



Regional Dialogue on the European Economic Partnership Agreements, Intellectual Property and Sustainable Development for ECOWAS

MEETING REPORT DRAFT

**Dialogue organised by ICTSD in partnership with ENDA and QUNO
Saly (Dakar), Senegal, 30-31 May 2007**

This report provides a summary of the deliberations and consensus of participants at the *Regional Dialogue on the European Economic Partnership Agreements, Intellectual Property and Sustainable Development for ECOWAS*, held in Senegal in May 2007. It provides a background to the dialogue followed by an overview of the specific issue-areas explored.

Background

1. The European Union (EU) is currently negotiating Economic Partnership Agreements (EPAs) with African, Caribbean and Pacific (ACP) states in six regional groups. The Economic Community of West Africa (ECOWAS) is one such regional grouping currently engaged in EPA negotiations with the EU. These negotiations have placed different emphases in areas including trade in goods, investment, competition and intellectual property (IP). All the EPA negotiations are linked to a de facto deadline of 31 December 2007 when the waiver of the Cotonou Agreement ends.
2. One aspect of the EPAs that has generated deep concerns among various stakeholders is the potential impact that TRIPS-plus provisions could have over the use of flexibilities and exceptions designed to safeguard certain public interest goals and advance development objectives.¹ In this regard EPAs raise many negotiation and implementation challenges regarding policy coherence and the maintenance of flexibilities.
3. The European Parliament has itself voiced concerns over the inclusion of IP chapters in EPA negotiations conducted by the European Commission on behalf of the EU. In resolution P6_TA(2007)0204 of 23 May 2007, entitled *Economic Partnership Agreements*, the Parliament “calls for the EU not to include, in EPAs, provisions on intellectual property rights”.²

¹ See e.g. the letter by Carlos Correa and others to the Financial Times on 25 May 2007, entitled ‘EU in Danger of Breaking its Promise to the Poor’, available at: www.ft.com/intprop.

² See: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P6-TA-2007-0204&language=EN>. The paragraph in question (45) reads, in full: “45. Calls for the EU

Resolution P6_TA(2007)0353 of 12 July 2007, entitled *TRIPS Agreement and Access to Medicines*, calls for restrictions on the Commission's mandate to "prevent it from negotiating pharmaceutical-related TRIPS-plus provisions affecting public health and access to medicines".³

4. In February 2007, ICTSD, in partnership with QUNO, CAFOD and CIEL, organised a workshop on *EPAs, Intellectual Property Rights and TRIPS Compatibility* in Jongny, Switzerland.⁴ One of the outcomes of the workshop was that ACP participants indicated the need to increase their awareness of new trends in, and the potential implications of, IP provisions in draft EPAs. They also requested assistance in identifying offensive and defensive strategies, and in building their capacity for the negotiation process and pro-development implementation of the outcomes.
5. Responding to these needs, ICTSD, in partnership with ENDA and QUNO, organised a *Regional Dialogue on the European EPAs, Intellectual Property and Sustainable Development for the ECOWAS* in Senegal, May 2007.⁵ The dialogue gathered experts, representatives of business associations, intergovernmental and civil society organisations and government officials from the ECOWAS region, acting in their personal capacity, to:
 - inform stakeholders of the ECOWAS region on the ongoing EPA negotiations, the new trends in IP and their implications and provide a platform for discussion;
 - increase understanding and awareness of the impact of potential IP commitments in a future EPA between the EU and ECOWAS;
 - assist ECOWAS negotiators in identifying offensive and defensive IP issues and in preserving their interests in the negotiation process;
 - explore linkages and identify options between IP and sustainable development policies in four specific issue-areas, namely:
 - copyrights and designs;
 - geographical indications and rural development;
 - genetic resources and traditional knowledge and;
 - IP enforcement.

not to include, in EPAs, provisions on intellectual property rights, since they constitute an additional barrier to access to essential medicines and to use the EPA system to help ACP countries implement the forms of flexibility provided for in the Doha Declaration; points out that, by virtue of the 2001 Doha Declaration on the TRIPS Agreement and Public Health, the EU has undertaken to place public health before its trading interests"

³ See: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0353+0+DOC+XML+V0//EN&language=EN>. The paragraph in question (11) reads, in full: "11. Calls on the Council to meet its commitments to the Doha Declaration and to restrict the Commission's mandate so as to prevent it from negotiating pharmaceutical-related TRIPS-plus provisions affecting public health and access to medicines, such as data exclusivity, patent extensions and limitation of grounds of compulsory licenses, within the framework of the EPA negotiations with the ACP countries and other future bilateral and regional agreements with developing countries"

⁴ See: http://www.iprsonline.org/ictsd/Dialogues/2007-02-16/2007-02-16_desc.htm. The intra-regional dialogue gathered some 35 participants from academia, ACP delegations in Geneva, capital-based ACP representatives and civil society.

⁵ See: http://www.iprsonline.org/ictsd/Dialogues/2007-05-30/2007-05-30_desc.htm, which includes a full list of participants.

Towards a Positive Agenda on IPRs for the ECOWAS in the EPA context

6. The dialogue participants noted that while WTO rules require a revised approach to many aspects of the trade arrangements between the EU and ECOWAS members, it is clear that there is no WTO-related requirement to negotiate intellectual property issues. The compatibility test laid down in GATT Article XXIV does not cover any agreement on IPR issues for the WTO compatibility.
7. Participants noted that despite this, and the European Parliament resolutions discussed above (Para.3), the EU and ECOWAS countries have already explored the potential for a chapter on IP in the EPA negotiations. In this line of ideas, the EU has recently tabled a non-paper on the content of such an agreement with ECOWAS countries.
8. The trends in current IPR negotiations were assessed, with the EU observed to be including more comprehensive and substantive IPR provisions containing TRIPS-plus provisions, and prioritising enforcement (international anti-counterfeiting campaign), protection of geographical indicators and copyright in the digital environment in its bilateral negotiations.
9. Participants observed that the EPA non-paper tabled by the EU demanded commitments that exceeded what is already required by TRIPS in the domains of copyright, enforcement and plant variety protection, and might undermine the provision of flexibilities in TRIPS. They resolved to ensure that the wording of any agreement should refer to TRIPS, including the specific measures provided for LDCs. It was noted that the East African Community was using TRIPS and national laws as the basis for its EPA negotiations relating to IP.
10. The draft IP chapters of EPA negotiations between the EU and, respectively, CARIFORUM and ESA were assessed, with the former seen to have presented a detailed text adhering to several requirements of the EU, including commitments on enforcement and TRIPS-plus provisions on *sui generis* rights for non-original databases. In contrast, ESA was seen to have presented a simpler text making provisions for flexibilities, including provisions on the granting of farmers' rights and demands for technical assistance. It must be noticed, however, that the ESA text is a proposal of ESA countries to the EU and not vice versa.
11. Participants observed that the EU approach in EPAs included a strong emphasis on technical assistance, some provisions of the disclosure of origin (not included in the approach of the USA) and compliance with UPOV 1991.
12. Participants discussed the ongoing negotiations on a WIPO Development Agenda, and noted that the EPA draft text proposed by the EU did not reflect the concerns voiced and proposals made in the development agenda process.

13. Thus, participants agreed on the importance of a strategic and coherent position on the part of ECOWAS members on the question of a potential chapter on IP in the ongoing EPA negotiations.
14. The strategic opportunities presented by current EPA negotiations were also noted, for instance in ensuring that the EU's commitment to development is reflected in bilateral negotiations; that negotiating positions could be supported by the use of expertise; and in gaining capacity building assistance and technical support.
15. Participants also discussed the role that regional IP organisations could play in assisting ECOWAS countries to implement their obligations under international law, such as ARIPO's assistance in opening local offices to issue licences for copyright, or the collaboration between regional IP organisations and ECOWAS countries to harmonise IP policy.

Copyright and Designs

16. Participants examined the TRIPS-plus provisions on copyright protection that were being sought in EPAs, such as the protection of non-original databases, erosion of exceptions/limitations and enforcement of IPRs.
17. In developing a positive agenda for copyright, participants acknowledged that current legislation in national laws and the region should be taken into account, such as Article 37 of the Copyright Act of Mali, the Third Schedule of the Nigerian Copyright Act and provisions in the Appendix to the Berne Convention.
18. A positive agenda for copyright was discussed, which participants considering it essential to account for the public interest and access to educational and research material for citizens in the region when negotiating on copyright issues.
19. Participants identified the preparation of an illustrative list of possible exceptions and limitations to copyright provisions to protect the public interest (e.g. in access to educational materials) as a matter of technical assistance that the EU could provide.
20. The protection of traditional designs and folklore in any EPA agreement was also identified as an area of ECOWAS interest, with participants considering whether the region should present specific proposals, and if such proposals should cross-reference regional interests in the protection of folklore.
21. Participants confirmed the need for the ECOWAS to continue its implementation of TRIPS standards on copyright and the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty of 1996 where applicable, and the need to develop capacity to enforce copyright laws within the possibilities of local authorities.

Geographical Indications and Rural Development

22. Some participants noted that key issues on GIs in the WTO Doha Round include the creation of a multilateral register for wines and spirits, extending higher levels of protection beyond wines and spirits and linking GIs to agricultural negotiations; and that the protection of GIs has featured in recent FTAs, including EPA negotiations.
23. TRIPS-plus provisions on GIs were observed in current EPAs, including extension of the higher level of protection to all products, internet use and a list of terms that do not constitute terms customary in common language.
24. Participants recognised the possible costs of GI protection, including the maintenance of necessary administrative systems (human and financial costs) the cost of registering local GIs in other countries (namely those in the EU and North America). Additional costs could also be seen in renaming, rebranding and labelling products and possible legal challenges.
25. The potential benefits of GI protection were discussed, with economic studies having shown premium prices increase from 10% to 50% with GI protection. Participants identified the need for an impact study on developing GI protection; a multidisciplinary expert group to define ECOWAS products that can be marketed in developed countries; a review of current GI protection in domestic and regional contexts and the TRIPS-plus provisions included in the EPA negotiations; and to investigate the steps and costs for registering non-EU GIs within the EU.
26. Participants noted that the Bangui Agreement has already set out the need to identify territories and producers of goods that require GI protection.
27. Thus, participants suggested the ECOWAS calls for technical assistance to undertake an assessment and prepare an inventory of particular products in the ECOWAS region that could benefit from GI protection. Possible GIs for the ECOWAS might include: peanuts (Gambia and Senegal), “sel du lac rose” (Senegal), cocoa and pineapple (Cote d'Ivoire), and textiles and all of its designs (Ghana, Nigeria and other relevant countries).
28. Participants considered that it might be useful for the ECOWAS to call for dialogue with the EU to evaluate the potential for extension of the higher level of GI protection granted to wines and spirits under the TRIPS Agreement to other products. They also discussed the links between GIs and market access in agriculture and goods chapters of WTO agreements.
29. The economic significance of GIs was recognised by participants, including that any agreement on GIs should be matched by market access commitments from the EU, such as tariff/quota free entry as well as reduction of non tariff barriers (subsidies, TBT, SPS) for the GI protected products.

30. Participants noted the need to consider an implementation period for GI protection in LDCs.
31. Participants discussed the role that GIs can play in development and in assisting the protection of traditional knowledge and biological biodiversity.

Genetic Resources and Traditional Knowledge

32. Participants discussed the need to implement national/regional systems for recognising the ownership of TK and genetic resources in order to negotiate on these issues in EPAs. Benefits can only be derived if countries/regions implement associated benefit sharing rules.
33. Participants recommended that the ECOWAS call for recognition of and action against the misappropriation of traditional knowledge and genetic resources through the adoption of measures by the EU.
34. The EU non-paper was seen as devoid of any substantive obligations in this regard, but rather obliges the region to ratify UPOV 1991 according to EU demands. The ESA proposal was cited as an alternative approach.
35. Participants considered that negotiations on this matter should be conducted under the principles provided by the CBD and the Bonn Guidelines (regarding the establishment of a disclosure of origin/source mechanism, request for prior and informed consent and an access and benefit sharing system) as well as by the draft framework agreement on traditional knowledge and folklore recently prepared by OAPI and ARIPO.
36. An additional element of a *sui generis* system for genetic resources and/or traditional knowledge and folklore could also include the granting of a “*droit de suite*” in cases where technology or traditional knowledge has been transferred from ECOWAS countries. This should be further considered to identify its contours, from the doctrine and jurisprudence standpoints, and could be developed into a proposal to be included in the EPA negotiations.
37. Participants saw the need to consider to what extent TK and genetic resources are covered by the TRIPS Agreement, and hence the implications of the MFN principle in relation to any bilateral arrangement or national legislative change.
38. Participants observed that the protection of plant varieties should not exclude farmer’s rights or hinder the establishment of the creation of domestic *sui generis* systems of protection.

Enforcement

39. Participants noted that TRIPS enforcement provisions cite standards such as civil and administration procedures, border measure and criminal procedures and penalties; that these should allow for effective action

against infringement without creating barriers to trade; and that there is no obligation to introduce special IP enforcement judicial systems or devote additional resources to this end.

40. Participants noted that the ECOWAS was committed to continuing the process of implementing the TRIPS standards of enforcement and that continued and augmented technical assistance was required to accomplish this costly task.
41. The EU's Enforcement Framework and Strategy was observed to include the Intellectual Property Rights Enforcement Directive (2004), The Intellectual Property Rights Enforcement Directive (2007) and the EU Strategy Enforcement of IPRs in Third Countries (2004). These describe the procedures and penalties and uses limited enforcement models without modification to particular contexts.
42. Participants assessed the EU non-paper to the ECOWAS, highlighting key enforcement issues and challenges for the region:
 - Commitments act as lock-in tools leading to a loss of flexibility to determine appropriate method of implementing enforcement provisions according to national legal systems;
 - Level of inconsistency, if at all, between EPA draft provisions and the Cotonou Agreement;
 - Lack of adequate safeguards and balancing mechanisms in relation to third parties and intermediaries;
 - Requirements for disproportional evidence gathering mechanisms and requirements for IPR enforcement in free trade zones and goods for export.
43. Participants considered the need to include flexibilities in procedures and obligations for technology transfer on behalf of the EU, and to incorporate aspects of the WIPO Development Agenda in relation to enforcement, including technical assistance on enforcement.
44. Participants agreed that it was also necessary to consider the financial and human costs of implementing enforcement procedures for national governments in the region.
45. Participants discussed the need to engage civil society in the process of developing domestic enforcement regimes, whilst noting the difficulties in implementing prosecution procedures in the informal sector.

Other Elements of a Positive Agenda on IPRs for the ECOWAS in the EPA Context

46. Participants noted that a key objective of the TRIPS Agreement is to promote and protect innovation (Articles 7 and 28) and that a priority for discussions on technology transfer could be the implementation of Article

66.2 of the TRIPS Agreement and the WTO Decision on the Implementation of Article 66.2 of 19 February 2003.

47. Participants analysed proposals on trade and innovation made in the discussions between the EU and CARIFORUM. It was indicated that this chapter seeks to improve supply-side capacity in sectors of comparative advantage and recognise the need to implement TRIPS flexibilities. The CARIFORUM proposal also seeks for the EU to agree to create regional research programmes for the weaker parties; and to eliminate any discrimination between national and foreign firms on the granting of research and development subsidies.
48. Participants considered whether the ECOWAS should propose a stand-alone chapter in the EPA on trade and innovation to focus on addressing the supply-side aspect of domestic innovation as well as for trade and investment incentives for innovative activities in both home and host countries. They also suggested continuing dialogue with the EU on improving their capacity to establish a viable technological base, access to knowledge and a robust environment for innovation.
49. Some participants encouraged the ECOWAS to implement current register treaties on intellectual property (PCT/PLT/Madrid) and to consider a section in agreement on unregistered and traditional designs.
50. Options were considered for improving access to knowledge, such as in patent databases and academic journals, with the role of OAPI and ARIPO explored for this regional dimension.
51. Participants discussed the need to have minimum requirements in national innovation systems; for the availability of local IP office helpdesks; and for infrastructure in information sharing.
52. Participants agreed that the establishment of IP law and policy alone is not sufficient for the promotion of innovation in developing countries and technology transfer and that IPRs are only one element of an overall inclusive industrial and development policy and that other factors can be considered more decisive than IP protection.
53. Participants identified the need to clarify the following provisions before negotiating further in the EPA: data protection, narrow definition of industrial application and adoption of *sui generis* terms to enable farmers to save and exchange seed.
54. Participants agreed that any EPA negotiations should consider the impact on access to medicines and public health in the region. In this regard, the ECOWAS could call for explicit recognition of the Doha Declaration on the TRIPS Agreement and Public Health, including a request to build capacities in the region for the implementation of the Paragraph 6 Decision/Article 31 (f) bis.

55. In this respect, participants considered whether a capacity-building model on access to medicine and on strengthening the pharmaceutical sector in the region could be drafted by the OAPI member countries accredited in Geneva, which would then serve as a basis to be further enriched by all the ECOWAS countries.
56. Participants considered the importance of establishing the process of the protection of industrial designs of ECOWAS products in the EU. In this regard, technical assistance and support was deemed necessary to develop a regionally based protection scheme, commercialise locally developed products and develop locally generated industrial designs including textiles.

Annex: ENDA Letter of Recommendations Sent to ECOWAS Secretariat

Head of Ecowas Secretariat
Ecowas Secretariat
101, Yakubu Gowon Crescent,
Asokoro District P.M.B. 401 Abuja, Nigeria

July 4, 2007

Re: ECOWAS EPA PRIORITY AREAS IN RELATION TO INTELLECTUAL PROPERTY

Dear Chairman,

On behalf of the participants at the “Regional Dialogue on the Economic Partnership Agreements, Intellectual Property and Sustainable Development for the ECOWAS Countries”, organized by ENDA Tiers Monde, the International Centre for Trade and Sustainable Development (ICTSD), and the Quakers United Nations Office (QUNO) in Senegal, Saly and held on the 30-31 May 2007,⁶ we are writing to submit for your consideration the recommendations of the meeting. This dialogue gathered experts, government officials, business associations, representatives of inter governmental and civil society organizations, all acting in their personal capacity,⁷ for the following objectives:

- Increase awareness of the new trends and potential implications of intellectual property (IP) provisions in the draft Economic Partnership Agreements (EPAs);
- Identify offensive and defensive issues for the EPA negotiations; and
- Provide support and capacity building in relation to the EPA negotiations and the future implementation of new IP obligations among ECOWAS countries.

During the dialogue, the participants agreed on the importance of a strategic and coherent position on the part of ECOWAS members on the question of a potential chapter on IP in the ongoing EPA negotiations. The participants noted that while WTO rules require a revised approach to many aspects of the trade arrangements between the EU and ECOWAS members, it is unequivocally clear that there is no WTO-related requirement to negotiate

⁶ More information about the meeting can be found at:
http://www.iprsonline.org/ictsd/Dialogues/2007-05-30/2007-05-30_desc.htm

⁷ A full list of participants is available at: http://www.iprsonline.org/ictsd/Dialogues/2007-05-30/2007-05-30_desc.htm

intellectual property issues. The compatibility test laid down in GATT Article XXIV does not include any negotiation on IPR issues for the WTO compatibility. That said, the EU and ECOWAS countries have already explored the potential for a chapter on IP in the EPA negotiations, and the EU has recently tabled a non-paper on the content of such an agreement. Notably a recently adopted European Parliament Resolution calls for the EU not to include intellectual property into EPAs (See Annex II).

The participants at the meeting thus considered it prudent to provide advice and recommendations to the ECOWAS Members and Secretariat regarding the preparation and submission to the EU of a non-paper to respond to its proposals in the field of IP in a future EPA. Specifically, they prepared the attached document which sets out core elements of a potential response to the European Commission from the ECOWAS countries in the form of a non-paper in line with current trade commitments (See Annex I).

We have also attached, for your information, a letter published by the Financial Times in late May by leading international experts on intellectual property which called on the EU to desist from calling for TRIPS-plus commitments in the area of IP in the EPA negotiations (See Annex II).

We hope that you find this input and recommendations useful.

Sincerely,

Environmental Development Action in the Third World.
(ENDA Tiers Monde), Syspro 2
73 Rue Carnot Bp 3370
Dakar

ANNEX I

ECOWAS EPA NEGOTIATIONS

NON PAPER ON INTELLECTUAL PROPERTY, INNOVATION AND DEVELOPMENT

PROPOSED DRAFT TEXT

Members of the Economic Community of West African States (ECOWAS) declare that adherence to and implementation of the TRIPS Agreement, the TRIPS Declaration of Public Health and the Doha Declaration, including all the subsequent WTO Decisions, as well as the WTO Decision on the extension of the transitional periods for Least Developed Countries (LDCs), must comprise the core of the proposed negotiations on intellectual property in the framework of the Economic Partnership Agreement (EPA) between ECOWAS and the European Commission. This should be nonnegotiable and, further, should reflect the commitments from the EU Member countries to implement these paramount multilateral decisions in favour of the ACP countries.

The Members countries of ECOWAS emphasise that they have no WTO obligations to extend intellectual property (IP) protection beyond the standards set out in the TRIPS Agreement and highlight that there is no WTO-related obligation on ECOWAS countries to negotiate an IP chapter within the framework of the EPAs.

The position of ECOWAS Member states with respect to IP in the context of the EPA negotiations is to reiterate their commitment to continue with their implementation process of the given TRIPS standards, noting the relevant transitional periods established in Articles 65 and 66(1) of the TRIPS Agreement and as extended under the TRIPS Council Decision dated 29 November 2005. To this end, the ECOWAS Member countries affirm that the top priority in any potential IP chapter in their EPA with the European Union should be to coordinate and continue to improve their existing regional and domestic IP frameworks and to ensure that these serve domestic public and development policy objectives.

With this objective in mind, the ECOWAS Member countries declare that the EPA should include a commitment on behalf of the EU to continue and increase its technical and financial assistance and cooperation in the field of IP. The ECOWAS Member countries shall not engage in negotiations for any new commitments that extend beyond those required by the TRIPS Agreement. Any potential or future commitments made in the IP chapter must be linked to increased market access for agricultural and industrial goods originating from the ECOWAS countries.

The protection of geographical indications

- The ECOWAS members call for dialogue with the EC to evaluate the potential for an extension for other products of the higher level of GI protection granted to wines and spirits under the TRIPS Agreement to other products. In this respect, the ECOWAS members call for technical assistance to undertake an assessment and prepare an inventory of particular products in the ECOWAS region that could benefit from GI

protection. Potential GIs for the ECOWAS could include: peanuts (Gambia and Senegal), 'sel du lac rose' (Senegal), cocoa and pineapple (Cote d'Ivoire), and textiles and all of its designs (Ghana, Nigeria and other relevant countries). The ECOWAS countries believe that GIs can play an important role in development and can assist the protection of traditional knowledge and biological biodiversity. In order to make this proposal economically meaningful, the ECOWAS Member countries should stress that any agreement for greater recognition and protection of ECOWAS should include market access commitments from the EC, including tariff/quota free entry as well as reduction of non tariff barriers (subsidies, TBT, SPS) for the GI protected products.

Enforcement measures (piracy and forgery)

- The ECOWAS Members commit to continuing the process of implementation TRIPS standards on enforcement and call for continued and augmented technical assistance to accomplish this costly task.

Transfer of technology and innovation

- The priority for discussions on the transfer of technology should be to give practical effect of the implementation of Article 66.2 of the TRIPS Agreement and the WTO Decision on the Implementation of Article 66.2 of 19 February 2003. The ECOWAS Members propose continued dialogue with the European Commission to improve their capacity to establish a viable technological base, access to knowledge and a robust environment for innovation. In addition, the ECOWAS members propose the negotiation of a stand-alone chapter in the EPA on trade and innovation to focus on addressing the supply-side aspect of domestic innovation as well as for trade and investment incentives for innovative activities in both home and host countries. Items for discussion should also include options for improving access to knowledge in (patent) databases and academic journals. In this context, the regional dimension through the OAPI and the ARIPO should be put to test in implementing these arrangements

The protection of Industrial Property (including industrial designs and models and plant variety protection)

- The ECOWAS Members commit to continuing the process of implementation of the TRIPS standards on industrial property. Members stress the importance of establishing the process of the protection of industrial designs of ECOWAS products in the European Union. Furthermore, there is a need to reduce and phase out market access barriers and non trade barriers on textiles from ECOWAS. Technical assistance is needed to develop a regionally based protection scheme and for the commercialisation of locally developed products. Support should be provided for the development of industrial locally generated industrial designs including textiles. The protection of plant varieties should not exclude farmer's rights or hinder the establishment of the creation of domestic sui generis systems of protection. There exists a need to find options for the use of technological documentation deposited in intellectual property offices in practical, industrial product development. In this line the

technological infrastructure should be improved to facilitate access to electronic databases.

Copyright in the digital environment

- The ECOWAS Members commit to continuing the process of implementation TRIPS standards on copyright. Those ECOWAS Member countries which are already members of the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty will continue to undertake measures domestically to implement mechanisms related to the protection of works in the digital environment. The ECOWAS Members call on the EC to assist them in the preparation of an illustrative list of possible exceptions and limitations to such mechanisms where necessary to protect the public interest (e.g., in access to educational materials).

The protection of genetic resources, traditional knowledge and folklore expressions

- The ECOWAS Members call for greater recognition and respect of traditional knowledge and genetic resources, namely through the adoption of measures against their misappropriation by the EC. Negotiations on this matter should be conducted using the principles provided by the Convention on Biodiversity and the Bonn Guidelines (regarding the establishment of a disclosure of origin/source mechanism, request for prior and informed consent and an access and benefit sharing system) as well as on a framework agreement on traditional knowledge and folklore recently prepared by OAPI and ARIPO. An additional element of a *sui generis* system for genetic resources and/or traditional knowledge and folklore could also include the granting of a "*droit de suite*" in cases where technology or traditional knowledge have been transferred from ECOWAS countries. This matter is to be further reflected in order to get the contours, from the doctrine and jurisprudence standpoints, then to develop a proposal to be included accordingly.

Public health

- The ECOWAS members call for recognition of the Doha Declaration on the TRIPS Agreement and Public Health adopted on 14 November 2001 by the Ministerial Conference of the WTO. They emphasize that in implementing the rights and obligations under Article 7 and 8 of the TRIPS Agreement members have the right to rely on this Declaration. In this respect, all parties to the EPA must apply and implement the Doha Declaration and ratify the TRIPS amendment of Article 31 (f) bis into their national legislation. The ECOWAS Members also call for the development of a project to help build capacities in the region for the implementation of the Paragraph 6 Decision/Article 31 (f) bis. In this context, a capacity-building model drafted by the OAPI Member countries accredited in Geneva could serve as the basis and to be further enriched by all the ECOWAS Member countries on the access to medicine and on strengthening the pharmaceutical sector in the region.

ANNEX II

European Parliament Resolution

Para 8 of the European Parliament Resolution of 23 May 2007 on Economic Partnership agreements "Calls on the Commission not to exert undue pressure and – in the event of negotiations not being completed by 1 January 2008 – make efforts at WTO level to seek to ensure that disruption of existing ACP exports to the EU is avoided pending a final settlement"

Para 45 of the European Parliament Resolution of 23 May 2007 on Economic Partnership Agreements "Calls for the EU not to include, in EPAs, provisions on intellectual property rights, since they constitute an additional barrier to access to essential medicines and to use the EPA system to help ACP countries implement the forms of flexibility provided for in the Doha Declaration; points out that, by virtue of the 2001 Doha Declaration on the TRIPS Agreement and Public Health, the EU has undertaken to place public health before its trading interests. See

<http://www.tradeobservatory.org/library.cfm?refid=98986>

Financial Times Article

'EU in Danger of Breaking its Promise to the Poor', letter by Carlos Correa and others published Financial Times 25 May 2007. Correa argues that the EU, in the EPA negotiation process has forgotten the development dimension and pursues an agenda that reflects primarily the interest of the EU alone.

See <http://www.ft.com/cms/s/b237b340-0a62-11dc-93ae-000b5df10621.html>