

THE DEVELOPMENTAL RAMIFICATIONS OF VANUATU'S INTELLECTUAL PROPERTY COMMITMENTS ON JOINING THE WORLD TRADE ORGANIZATION

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After over a decade of protracted negotiations, Vanuatu joined the World Trade Organization (WTO) in 2012. Intellectual property provisions formed part of Vanuatu's accession package, and included some Agreement on Trade-Related Aspects of Intellectual Property (TRIPs) Plus provisions. This paper will look at the potential effects that these new undertakings will have on two key areas of development, namely, health and education. It argues that the new intellectual property framework is likely to have detrimental effects on access to both medicines and other medical technology and also educational materials, which is at odds with the developmental aspirations of membership. Although these can to an extent be mitigated by better use of flexibilities permitted within the WTO framework, this should be coupled with the embracing of an open access mentality toward intellectual property rights.

Introduction

VANUATU BECAME the 157th member of the World Trade Organization (WTO) on August 24, 2012, concluding negotiations that began in 1995. As this long period suggests, the road to accession has been rocky, and was faced with a last minute, but active, "Say No to WTO" campaign by civil society, churches, and the chiefs, and one Supreme Court challenge. From an intellectual property perspective, the WTO accession means major changes to Vanuatu's legal regime. It was required to become compliant with the Agreement on Trade-Related Aspects of Intellectual Property

(TRIPs) by the end of 2012, requiring the introduction of a whole raft of intellectual property (IP) laws, and the establishment of an intellectual property office. This paper briefly examines those aspects of Vanuatu's IP commitments that have the greatest impact, or potential impact, upon development in the country. As we will see, the package that Vanuatu signed up to commits it to a number of TRIPs Plus standards, and does not take advantage of flexibilities that were available to it as a Least Developed Country (LDC). The paper is based on both desk research and also a number of interviews with key stakeholders in the two sectors discussed. The research presented here forms part of the preliminary findings of an ongoing three year project.¹

A Developmental Perspective?

In order to investigate the impact of new intellectual property laws on development, it is first necessary to define what is meant by development, and what criteria will be used to measure it. The conventional measures of national development are salary levels and economic growth measured by gross domestic product (GDP). However, this conception of development has been subjected to much criticism as being overly narrow, for example, by the economist Amartya Sen, who has reconceptualized development as "freedom."² Numerous alternative criteria have been proposed, such as The Human Development Index, the Millennium Development Goals, International Human Rights, and Burma's Gross National Happiness Index. A movement has also started in Vanuatu to develop alternative indices of "well-being," that take into account a range of factors including participation in the traditional economy and cultural activities.³ A representative of the National Statistics Office has explained this development, arguing that for far too long economists have used income and expenditure patterns to paint a picture of a society's well-being. He points out that although Vanuatu is a LDC, it was voted the Happiest Country in the World by the New Economics Foundation.⁴ For example, the alternative indicators study found that:

TORBA Province, the northern most province in the country with the lowest GDP per capita and least access to markets . . . in effect the most "economically handicapped" and, coincidentally, the Province with the highest subjective well-being (or, happiness) of any other province by a significant amount. It is also the province with the highest perceived equality, highest levels of trust in neighbours, most positive assessment of traditional leaders, highest rates of community interaction, and the list goes on.

In contrast to this approach, the Pacific Island Forum leaders' 2011 statement on Sustainable Development focuses heavily on economic development, for example, by recognizing "the way in which regional and economic integration can improve the prospect of stable, long-term economic growth in Pacific communities by creating jobs, enhancing private sector growth, and raising standards of living, through the freer flow of goods, services, and investment within the Pacific."⁵ Thus, the term "development" is currently being used by a range of different players to mean very different things and is being measured according to very different criteria. As Merry argues, "How indicators are named and who decides what they represent are fundamental to the way an indicator produces knowledge."⁶ However, the common use of the term "development" risks hiding the different interpretations and meanings vested in the term by the different actors involved. For example, Vanuatu's recent accession to the WTO was both promoted and critiqued on the basis that it would promote "development," with opposing parties talking at cross-purposes about what development means.

This lack of a uniformly accepted definition and indices of measurement of development is problematic for the current investigation into the developmental implications of intellectual property law. The definition of development chosen for such an investigation can, in fact, largely determine its outcome. For example, and this is adopting a very "broad brush" approach, if we look at development as meaning increased foreign investment and greater GDP, then we would support IP rules that favor granting strong proprietary rights over new technologies. However, if we look at development as meaning ensuring access by all citizens to adequate food, education, and health, then we may favor free access to new technologies. Although these different viewpoints over development are represented in the growing literature and policy debates about IP,⁷ especially in the new era of proliferation of what Margaret Chon calls "norm entrepreneurs,"⁸ there is not, as yet, a satisfactory conceptual framework to apply. However, this paper is not the place to fill that hole, although that is certainly the intention for future research. Having noted the difficulties with any measure of development, we now move on to consider the impact of Vanuatu's new IP laws in the areas of health and education, on the basis that these two sectors at least should be central to any measurement of development where IP is implicated.

Health

Vanuatu's accession to the WTO raises many issues about the relationship between trade and health in general. A number of academics and public

policy advocates have drawn attention to the aspects of globalization mediated through WTO Agreements that are having negative impacts on health in the region, highlighting problems of food security and fostering increased dependence on imported food of poor nutritional quality.⁹

Intellectual property laws also have an effect upon a number of different health-related areas, but the focus here is on access to medicines. As is well known, patents granted to drug companies can restrict access to medicines by allowing those companies to charge higher prices than would be obtainable if they did not have such a monopoly right. Although patents are only available for twenty years, there are a variety of ways of extending these, known collectively as “evergreening,” which means that patents can effectively last significantly longer than this. For example, the life of a patent can be extended by data exclusivity periods, such as those Vanuatu has agreed to in its accession package, and also by recognizing patents for new uses of known substances, which allows companies to extend their monopoly by presenting the same drug in a different form or combination. So if a country introduces patent laws that allow drug manufacturers to register their patents, this means that patients in that country can legally only have access to the drugs produced by that company, which are likely to be significantly more expensive than an imitation (or generic brand) of the same drug.

Vanuatu passed a *Patents Act* in 2003 as part of its initial program to join the WTO. However, the law was only gazetted in February 2011 (and hence came into operation) as part of the renewed bid to join the WTO. The *Vanuatu Patents Act 2003* repealed the *Registration of United Kingdom Patents Act* [Cap 80], which essentially provided that any person who had registered a patent in the United Kingdom (UK) could, within three years of the date of issue of the patent, apply to have the patent also registered in Vanuatu. This Act was used very rarely, and according to the Vanuatu Financial Services Commission who administered the patent register under the Act, only about 100 patents had ever been registered. Because of the existence of this old Act, it cannot be said that Vanuatu’s patent regime is *entirely* a consequence of its WTO membership, but there is no doubt that the new system that has been put in place as a result of the accession is greatly strengthened and is likely to result in many more patents being filed than in the past. This is particularly the case given that Vanuatu was required to signal “readiness to participate” in the Patents Co-operation Treaty (PCT) as part of its accession package.¹⁰ Further, previously Vanuatu had complete autonomy over decisions about whether or not to enforce its patent laws, but as a result of WTO membership it can now be compelled to enforce these laws through international trade sanctions implemented by

the WTO's own enforcement machinery, even where they operate against domestic interest.

The attention of the effect of patents on access to medicine in the past few decades has really been focused on human immunodeficiency virus (HIV)/acquired immune deficiency syndrome (AIDS) and those countries in Africa affected by that epidemic. However, the question for Vanuatu, which does not—yet—have an AIDS epidemic, is whether the same level of concern is justified.

In general this research found that at present the introduction of patent legislation is unlikely to increase the cost of most medicines in Vanuatu. This is because approximately 95 percent of drugs in the country are provided for free by the government through health clinics and hospitals, and all of these drugs are generic medicines that have been off patent for a number of years. Those medicines that are only available on patent have tended to be donated to Vanuatu through either international programs, such as the Global Fund,¹¹ or else through bilateral aid programs. Further, Vanuatu, and indeed almost all Pacific Island countries (PICs), do not have local manufacturing companies to produce generic drugs. This means that generic medicines have to be purchased from a country that is not TRIPs compliant, and there are fewer and fewer of these as membership of the WTO increases. These factors point to changes in national patent laws having a potentially minimal effect on the supply of pharmaceuticals in Vanuatu, as the situation in Vanuatu currently stands. This is confirmed by looking at Fiji, which has been a WTO member since 1996, and has only had the issue of a patent over a medicine arise once. It was resolved in that case by using an exception that allows a government to supply generic medicine in particular conditions.¹²

However, if certain circumstances change and what Meads calls the “generic bubble”¹³ bursts, then changes in patent law could have a significant impact on access to medicines in Vanuatu. These circumstances include the following:

- There is a massive worldwide epidemic, for example, severe acute respiratory syndrome or swine flu, for which either vaccines or treatment are developed that are covered by patent, and no donor is willing to donate these to Vanuatu.
- New vaccines are developed (for example, for malaria or cervical cancer) that are covered by patent and that Vanuatu would like to use.
- There is a rise in HIV/AIDS in the country and there is a need to move to second or third line retroviral medicines, which are currently not available off-patent, to treat it.

- Resistance develops to some of the treatments that Vanuatu uses for major diseases such as tuberculosis and malaria, and there is a need to treat these with new generation drugs that are not available off-patent.
- There are new demands for treatments for noncommunicable diseases (NCDs) for example, statins, new diabetic treatments, chemotherapy, and dialysis. Noncommunicable diseases are reaching epidemic levels in the region, and since these are also diseases for the wealthy countries, it is likely that more effective treatments for these conditions will be developed and will be patented. The 2011 Forum Leaders Communiqué states “Leaders noted with concern the huge economic costs of NCDs in the Pacific and in particular the rapidly rising expenditure on NCDs comprising well over 50 percent of the total health budget of many island countries;”¹⁴ While Vanuatu has a lower incidence of heart disease and diabetes than many other PICs, changes in diet, urbanization, and loss of land on which to grow healthy local food may all combine to change this picture.
- Donor support drops off, for example, as a result of the global economic crisis. For instance, in 2011 the World Health Organization (WHO) had to decrease its budget dramatically, and this has meant less assistance for Pacific Island countries.
- Vanuatu ceases being a LDC (it is programmed to “graduate” from LDC status in 2013) and therefore does not qualify for donor support, for example to pay for antiretroviral medication (as is the current case in Fiji, which has to fund this on its own).

Any one of these factors, among others, could alter the situation in Vanuatu to mean that the health requirements of ni-Vanuatu would be best supported by the government, or private pharmacies, being able to access generic drugs. For example, the Malaysian Minister of Health recently stated “With the increasing prevalence of patients with NCDs, many countries are faced with a huge challenge in providing sufficient access to essential medicines . . . The positive economic impact of generic substitutions can be enormous.”¹⁵

Consequently, Vanuatu’s new patent regime introduced as a consequence of the WTO accession means that ni-Vanuatu access to medicine is likely to be constrained in the medium to long term. This conclusion is of course also relevant to other areas of medical technology, for example, hospital equipment and machinery, diagnostic machines, and technology for use in dentistry. The conclusion should also be viewed in the context of the limitations of Vanuatu’s health system generally and drug purchase and

distribution mechanisms more particularly, where a range of systemic factors already significantly hinder public access to medicine.¹⁶

The rationale for introducing patent laws, apart from being a condition of WTO membership, are that they will stimulate investment in research and development leading to the development of new pharmaceuticals to treat new diseases and better treat existing diseases. However, Vanuatu does not currently have any local capacity to conduct research and development (R&D) in this area, and given the start-up costs and depth of experience required, it is unlikely to develop that capacity soon. Therefore, the availability of patents is unlikely to stimulate any R&D. Further, Vanuatu is such a small market that whether it grants patents over pharmaceuticals or not is unlikely to make the slightest difference as an incentive to multinational pharmaceutical companies. The UK Commission on Intellectual Property Rights¹⁷ found that "the presence or absence of IP protection in developing countries is of at best secondary importance in generating incentives for research directed to diseases prevalent in developing countries."¹⁸ Patents may also improve quality by prohibiting counterfeit medicine. However, since there are no drug testing facilities in Vanuatu, it is hard to see how such laws would assist.

The limiting effects of patents on access to medicine can be mitigated by making use of various flexibilities in patent law allowed on the grounds of public health.¹⁹ Even though these flexibilities have not been incorporated into the *Patent Act* as yet, there are no legal grounds stopping Vanuatu from amending the Act to incorporate them, unless it has specifically made a contrary commitment in the accession negotiations. As a precedent, Chile amended its laws to take greater advantage of available safeguards and options after joining the WTO.²⁰ There is no doubt, however, that Vanuatu's lack of technical expertise in this area is likely to be a significant constraining factor in making full use of these flexibilities.

Further, perhaps an even greater difficulty than the new patent regime will be finding a country to supply the required generic medicines, since most countries in the world are now also covered by TRIPs, as mentioned above. Although there are mechanisms that theoretically allow a country to purchase generic drugs through compulsory licenses in drug manufacturing countries in the context of a health emergency, the provisions are so cumbersome and uncertain they have rarely been used.²¹ The rather radical conclusion this points toward is the need for the establishment of a generic medicine plant in the Pacific Island region in a country that is not yet a WTO signatory. This would have a range of developmental benefits, including facilitating access to generic medicines for countries in need (in the

Pacific, but arguably also elsewhere, to take over the market left by Indian manufacturers since 2005, when India's patent laws came into effect), providing a new industry for the region, and requiring investments by domestic governments, private business, and development partners in high-level training programs for nationals. Such a facility could also be used to better produce and market remedies based on traditional medicinal knowledge and plants, such as noni and kava. It is acknowledged, however, that there are a range of practical obstacles that make this an unlikely eventuality.

Education

Intellectual property rights (IPR) are linked to education because of the potential for owners of works to use the doctrine of copyright to restrict access to textbooks, journals, and other print and online learning materials. Copyright gives authors of works exclusive legal rights over those works, including reproduction and dissemination rights. As a result, copyright owners have the right to control the production, dissemination, and use of educational materials. This means that copyright owners can charge high prices for their works, making them inaccessible to students in least developed countries such as Vanuatu. Copyright laws can also prevent students and teachers from photocopying educational materials for use in the classroom, in course packs and at home, and can also prevent bulk copies of books being locally reprinted and sold or distributed at affordable prices.

In the case of Vanuatu, research indicates that copying of textbooks for use by students is widespread. According to one informant who had been a school principal for twelve years, teachers regularly photocopy parts of textbooks, or even whole textbooks if they are small. He does not consider that it is possible to satisfy the educational needs of the students without photocopying textbooks because the textbook subsidy is too small. Overseas learning materials are generally used as supplements by teachers, particularly in the Francophone programs. It is very common for provincial educational authorities to reprint (photocopy) teaching materials and then sell these to the schools. The Ministry of Education is currently trying to stop this practice and to distribute copies directly to schools, which have to pay the production costs. However, the physical delivery of materials to schools is both costly and difficult. At a tertiary level, there is a heavy reliance on overseas textbooks, and these are extremely costly. Many students simply do not buy textbooks because of the cost, and others photocopy large sections of them. This reinforces the findings of the UK Commission on Intellectual Property that

it is arguably the case that many poor people in developing countries have only been able to access certain copyrighted works through using unauthorised copies available at a fraction of the price of the genuine original product. We are therefore concerned that an unintended impact of stronger protection and enforcement of international copyright rules as required, inter alia, by TRIPS will be simply to reduce access to knowledge products in developing countries.²²

Vanuatu did not have any copyright legislation prior to the first round of WTO negotiations. A Copyright Act was drafted in 2000 (the *Copyright and Related Rights Act 2000* [Copyright Act] in preparation for joining the WTO, but was not gazetted until February 8, 2011, when the negotiations resumed. As a result of accession, Vanuatu acceded to the Berne Convention on September 27, 2012, meaning that it will have to recognize and enforce copyright of foreign authors. Further, as part of its accession package, Vanuatu agreed to the TRIPs Plus requirement of becoming a signatory to the World Intellectual Property Organization (WIPO) Copyright Conventions that extend copyright protection into the digital realm and make it an offense to circumvent technological rights managements systems in certain circumstances.²³ Vanuatu's copyright regime is therefore a direct consequence of joining the WTO.

This research found that WTO accession does have a potentially negative effect upon the quality of education in Vanuatu in a number of respects. First, photocopying or reprinting foreign textbooks is no longer legal, meaning fewer students will have access to these materials. Textbooks are fundamental to basic learning; Professor Heyneman states that a World Bank study showed that "textbook availability was the single most consistent correlate of academic achievement in developing countries."²⁴ Copying of textbooks is particularly needed to deal with distributions problems in Vanuatu where delays in ordering and transportation difficulties can mean that students can be delayed in accessing their textbooks for many months. In such circumstances, photocopying books is the only way to provide immediate access. Second, through agreeing to ratify the WIPO Copyright Conventions, Vanuatu has agreed to extend copyright laws into the digital environment. The essential provisions of these treaties have already been included in the *Copyright Act*.²⁵ This is likely to have a curtailing effect on the accessibility of material online to ni-Vanuatu, including educational material, and will limit the extent to which Vanuatu is able to bridge the "digital divide."²⁶ Although there is a lot of content that is available online for free, there is also a lot that is protected by technological protection

measures. These are, however, often quite easy to get around, and there is often advice on the Internet about how to do so.²⁷ However, by introducing such laws, Vanuatu has made it an offense to do this, meaning that such materials will remain inaccessible.²⁸ While individual citizens may be prepared to take the risk of infringement and access them anyway, educational institutions are likely to be far more cautious about taking such risks. Thus, the copyright laws are likely to have a significant impact upon educational quality in Vanuatu. In a 2009 study into access to knowledge in Africa, the authors found that

The link between education and the availability of adequate learning materials such as textbooks is undeniable: It is difficult to imagine effective learning independent of learning materials, both inside and outside of classrooms. Learning materials take many forms. Hard-copy books are still the basis of education systems worldwide and are especially so in Africa. Digital materials are, however, quickly becoming learning tools of choice. As information and communication technologies (ICTs) proliferate, the shift from hard-copy to digital learning materials should accelerate. Technology can have a transformative effect on entire systems of education and on individual teachers and learners within those systems.²⁹

Experiences in the US and EU where the WIPO Copyright Conventions have been implemented demonstrate that they seriously affect access to works online, and have “retarded creativity and technological innovation and stifled competition.”³⁰ For these reasons Correa argues “Should a developing country not be signatory to the WCT and/or the WPPT, as in the case of Brazil, it should refrain from signing them, since they have TRIPs Plus provisions mandating a more rigid copyright protection than such a country’s current stage of development is capable of absorbing, which creates greater drawbacks than benefits for society as a whole.”³¹

Finally, Vanuatu’s new copyright legislation does not give libraries the right to lend books, which also impacts negatively upon education. The Act currently gives the exclusive right of public lending to copyright owners, meaning that libraries that allow borrowing of books will be in breach of the Act.³²

One of the major ways that most developed countries minimize the impact of copyright laws on access to education is through copyright collecting societies. These allow an educational institution to pay a license fee for access to a whole range of works. However, Vanuatu’s small size

means that it is unlikely for a national collecting society to be feasible, meaning that the negative impact will not be able to be mitigated in this way. It may be that this can be dealt with at a regional level, and the University of the South Pacific is currently working on the development of such a proposal,³³ but it will require broad-based support from educational institutions across the region and may involve costs that will be passed on to students.

There are some flexibilities that can be built into the copyright laws to facilitate greater access to educational materials, although this is an area where the law is still very uncertain, and there are very few model guidelines to follow.³⁴ These flexibilities include allowing for parallel imports, utilizing compulsory licensing mechanisms, incorporating educational flexibilities, including a general fair use provision, and providing for a public lending right. However, to really mitigate against the negative impact of copyright laws on access to educational materials, Vanuatu should also conduct awareness-raising about the exceptions that currently do exist in its copyright laws, in order to ensure that people are not discouraged from using materials they have the right to access. The understanding that copyright is a balancing act and that users do have rights to access is not well understood in Vanuatu. As the African Copyright and Access to Knowledge (ACA2K) project argues:

Informal interpretation and application of the law by institutions such as libraries and enforcement agencies have enormous relevance for access to learning materials. Access-enabling interpretations of the law could be reasonable in the absence of precedents adopting the opposite position.³⁵

Vanuatu should also consider introducing policies that encourage authors to use flexible copyright protection schemes—such as Creative Commons licensing—that both protect and promote free access to works.

Costs and Institutional Capacity

Establishing and running a TRIPs compliant IP system is likely to be extremely costly for Vanuatu. It is not clear exactly how much the administrative costs will be, but they are likely to be significant. Further, Vanuatu is required by its accession package to train at least fifteen “officials, customs officers and private sector people as well as educators” in TRIPs issues, which is an additional cost.³⁶ Vanuatu currently lacks expertise in this area, and since it is of a highly technical nature, developing competence in

these areas will take considerable time. The World Bank estimated that a comprehensive upgrade of the IPR regime in developing countries could require capital expenditure of US\$1.5–2 million. The director of the new IP Office in Vanuatu (established in keeping with Vanuatu's WTO commitments) had estimated an initial budget proposal of 25 million vatu to the government to fund the set-up and staffing of the office, although this is unlikely to be granted. In comparison, the estimate spending on health (public and private) in Vanuatu in 2009 was estimated at 2,692 million vatu, so it is about 10 percent of the total amount currently spent on health. The significance of the administrative burden of becoming TRIPs compliant was highlighted by a group of LDC countries on November 11, 2011, when they asked the WTO for an extension of the 2013 deadline to be TRIPs compliant. A chief reason was that

Least Developed Country Members continue to face serious economic, financial and administrative constraints in their efforts to bring their domestic legal system into conformity with the provisions of the TRIPs Agreement, and as such the continued relevance of the previous request made for an extension of the transition period under Article 66.1.³⁷

Despite being a LDC country and hence eligible for the current deferral of full implementation until 2013, Vanuatu waived this flexibility in its accession package. However, as a result of a new extension negotiated on behalf of the LDCs in June 2013, Vanuatu will have a "second chance" to take advantage of this new intellectual policy space.³⁸ This discussion of costs is relevant to the issue of development because by spending money on its intellectual property system, Vanuatu will have to spend less on other areas, such as health and education.

Conclusion

This paper has demonstrated that the intellectual property commitments Vanuatu made as a result of acceding to the WTO are likely to have a negative effect on access to medicines and access to educational materials, at least in the medium to long term. Vanuatu is overwhelmingly a net importer of intellectual property and is likely to remain this way for many years to come, given the country's lack of research and development and current state of technological development. It is best served by having laws that reflect that reality, instead of enacting laws that support foreign owners of intellectual property, especially given the considerable public expense that

will be required to implement and enforce such a system. However, there is still room within the legal framework that Vanuatu is now part of to introduce some flexibilities to mitigate against some of these consequences, and Vanuatu is urged to give careful consideration to legal reforms to take advantage of this “wobble room.” Perhaps even more important, though, is the need to avoid adopting an “ideology of ownership” to use Filer’s term (which he coined in relation to landownership)³⁹ in relation to intellectual property. Legal flexibilities are only useful if they are actually implemented and supported by both officials and a public who are informed about, and believe in, users’ rights of access to intellectual property.

NOTES

1. See <http://www.ippacificislands.org>.
2. Amartya Sen, *Development as Freedom* (Oxford: Oxford University Press, 1999).
3. See Vanuatu National Statistics Office, “Alternative Indicators of Wellbeing for Melanesia” (2012), accessed February 28, 2013, http://www.vnso.gov.vu/index.php/component/docman/doc_download/193-well-being-survey-2012?Itemid=18.
4. Bob Maikin, “Well-being for Melanesia,” *Vanuatu Daily Post*, September 5, 2012.
5. “The Waiheke Statement on Sustainable Development,” *Cook Islands Herald*, September 9, 2011, Online Edition, accessed March 1, 2013, <http://www.ciherald.co.ck/articles/t415a.htm>.
6. Sally Engle Merry, “Measuring the World: Indicators, Human Rights, and Global Governance,” *Current Anthropology* 52 (2011): 584, accessed February 28, 2013, <http://www.jstor.org/stable/pdfplus/10.1086/657241.pdf?acceptTC=true>.
7. See, for example, Commission on Intellectual Property Rights, *Integrating Intellectual Property Rights and Development Policy* (2002), accessed February 28, 2013, <http://www.iprcommission.org/home.html>; UNCTAD-ICTSD, *Resource Book on TRIPS and Development* (Cambridge: Cambridge University Press, 2007); Daniel Gervais, ed., *Intellectual Property, Trade and Development: Strategies to Optimize Economic Development in a TRIPS-Plus Era* (Oxford: Oxford University Press, 2007); Madhavi Sunder, *From Goods to a Good Life: Intellectual Property and Global Justice* (New Haven, CT: Yale University Press, 2012).
8. Margaret Chon, “A Rough Guide to Global Intellectual Property Pluralism” (Seattle University School of Law Research Paper No. 09-01, November 16, 2009), 5, <http://ssrn.com/abstract=1507343>.
9. For example, A. M. Thow and W. Snowdon, “The Effect of Trade and Trade Policy on Diet and Health in Pacific Islands,” in *Trade, Food, Diet and Health: Perspectives and Policy Options*, ed. C. Hawkes, C. Blouin, S. Henson, N. Drager, and L. Dubé

(Chichester, UK: Wiley and Sons, 2010), 147–168; David Legge and Deborah Gleeson, “Trade Agreements and Non-Communicable Diseases in the Pacific Islands” (2011, manuscript on file with author). See also Public Forum on Trade and Health in the Pacific, “People’s Health Movement Australia” (background paper, 2010), accessed February 28, 2013, http://phmoz.org/wiki/index.php?title=People%27s_Health_Movement_Australia; United Nations Human Rights, *Pacific Trade and the Right to Health* (Suva, n.d.).

10. See WHO, Regional Office for the Western Pacific, “Informal Intercountry Consultation on Public Health and Intellectual Property Rights for Selected Pacific Island Countries,” Nadi, Fiji, March 25–27, 2009, 16. This report notes that Papua New Guinea joined the PCT in 2003, and according to the statistics for that year, 81 percent of patent applications were PCT applications. See also Peter Drahos, *The Global Governance of Knowledge: Patent Offices and Their Clients* (Cambridge: Cambridge University Press, 2010), 270–72.

11. See, for example, “Global AIDS Response Progress Report 2012, Republic of Vanuatu,” accessed February 28, 2013, http://www.unaids.org/en/dataanalysis/know_yourresponse/countryprogressreports/2012countries/ce_VU_Narrative_Report.pdf.

12. See WHO, “Briefing Note: Access to Medicines: Country Experiences in Using TRIPS Safeguards” (February 2008), accessed February 28, 2013, http://asia-pacific.undp.org/practices/hiv aids/documents/trips/Country_experiences.pdf.

13. Sarah Meads, “Trade, Medicines and Human Rights: Protecting Access to Medicines in Fiji and the Pacific” (master’s thesis, Victoria University of Wellington, 2008), 70.

14. Pacific Islands Forum Secretariat, “Forum Communiqué,” 42nd Pacific Islands Forum, Auckland, New Zealand, accessed February 28, 2013, <http://www.forumsec.org/pages.cfm/newsroom/press-statements/2011/forum-communique-42nd-pif-auckland-new-zealand.html>.

15. See Y. B. Dato’ Sri Liow Tiong Lai, “Statement by Y. B. Dato’ Sri Liow Tiong Lai, Minister Of Health, Malaysia at United Nations High Level Meeting on NCD (Plenary Meeting), 19 September 2011, New York—Theme: The Prevention and Control of Non-Communicable Diseases,” accessed February 28, 2013, <http://www.twinside.org.sg/title2/FTAs/info.service/2011/fta.info.195.htm>.

16. See, for example, AusAID Office of Development Effectiveness, *Working Paper 3: Vanuatu Country Report* (2009), 14, accessed February 28, 2013, <http://www.ode.ausaid.gov.au/publications/documents/working-paper-health-service-delivery-vanuatu.pdf>.

17. Commission on Intellectual Property Rights, *Integrating Intellectual Property Rights and Development Policy*.

18. Commission on Intellectual Property Rights, *Integrating Intellectual Property Rights and Development Policy*, 38.

19. These are set out in Carlos Correa, *Intellectual Property Rights, the WTO and Developing Countries: The TRIPS Agreement and Policy Options* (Penang: Zed Books, 2000), 242–43.

20. Carol Deere, *The Implementation Game* (Penang: Oxford University Press, 2009), 72.
21. See WHO, Regional Office for the Western Pacific, "Informal Intercountry Consultation on Public Health and Intellectual Property Rights for Selected Pacific Island Countries," 6–7. See also Jenny Wakely, "Compulsory Licensing under TRIPs: An Effective Tool to Increase Access to Medicines in Developing and Least Developed Countries?," *European Intellectual Property Review* 33, no. 5 (2011): 299–309, 302.
22. Commission on Intellectual Property Rights, *Integrating Intellectual Property Rights and Development Policy*, 101.
23. Anticircumvention provisions are provisions that make it illegal to circumvent or defeat technological protection devices (or rights management systems) that have been installed by copyright owners as technological barriers to access.
24. Stephen P. Heyneman, cited in Margaret Chon, "Intellectual Property 'From Below': Copyright and Capability for Education" *University of California, Davis, Law Review* 40 (2007): 823.
25. See sections 2, 8, 36, 37 of the act.
26. The "digital divide" refers to the inequitable access to information and communication technologies, including access to the Internet, between the developing and developed countries.
27. Xuan Li and Carlos Correa, eds., *How Developing Countries Can Manage Intellectual Property Rights to Maximise Access to Knowledge* (Geneva: South Centre, 2009), 119.
28. See sections 36 and 37 of the Copyright Act.
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