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UNFCCC and Trade-related issues and intellectual property

- The 21st Conference of the Parties to the United Nations Framework Convention on Climate Change (COP21/CMP11) will be held in Paris from 30 November to 11 December 2015. This year's conference is crucial because the expected outcome is a **new international agreement on climate change**, applicable to all, to keep global warming below 2°C.
- Although the UNFCCC negotiations do not as such deal with trade, **specific trade issues are regularly raised in UNFCCC context**, which is also expected in Paris.
- I. Regarding **trade in general**, many countries have tried to introduce parallel discussions concerning trade issues under the UNFCCC, in particular within the framework of the discussions concerning the "impact of the implementation of response measures".
- As a matter of principle, **the UNFCCC is not the appropriate forum to discuss trade measures and to elaborate on additional disciplines**. The WTO is the established international body tasked with this purpose, and any decision regarding the use of trade measures under the UNFCCC would undermine this role. The EU argues that the UNFCCC (Article 3(5), which provides that measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade), and the Kyoto Protocol (Article 2(3), which provides that developing countries shall strive to implement policies and measures in such a way as to minimize adverse effects on international trade) already contain the necessary provisions on the trade-climate relationship.
- **Therefore it is proposed to continue to oppose discussion of trade measures under UNFCCC**. More concretely, the following outcomes would be undesirable:

- the adoption of any trade provision going beyond already existing Convention principles¹, in particular the restriction of the use of unilateral trade measures as part of climate change policies;
 - the establishment of formal links between the UNFCCC institutions and WTO;
 - the launching of any working programme or mechanism on trade measures;
- II. Regarding **intellectual property rights (IPR)**, many countries keep proposing to introduce references to the role of IPR as a barrier to the dissemination of innovation and provisions promoting transfers of technology that do not sufficiently safeguard the voluntary nature of such activities. Accepting such language would create the strong risk of weakening IPR as an incentive to innovation in the area of climate related technologies.
 - Empirical evidence proves that IPR do not hamper the use and dissemination of climate-related technologies in developing countries and cannot be seen as an obstacle to technology transfer. Only a minute proportion of patents for Climate Change Mitigation Technologies (CCMT) are actually filed in developing countries. Two studies conducted jointly by the European Patent Office and the United Nations Environment Programme show that less than 1% of all patent applications relating to CCMT from the last 30 years (1980 to 2009) have been filed in Africa and less than 3% of worldwide CCMT patent applications are filed in Latin America². These studies show that IPR does not hamper the use and

¹ Pursuant to Article 3(5) of the UNFCCC, modelled on Article XX of GATT, "[T]he Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change. **Measures taken to combat climate change, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade.**"

² "Patents and clean energy technologies in Africa", EPO & UNEP, 2013 <http://www.epo.org/news-issues/issues/clean-energy/patents-africa.html> and ongoing study on "Patents and climate change mitigation technologies in Latin America" conducted by EPO & UNEP http://www.oecd.org/site/stipatents/2013%20PSDM%20Agenda_final.pdf

dissemination of climate-related technologies in developing countries and cannot be seen as an obstacle to technology transfer. On the contrary, most of the more than 720.000 inventions for climate change mitigation technologies made in the last 30 years are part of these (developing and least-developed) countries' public domain and can be exploited without any IP related authorisation.

- **Therefore the introduction of IPR issues into the discussions must also be strictly opposed.** Other fora (WTO, World Intellectual Property Organization - WIPO) are dedicated to IPR. Any decision under UNFCCC to weaken or alter the international or national IPR regime as well as of mechanisms forcing transfers of technology would do more harm than good. IPR should not be presented as "barriers"; on the contrary, they are a tool to attract investment and to reward much needed innovation to fight against climate change.

EU position for Paris

- **The EU's overall objective is to have COP decisions without any explicit mention of trade and IPR issues and to minimize discussions on trade-related issues.**
- **Any attempt to create any kind of new provision/agenda item/work programme/mechanism on trade/IPR at the UNFCCC discussions cannot be accepted.**