>10</sup> Tralac, "EPA Background Note," March 2006, <http://epa.tralac.org/scripts/content.php?id=4596>

<sup>11</sup> For example, the 2004 Joint Roadmap between the EU and the SADC region covers the following nine negotiating areas: Development dimension/regional integration; Sanitary and phytosanitary measures; Standards and technical barriers to trade; Market access for agricultural, non-agricultural and fisheries products; Rules of origin; Trade facilitation and customs cooperation; Legal and institutional issues; Other trade related measures; and Trade in services.

<sup>12</sup> For more information on the texts produced by the various regions see the South Centre/CIEL IP Quarterly Fourth Quarter 2006 (available at [http://www.ciel.org/Publications/IP\\_Update\\_4Q06.pdf](http://www.ciel.org/Publications/IP_Update_4Q06.pdf))

<sup>13</sup> Kruger, P., "SADC-EPA Update," tralac, 22 December 2006 (available at [http://epa.tralac.org/pdf/20061222\\_SADC\\_EPAUPDATE.pdf](http://epa.tralac.org/pdf/20061222_SADC_EPAUPDATE.pdf)), 4.

<sup>14</sup> "EC Non-Paper CARIFORUM-EC EPA: Elements for a section on IPRs" (available at [http://www.ip-watch.org/weblog/index.php?p=463&res=1024\\_ff&print=0](http://www.ip-watch.org/weblog/index.php?p=463&res=1024_ff&print=0)).

<sup>15</sup> "EC Non-Paper CARIFORUM-EC EPA: Elements for a section on IPRs" (available at [http://www.ip-watch.org/weblog/index.php?p=463&res=1024\\_ff&print=0](http://www.ip-watch.org/weblog/index.php?p=463&res=1024_ff&print=0)) Article 4(2).

<sup>16</sup> "EC Non-Paper CARIFORUM-EC EPA: Elements for a section on IPRs" (available at [http://www.ip-watch.org/weblog/index.php?p=463&res=1024\\_ff&print=0](http://www.ip-watch.org/weblog/index.php?p=463&res=1024_ff&print=0)) Article 6(1).

<sup>17</sup> "EC Non-Paper CARIFORUM-EC EPA: Elements for a section on IPRs" (available at [http://www.ip-watch.org/weblog/index.php?p=463&res=1024\\_ff&print=0](http://www.ip-watch.org/weblog/index.php?p=463&res=1024_ff&print=0)) Article 9.2(3).

<sup>18</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the Enforcement of Intellectual Property Rights.

<sup>19</sup> "EC Non-Paper CARIFORUM-EC EPA: Elements for a section on IPRs" (available at [http://www.ip-watch.org/weblog/index.php?p=463&res=1024\\_ff&print=0](http://www.ip-watch.org/weblog/index.php?p=463&res=1024_ff&print=0)) Article 17.

<sup>20</sup> "EC Non-Paper CARIFORUM-EC EPA: Elements for a section on IPRs" (available at [http://www.ip-watch.org/weblog/index.php?p=463&res=1024\\_ff&print=0](http://www.ip-watch.org/weblog/index.php?p=463&res=1024_ff&print=0)) Article 18.

<sup>21</sup> Comments and Ideas in Relation to ESA Draft Proposal For EPA Between The ESA and The EC – Intellectual Property Rights (Title VI of ESA Draft Text 24-8-2006), 12 January 2007.

<sup>22</sup> Id.

<sup>23</sup> European Commission "Communication from the Commission to the Council: Communication to modify the directives for the negotiations of economic partnership agree-

ments with ACP countries and regions" 28 November 2006, COM(2006) 673 final, Annex 2 (Available at [http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006\\_0673en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2006/com2006_0673en01.pdf))

<sup>24</sup> See "Paul Kruger "The SADC EPA – Official Response" 6 March 2007 (available at <http://epa.tralac.org/scripts/content.php?id=6215>)

<sup>25</sup> Strategy for the enforcement of intellectual property rights in third countries, Official Journal of the European Union, 2005/C 129/03).

<sup>26</sup> The strategy documents highlights the importance of adopting an approach that is flexible and that takes into account different needs and levels of development of the countries in questions and See [http://trade.ec.europa.eu/doclib/docs/2006/june/tradoc\\_129013.pdf](http://trade.ec.europa.eu/doclib/docs/2006/june/tradoc_129013.pdf).

<sup>27</sup> European Commission, "Global Europe: competing in the world," EC Policy Review, October 4, 2006 (available at [http://ec.europa.eu/trade/issues/sectoral/competitiveness/global\\_europe\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/competitiveness/global_europe_en.htm)) Section 4.2(ii).

<sup>28</sup> Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, at [http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0048R\(01\):EN:NOT](http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0048R(01):EN:NOT).

<sup>29</sup> See, e.g., Article 32 the US-Chile Association Agreement.

<sup>30</sup> The U.S. has been a fervent advocate of stronger protections. See Pedro Roffe, Bilateral Agreements and a TRIPS-plus World: The Chile-USA Free Trade Agreement TRIPS Issues Papers (Quaker International Affairs Programme, Ottawa) 2004, available at [http://geneva.quono.info/pdf/Chile\(US\)final.pdf](http://geneva.quono.info/pdf/Chile(US)final.pdf).

<sup>31</sup> Speech by Robert B. Zoellick, U.S. Trade Representative, before the Committee on Finance of the United States Senate March 9, 2004 (available at [http://www.ustr.gov/assets/Document\\_Library/USTR\\_Testimony/2004/asset\\_upload\\_file178\\_4326.pdf](http://www.ustr.gov/assets/Document_Library/USTR_Testimony/2004/asset_upload_file178_4326.pdf)). See also Peter Drahos, The New Bilateralism in Intellectual Property (available at <http://www.maketradefair.com/assets/english/bilateralism.pdf>).

<sup>32</sup> European Commission, "Global Europe: competing in the world," EC Policy Review, October 4, 2006 (available at [http://ec.europa.eu/trade/issues/sectoral/competitiveness/global\\_europe\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/competitiveness/global_europe_en.htm)).

<sup>33</sup> European Commission, "Global Europe: competing in the world," EC Policy Review, October 4, 2006 (available at [http://ec.europa.eu/trade/issues/sectoral/competitiveness/global\\_europe\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/competitiveness/global_europe_en.htm)) Section 3.2 and Section 3.2(iii).

<sup>34</sup> Kruger, P., "SADC-EPA Update," tralac, 22 December 2006 (available at [http://epa.tralac.org/pdf/20061222\\_SADC\\_EPAUPDATE.pdf](http://epa.tralac.org/pdf/20061222_SADC_EPAUPDATE.pdf)), 4.

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## **CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW**

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