

Technology contact group debates intellectual property rights

Bangkok, 31 August (Chee Yoke Ling) – Intellectual property rights and their implications for technology development and transfer was once again debated at the 30 August meeting of the contact group on technology under the Ad Hoc Working Group on Long-term Cooperative Action (AWG-LCA) of the United Nations Framework Convention on Climate Change (UNFCCC).

The AWG-LCA is mandated to work on “Enhanced action on technology development and transfer to support action on mitigation and adaptation” and the issue of patents and other intellectual property rights (IPRs) remains contentious with developing countries consistently seeking to address the issue as an obstacle or barriers, while developed countries deny that IPRs are a problem.

The contact group on technology held its first meeting on 30 August at the Bangkok informal session of climate talks (30 August to 5 September), guided by two documents prepared by the AWG-LCA chair, Mr. Aysar Tayeb of Saudi Arabia. The first was a matrix table of an overview of the progress made by the Conference of the Parties (COP) of the UNFCCC on the 2007 Bali Action Plan agenda item on technology development and transfer that the chair said is factual.

The second document was an “Informal note” with bullet points containing elements and options that Parties “may wish to further elaborate on ... add to them or remove from them, as appropriate”. Several questions were also posed for Parties to consider as they wish. The chair said that the note acknowledges the progress made at the last meeting in Bonn (in May 2012) on the Technology Executive Committee and the Climate Technology Centre and Network and tries to capture discussions on other issues. He emphasized that it is an informal note and that the work by Parties will then be the basis for text to be negotiated in Doha, Qatar.

(Similar matrix tables and informal notes that reflect different levels of maturity of the various items of the AWG-LCA mandate have been prepared by the chair.)

Most of the exchanges made by the Parties in the 30 August session centered more on the issue of IPRs, on whether the UNFCCC has the competence to deal with it or whether it should be left to other international arenas such as the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO).

Three questions were posed in the informal note:

- Reconciliation of IPRs to facilitate technology development and transfer?
- Discussion under the Convention? If so, under which body?
- Role of WIPO/other relevant organizations?

The **United States** said IPRs are not in the Bali Action Plan (BAP), that there was some debate in Durban but there was no consensus that we should talk about this topic. It stressed that IPRs are not part of the BAP, Cancun or Durban and they do not consider that this is appropriate.

Chair Aysar Tayeb said that what we are doing here is to identify what are the other topics. In order to decide on the further topics, we need to know what topics have been suggested.

He reiterated that the note is on what was said (in Bonn) and not consensus. This is what we are exploring. When it references functions to the CTCN, what is it that is needed? We need to see what they are so we can make a judgment. It is helpful to facilitate this exploration to see what people want to talk about, he added.

Regarding IPRs, this was one of the issues raised in Bonn and the Chair said the US is right that there

was no agreement on this, but some Parties said there is some work to be done and you can see there is a question mark here (in the informal note's bullet points).

China responded on behalf of **G77 and China** to the comment by the US, saying that it knows there is no agreement on text on IPRs but anyone talking about technology development knows intellectual property is an issue. If we want to talk about innovation for climate change then we need an innovative arrangement for IPRs. If we take technology development and transfer seriously we have to deal with IPRs.

Chair Aysar Tayeb queried if the innovative measures to deal with IPRs mentioned by China is considered somewhere, or if it has some proposals on these measures that it wants the contact group to take forward to think about.

The **European Union** said that IPRs is an issue that is raised all the time. It is a complex issue that the EU did not want to talk about at this time, and that we have ways of discussing barriers to technology elsewhere as the TEC is doing now. To the extent that IPRs is a barrier it can be dealt at the TEC, according to the EU, adding that IPRs can also be a powerful tool. It also said that we should let these institutions we have set up, such as the TEC, go on with its work on this issue, and we can come back later and see what we can do.

Australia said that IPRs have been discussed before and asked what outcome is wanted out of a discussion in the next 3 days. It said that it is quite clear that there is no reason to consider a change to the IPR system, adding that these issues are being considered in the WTO (Agreement on Trade-related Aspects of IPRs) and WIPO. Australia also said WIPO is already doing some work on climate technology and there are other bodies doing some of this work, so we should let those do the work first.

Japan said that as it has discussed in the (earlier) meetings, it did not think this is the right forum to discuss IPRs; there are other international organisations to discuss this issue and we should leave this issue to them.

Uganda responding to the US and Australia, said we are here discussing financial issues and we are not in the World Bank or the International Monetary Fund. So when it comes to IPRs and we say we

should not talk about (the issue), it is not appropriate. If it is relevant here we should discuss it, adding that it does not matter that IPRs is discussed elsewhere. We should discuss it in accordance with the relevance to technology development and transfer.

Uganda said it matters to us that this issue is taken up here; in every issue, there's a beginning and an end, the US says IPR has not been discussed here before. We need to deal with emerging issues; why is IPR coming up again and again? Because it is a barrier to us in accessing technology, said Uganda. It added that addressing barriers/obstacles is one of the functions agreed to in COP 16 (in Cancun), and that on the demand side we feel IPR is an obstacle, a barrier. It stressed that we can discuss it later but we should have the issue included.

(Uganda also gave the example of loss and damage – the issue was not considered under adaptation before but it is now.)

Mr. Kuni Shimada (Japan) who had taken over from the AWG-LCA Chair to facilitate the discussion by then, responded by saying that COP 16 agreed to deal with barriers and obstacles and that this is part of the work of TEC, as part of the discussing the enabling environment for technology development and transfer.

The Philippines pointed to the Chair's matrix on the decision of COP 13 (Bali, 2007) that refers to the removal of obstacles and said that this is a matter that squarely puts IPR on the agenda. According to the Philippines, the argument that we should not discuss this because some other bodies are doing do is not sound. Saying that IPRs cannot be tackled here because it is being taken up by WTO and WIPO, is, for lack of a better word, a lame reason. It said that the WTO tackles IPR as a trade barrier issue, and WIPO tackles IPR as part of its mandate to promote IPRs, questioning whether these organisations have the competence to deal with climate change.

The Philippines stressed that Parties have the mandate under the Convention to deal with the issue of climate change and finding ways like adaptation and mitigation for countries to deal with the problem and this issue of IPRs actually is a much narrower concern here in UNFCCC. We are here to consider whether IPRs as they relate to climate change technology transfer for adaptation and

mitigation are preventing countries from getting these technologies. We should not here talk about turfing, that this and that issue cannot be tackled because of lack of institutional competence; this is not what we should be doing. The bottom line is, it said, the UNFCCC has the mandate and the institutional competence to deal with the issue of IPRs as it relates to technology transfer for climate change adaptation and mitigation.

Facilitator Shimada reminded Parties that WIPO has already done some work under their own mandate. Maybe it is useful for this group to look at what has been discussed there in terms of climate change technology and IPRs. He also said that the TEC is currently working on obstacles and some of the issues will be submitted to the COP and the TEC will seek inputs from experts outside the TEC and from stakeholders. He asked Parties to be as specific as much as possible so we can find a way to reflect that as matters for further discussion by this group.

Gambia said expressed concern over hearing that we should leave the IPR issue to WIPO or WTO. If there is an issue we should set up a working relationship, e.g. with the WMO, IMO, IPCC. Now that we have an issue around IPR why can't we do the same? Why leave it to WIPO? WIPO will of course deal with the IPR issue. We want to deal with issues that are identified in our national communications and our NAMAS and NAPAs – and we have identified problems. So can we as a group explore ways to work with WIPO to deal with this?

The facilitator said that if Parties decide to do it, we do it. If not and we decide to give it someone else then we do that, so please give me some concrete proposals on how to deal with this.

Ecuador supported G77/China, welcomed the IPR issue in the paper and said it is important to work with WIPO on this.

Nigeria said IPRs and access to technology is a real challenge. So we must find ways to solve the challenge. Let us for the sake of humanity isolate climate change – let us have access to these technology so that we can at least solve some of the problems of Africa. We have minimum resources, it said, calling for cooperative research. It also said that if it means inviting WIPO to talk with us, let us do that and we can talk with them.

India agreed with China on behalf of G77/China and Uganda on behalf of Africa and the LDCs, adding that the issue of technology and IPRs are closely related and this issue needs to be properly addressed so that technology development and transfer can be properly implemented.

The US intervened again, saying that it has heard quite a few views especially from African countries on their needs. The question is whether we have addressed those needs, and as the EU said whether we are going in the right direction. It said that we have made significant progress and referred to a recent study by African practitioners on African technology needs. According to the US the study identified many of the problems mentioned and if we look at what is tasked by the TEC, these needs are to be addressed. It said that the study did not identify IPR as a barrier, though it will not extrapolate this to other regions.

The facilitator then said that we would like to see emerging from Bangkok a draft decision so that we can negotiate based on something. I can see some convergence. He asked Parties if they are comfortable for him or the LCA chair to write up a very informal note based on the discussion.

The G77 and China agreed saying that it is helpful to have text.

The US said this will be a summary note, and not text that will be pushed for Doha.

The EU said there are divergent views on the nature of the work so it hoped the informal note can capture that too.

The Philippines asked if a submission is also to be made, to which the facilitator said that it must be in specific language (proposals).

The other issues that saw differences between developing and developed countries was over additional functions of the Climate Technology Centre and Network (CTCN) and the Technology Executive Committee (TEC); and the relationship between these two components that constitute the technology mechanism of the UNFCCC.

The informal note also addressed linkages with the financial mechanism and other thematic bodies.