

will always be subsidised, as discussed above). Whilst other subsidies – management services, income support and the like – may end up benefiting IUU vessels, the pathway of these benefits is less direct.

Financial incentives for sustainable equipment and practices are unlikely to encourage IUU fishing. Quite the opposite: as a number of commentators have shown,¹³ the lack of adherence to conservation standards – such as using fishing gear with a low ecosystem impact – gives IUU vessels an economic advantage. Support for better use of sustainable equipment is likely to start to redress the imbalance between the economics of IUU and legitimate fishers by reducing the relative cost of legitimacy.

Since the drivers for IUU fishing are so varied and often indirect, it would probably not be helpful to attempt to ban all ‘subsidies contributing to IUU fishing’ since this would require an exhaustive catalogue over which there would be much argument. It would be more to focus the WTO discussions on disciplining those subsidy categories that are known to fuel IUU fishing.

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ENDNOTES

¹ UNEP. 2004. *Analysing the Resource Impact of Fisheries Subsidies: A Matrix Approach*

² G. Munro & U.R. Sumaila. 2002. *The Impact of Subsidies upon Fisheries Management and Sustainability: The Case of the North Atlantic*. Fish and Fisheries 3, pp 233-250

³ C.W. Clark, G.R. Munro & U.R. Sumaila. 2005. *Subsidies, Buybacks and Sustainable Fisheries* in the Journal of Environmental Economics and Management 50, pp 47-58

⁴ High Seas Task Force. 2006. *Closing the Net: Stopping Illegal Fishing on the High Seas*. Government of Australia et al.

⁵ OECD. 2005. *Why Fish Piracy Persists: The Economics of Illegal, Unreported and Unregulated Fishing*

⁶ OECD. 2004. *Fish Piracy: Combating Illegal, Unreported and Unregulated Fishing*, Chapt. 11

⁷ Op. cit. supra note 4

⁸ M. Gianni & W. Simpson. 2005. *The Changing Nature of High Seas Fishing: How Flags of Convenience Provide Cover for Illegal, Unreported and Unregulated Fishing*. Australian Department of Agriculture et al.

⁹ K. Hanafusa & N. Yagi, op. cit. supra note 6

¹⁰ B. Le Gallic, op. cit. supra note 5

¹¹ Gianni & Simpson, op. cit. supra note 10

¹² Idem

¹³ Agnew & Barnes, op. cit. supra note 6

Clash over Development Agenda at WIPO

The last week of June saw a serious clash between the advocates of substantial reform of the World Intellectual Property Organisation and those essentially content with the status quo.

The rift appeared at a meeting of a committee charged with preparing recommendations on how to proceed with the WIPO Development Agenda proposed in 2004 by 14 ‘Friends of Development’ (FoD).¹ The recommendations are to be considered by the WIPO General Assembly next September.

The thrust of the Development Agenda is that, as a United Nations agency, WIPO must integrate a development dimension in its rule-making, technology transfer and technical assistance activities. Future treaties should reflect this, including through more efficient provisions on technology transfer to developing and least-developed countries, as well a new approach to IPR enforcement that would not only consider the rights but also the obligations of right-holders. For instance, future agreements should take into account the need to prevent abusive practices that restrain competition. In addition, the FoD argue that the preservation of public interest flexibilities and policy space of all Member States should be pursued and acknowledged in current WIPO negotiations, with proposals submitted by developing countries and least-developed countries properly taken into account (Bridges Year 8 No.8, page 17).

So far, Member States have made more than a hundred submissions to the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA). At the committee’s June session, PCDA Chair Ambassador Rigoberto Gauto Vielman (Paraguay) put forward a draft recommendations text containing a ‘selection of proposals’ on which he deemed consensus possible. While most developed countries expressed support for the Chair’s approach, several developing countries rejected it, arguing that the text disproportionately reflected developed country proposals and amounted to an attempt to dilute the Development Agenda.

FoD leaders Brazil and Argentina said the text illustrated the kind of behaviour the proponents of the Development Agenda were trying to address with their call for a decision-making process that is not primarily driven by the interests of developed countries. The two countries, as well as South Africa, said they could not continue discussions on the basis of the Chair’s text.

Before the meeting, the FoD had presented a summary of proposals and suggestions tabled by developing countries, in “an effort to facilitate the PCDA’s work through the submission of formulations for a decision to be taken on the 111 proposals identified individually by the respective proponents at the last meeting” (PCDA/2/2, 23 June 2006). Many of these suggestions were either not reflected – or were reflected in a much attenuated form – in the Chair’s text, including the recommendations that WIPO launch negotiations on a Treaty on Access to Knowledge and Technology, as well as initiate negotiations on “a multilateral agreement where signatories would place into the public domain, or find other means of sharing at affordable cost, the results of publicly funded research.” Among other controversial issues overlooked in the Chair’s text were, *inter alia*, (i) reaffirming the commitment of WIPO Members toward UN objectives and principles; (ii) adopting guidelines for the provision of technical assistance; (iii) establishing pro-development treaty-making principles; and (iv) separating the normative and technical assistance functions of the WIPO Secretariat.

Members were ultimately unable to reconcile their differences. Thus, instead of a set of agreed recommendations, all proposals made in the PCDA process will be forwarded to the General Assembly. These include the draft Chair’s text, which in a last-minute surprise move, was submitted to the committee as a Member’s proposal by the Kyrgyz Republic.

ENDNOTES

¹ Argentina, Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania and Venezuela. Uruguay joined the group later.