



INB 8 - KEI oral intervention

19 February 2024

Among the areas of division are those relating to intellectual property rights.

We are pleased to see in Article 11, paragraph 6, an obligation for a country to “review and update as necessary its national legislation” for flexibilities in intellectual property laws that are relevant to dealing with a pandemic.

It would be helpful to add reporting on what members think is necessary, and also if they have implemented the exceptions in law, and if the exceptions are actually used.

It’s one thing to have an exception in national law that is never used, and another to actually use exceptions.

We know that during COVID, the United States did not use 31bis or Article 31 of the TRIPS Agreement, but rather some combination of TRIPS Articles 30, 44 to provide authorization and consent for non-voluntary use of patented inventions, not once, not twice, but dozens of times.

The pandemic agreement should include an obligation to use exceptions, including those cited by Innovate in their excellent intervention, when necessary to achieve the objectives of the treaty, particularly for flexibilities like compulsory licenses when they require decisions by governments or courts.

The parties should consider an opt-in pool for sharing-rights obtained in government R&D or procurement contracts. The opt-in pool could be designed to only share on a reciprocal basis, with parties that join the pool. The specific obligations to benefit from such a technology pool could be determined later, in the implementation of the agreement.