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Council for Trade-Related Aspects of Intellectual Property Rights

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 11 JUNE 2014

Chairperson: Ambassador Mothusi Palai (Botswana)

Addendum

The present document contains statements made during the Council for TRIPS meeting held on 11 June 2014.

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Subjects discussed

INDEX OF THE STATEMENTS MADE AT THE MEETING OF THE COUNCIL FOR TRIPS 11 JUNE 2014*

AGENDA ITEM 2: NOTIFICATIONS UNDER PROVISIONS OF THE AGREEMENT

2.1 Turkey

1. Turkey has submitted its instrument of acceptance of the Protocol Amending the TRIPS Agreement on 8 May 2014.

2.2 Secretariat

2. This update follows the Council's request in November 2012 for the Secretariat to inform it at future meetings on enhancements to the Secretariat services improving the transparency, timeliness, completeness and user-friendliness of the notification system. In turn, this request responded to its earlier work from March 2009 under a separate agenda item on the Letter from the Chair of the General Council Concerning Ways to Improve the Timeliness and Completeness of Notifications and Other Information Flows, following a request by the General Council for committees and councils to work on the issue. The document prepared at that time (IP/C/W/543) continues to serve as the information base for this process. It provides, in effect, an audit of the then current state-of-play of notifications of laws and regulations. That document both reported on the state-of-play of notifications at that point and suggested how to make the system more timely and complete. The regular reports made to the Council since that time have been supplemented by more informal consultation sessions with Members.

3. The legal basis for the notification procedures is in Article 63 of the TRIPS Agreement, which refers to laws and regulations pertaining to the subject matter of the Agreement, that is the availability, scope, acquisition, enforcement and prevention of the abuse of IPRs. The Council established at its early meetings a system for dealing with legal notifications, in particular the 1995 Decision by the Council (IP/C/W/6/Rev.1) that provides a framework for notifying laws and also refers to subsequent amendments to Members' laws and regulations and specifies particular timelines for notifying both original laws and amendments to laws. Established nearly 20 years ago, these procedures have proven to be durable and effective up to the present time, and seem to be well adapted to continue to be applied and in particular to respond to major developments since the first round of notifications from 1995.

4. The original Council decision calls for notifications to be made where possible in machine readable form. Since then, there has been a general shift towards online and digital systems for collecting, managing and distributing such information. The original decision also deals with the notification of amendments. The current focus has transited from the initial notification of laws and enforcement mechanisms to the notification of amendments and other further developments to laws already notified. The work on improving the notification system therefore continues to take an integrated approach to managing the vast amount of information that has been tabled since 1995 and this focuses on the three key areas: improving data capture, modernising the management of the data that has been provided, thereby expediting its processing and ensuring that it is less of a burden on the documentation systems of the Secretariat.

5. Another objective is to improve and extend the service provided to Members so that the notified information can be accessed and referred to in a way more in keeping with the way delegations and others expect to work with it today, that is to say a more facilitated online service. We will continue to follow the general approach that has been outlined in the past - firstly to remain entirely within the framework of notification and reporting standards set out in the TRIPS Agreement and the subsequent Council decisions, therefore ensuring that we focus on updating and streamlining existing arrangements from a practical point of view rather than amending or altering the established framework. Secondly there remain some lacunae in the content, so the focus will be on improving the completeness, timeliness and practical accessibility of the information provided, but also on easing the administrative burden for notifying and reporting activities of Members.

6. We have identified ways of saving resources, reducing the load on the documentation systems of the Secretariat while finding ways of improving the services for Members. Concerning data capture, the first step in the chain, we are continuing to work on fully digitising the entire backlog of notifications. We also maintain the successful WIPO-WTO Common Portal, which has facilitated notifications and updates of laws. Furthermore, we are working on similar on-line notifying and

reporting tools for other TRIPS-related notifications as an optional tool that Members may choose to use to facilitate their notifications and to help us work with the data in a more workable and consistent format, given the past experience of highly diverse and often incompatible formats that have been used.

7. A concrete suggestion for improving the usefulness of notified materials is for Members to provide a brief introduction that explains the significance of a notified amendment or update. This would make it easier to understand the significance of an amendment, thus improving the transparency and usefulness of the information. This kind of information is helpful since, for the most part, we have effectively reached the end of the first phase of notifications of the basic legal framework for most Members but in many cases these notifications date back to nearly two decades.

8. Concerning the possibility of a more user-friendly notifying and reporting tool, we propose to informally consult with Members tomorrow on a prototype of what such a tool would look like, and on a related tool to identify ways of more easily access and distribute the notified material.

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AGENDA ITEM 4: REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B)

AGENDA ITEM 5: RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CONVENTION ON BIOLOGICAL DIVERSITY

AGENDA ITEM 6: PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE

6.1 India

9. We have been extensively discussing these agenda items, which are of critical importance to the biodiverse countries. The majority of the membership of this Council has not only highlighted the misappropriation of genetic resources and traditional knowledge but have proved beyond doubt that that such misappropriation and granting of wrongful patents is possible because of the inadequacy of the TRIPS Agreement to address these issues. India has been a major victim of biopiracy and has developed a comprehensive legislation on biodiversity, enacted Biological Diversity Act in 2002 and notified Biological Diversity Rules in 2004. This Act gives effect to provisions of the CBD, including those relating to ABS. In 2003 the National Biodiversity Authority was set up. All matters relating to requests for access by foreign individuals, institutions or companies, and all matters relating to transfer of results of research to any foreigner are dealt with by the National Biodiversity Authority. Unfortunately these domestic measures are insufficient since the problem has an obvious international dimension. It needs an international solution in order to address the problem of misappropriation of genetic resources effectively. We are therefore convinced that, since the TRIPS Agreement continues to ignore the numerous IPR related obligations in the CBD, there is an inherent contradiction between the provisions of TRIPS and CBD.

10. The latest submission on this issue "Enhancing Mutual Supportiveness between TRIPS and CBD" (TN/C/W/59) has been proposed by a vast majority of the WTO Membership. The submission captures the developments in the past including the Nagoya Protocol signed by 192 countries and which contains a significant implementing legislation for the CBD issues regarding prior informed consent, and access and benefit sharing. We feel that the submission could be a good basis when we could restart our work on this issue.

11. There have been substantial discussions over the issue of formally inviting the CBD Secretariat to brief on the Nagoya Protocol. It is unfortunate that while CBD has given presentations in WIPO and the WHO, the WTO has been deprived of its briefing on account of objections by a Member for an unknown reason. There is now an urgency to discuss the Nagoya Protocol under this agenda item, especially after 25 Members have already ratified it and it is a matter of time until the Protocol will enter into force. We therefore reiterate our demand for a formal briefing by the CBD Secretariat in the interest of the large majority of developing countries and urge the Member blocking consensus to revise its position at the earliest. Constructive engagement of all the Members on this critical issue would not only reaffirm the faith of the developing countries in the multilateralism but would also prove that the organization has the willingness and capacity to take care of the interests of the developing countries.

6.2 China

12. In accordance with the mandate awarded by Ministers, which instructs the Council to examine, *inter alia*, the relationship between the TRIPS Agreement and the CBD, Members shall work effectively in order to resolve the matter. As has been illustrated at previous TRIPS Council meetings, it is well recognized that TRIPS-CBD has been an important outstanding issue.

13. China believes the TRIPS Agreement and the CBD shall operate in a mutually supportive way. China supports amending the TRIPS Agreement with the purpose of introducing a mandatory disclosure requirement of the origin of genetic resources and/or traditional knowledge into patent applications. Through this way, it can contribute to prevent the misappropriation of genetic resources and the grant of erroneous patents, improve the transparency of the utilization of genetic resources and enhance legal certainty.

14. This position is co-held by the majority of Members and can be found in documents TN/C/W/52 and TN/C/W/59. These documents could improve the transparency and help prevent

misappropriation and erroneous patents granted due to the lack of information by patent examiners. At the same time, China does not think it would be burdensome for the patent applicant to provide the information concerning prior informed consent and access and benefit sharing, especially considering the legitimate objective pursued by the system. The contractual arrangements or database solution proposed by some Members is not enough for the protection of genetic resources.

15. Once again, China is supportive of inviting the CBD Secretariat to make presentations on the Nagoya Protocol at the TRIPS Council, from a perspective different from WTO Members. Such a presentation will help improve Members' understanding of the protection of genetic resources, and contribute to the cooperation between the WTO and other international organizations.

16. In addition, China also supports Ecuador's suggestion to update the three summary notes by the Secretariat under these items. The updates could help Members have a full, clear and better understanding of the current situation, and could facilitate further discussion on these issues.

6.3 Brazil

17. Brazil associates itself with the proposals enshrined in TN/C/W/52 and TN/C/W/59, as well as the statements by India and China. The world has changed a lot with this new protocol on the biological diversity, the Nagoya Protocol, but we have not managed to update the TRIPS Agreement to adapt it to this new international framework.

18. National initiatives to regulate the relationship between IP and biodiversity are important, but they do not mean much when other countries can use these resources without respecting the principles enshrined in the CBD, such as prior informed consent, and access and benefit sharing. Establishing a mutually supportive relationship between TRIPS and CBD is important, not only to mega-diverse countries like Brazil, but also to all Members interested in protecting biodiversity in strengthening the IP system. Making sure that patents that involve misappropriation of resources cannot be granted or kept would be a good way to show that the system works for all countries and in the best interests of the diverse stakeholders, regardless of their level of development.

19. It is important to emphasize that, in the proposed mechanism to preclude misappropriation of genetic resources and associated traditional knowledge, patent offices would be nothing more than a checkpoint to collect and to disseminate information. Therefore it would not in any way represent an unnecessary burden to the national systems of IP.

6.4 Bangladesh

20. At the outset allow me to join other delegations to warmly welcome you and put on record our deep appreciation for the outgoing Chair for his valuable contribution.

21. Bangladesh's position is well known, and unchanged. We much appreciate your effort to consult Members on how to move forward the issue. Though the issues that fall under these agenda items are of critical importance to us, our decade's effort is yet to bring any positive results. We are not even on the same plane to invite CBD for a presentation on Nagoya Protocol.

22. Another critical concern of us relates to Article 27.3(b). We are ready to contribute in a constructive manner in any substantive discussion on the issue.

23. Regarding the patentability of life forms, we are against any such attempt, because any trade interest cannot and must not be pursued neither crossing the limit of nor ignoring morality and ethics. As regards genetic resources, traditional knowledge and folklore, we reiterate that these are absolutely sovereign interest of the state. As such, a comprehensive disclosure mechanism with prior informed consent should be in place to safeguard the legitimate right of and ensure benefit sharing to the people.

24. Last but not least, my delegation believes that both TRIPS and CBD has a common enshrined objective to promote social and economic welfare while promoting technological innovations and dissemination of technology. However, due to some imbalances, in particular lack of a mandatory disclosure and fair benefit sharing mechanism within the TRIPS Agreement, one side continues to

remain handicapped to reap any benefit. Implementation of TRIPS and CBD should be done in a harmonious and mutually supportive manner with a view to achieving that common goal.

6.5 Plurinational State of Bolivia

25. Bolivia would like to reiterate its concerns about the possibility of patents being granted on life forms or parts thereof under Article 27.3(b) of the TRIPS Agreement. This is a matter that raises a number of problems, be they ethical, cultural or commercial and that is why we need to review that Article. It has given rise to a real competition for such patents which has led to a number of difficulties under different jurisdictions which are trying to deal with public goods and trade relevant to this Council. There is a mandate for the review of Article 27.3(b) and this should have happened four years after the WTO Agreement came into force. In paragraph 19 of the Doha Declaration, Ministers agreed that this would be considered under Article 71 of the TRIPS Agreement.

26. Bolivia would like to express its support for the CBD Secretariat participating in a briefing session for this meeting, and we support Ecuador in their suggestion that the Secretariat provide us with an update of the discussions that have taken place under these three agenda items.

6.6 Ecuador

27. We agree with India, China, Brazil and Bolivia on this matter. In our view, there must be a consideration of the review and amendment of Article 27.3(b). We agree with what the delegation of Bolivia just said on that score. We feel that there should be a prohibition on the patentability of life forms or parts thereof. We do feel that the TRIPS-CBD relationship is clear and that is why we do need to have multilateral instruments that allow for true, proper and adequate protection of traditional knowledge and traditional cultural expressions. Similarly, based on the links between TRIPS and CBD, we feel that the CBD Secretariat should be in a position to brief us on the Nagoya Protocol and help us deal with the question of protocol and access to genetic resources.

28. I recall that the Secretariat organized a briefing session on these matters. This was in relation to a proposal that Ecuador made some time ago that we have a compilation of documents since we haven't had an update since 2006. We feel that a new compilation would provide Members with helpful information that would enable a constructive debate. We therefore hope that you will have fruitful consultations on this matter in order to help us move forward, and we would urge those delegations that have opposed this to find a way of joining us on this matter.

6.7 Colombia

29. We continue to maintain that all Members should work together in order to discuss this agenda item. It is a matter of great importance for most countries. We do need to find a way of moving forward with the work that has been entrusted to us. Colombia is engaged in domestic procedures which will enable it to ratify the Nagoya Protocol. The Protocol has implications for indigenous communities and that is why the Constitution of Colombia provides for prior consultations with such communities and we are engaged in that particular process.

6.8 Indonesia

30. Indonesia would like to support the statements made by India, Brazil and China. Indonesia believes that this agenda item is highly important and that all Members of this Council should take real action so that the TRIPS Agreement and the CBD can be implemented in a manner which is mutually supportive and does not run counter to their objectives. Indonesia, as a proponent to document IP/C/W/59, remains consistent in its view of the urgency of a mandatory disclosure requirement to be included in the TRIPS Agreement. Indonesia would also take this opportunity to support Ecuador's proposal that the Secretariat be requested to update the information.

6.9 Peru

31. The whole question of the protection of traditional knowledge and folklore and TRIPS-CBD links is of vital importance to Peru in the context of the Doha Round. There has been some progress made in the WIPO Intergovernmental Committee on Intellectual Property and Genetic

Resources, Traditional Knowledge and Folklore (WIPO IGC). There have been meetings that have made progress and there has been good exchange of views on the benefits in the protection of traditional knowledge. We know what benefits there are when it comes to the protection of such resources. We have a clear definition of these matters and we do think that we need to ensure that we carry on with our clear definition of all the terms that we have to deal with, and that we have to tackle particularly the whole question of the ways in which developing countries like my own are affected.

32. We do hope that there is going to be some work done so that we have real results on these issues. That said, the headway made by WIPO does not seem to be matched here at the WTO. Work on these areas does not seem to be going hand-in-hand with others. As other delegations have said, we would encourage that work be done on TRIPS, so that there is prior consent? and to ensure that there is access and benefit-sharing. When it comes to such resources, we do need to have a multilateral mechanism that will enable us to establish acceptable procedures here. Another important matter is that there should be up-to-date information on these agenda items on which we seem to have come to an impasse. It would be useful to hear from the CBD Secretariat so that they could tell Members about the work that has been done within the CBD.

6.10 Bolivarian Republic of Venezuela

33. Venezuela supports the amendments suggested by Bolivia to Article 27.3(b), which is a matter that this Council should tackle.

6.11 Egypt

34. Egypt would like to associate itself with the delegations of India, China and others. The protection of biological resources, traditional knowledge and folklore presents an important developmental issue for Egypt with implications on the preservation and development of national Egyptian natural and cultural heritage. In view of the importance of this issue, we continue to support engagement in full negotiations on the relationship between the TRIPS Agreement and the CBD, which is a critical part of the implementation-related issues and concerns as contained in the Doha Work Programme. We remain steadfast in urging other Members to engage in this issue of prime importance to developing countries, as part of the hoped-for developmental gains of the Doha Development Agenda.

35. Technical discussions on this issue have been ongoing for almost a decade so far. During this period, several submissions have been made with the aim of clarifying the issues so that an effective and consistent framework could be established to enable WTO Members to meet their obligations under both the TRIPS and the CBD. The essence of our efforts is that the TRIPS Agreement should be amended in order to provide that Members shall require an applicant for a patent relating to biological materials or associated traditional knowledge to disclose the source and country of origin of the biological resource and the associated traditional knowledge used in the invention.

36. In this regard we also support the initiative to invite the CBD Secretariat to brief us on the Nagoya Protocol.

6.12 United States

37. We wish to update Members on the WIPO IGC discussions. At the last session of the WIPO IGC, the Committee had considered two texts, namely "The Protection of Traditional Knowledge: Draft Articles" ("the TK text") that was annexed to document WIPO/GRTKF/IC/27/4, and "The Protection of Traditional Cultural Expressions: Draft Articles" ("the TCEs text") that was annexed to document WIPO/GRTKF/IC/27/5. During the session, the Committee continued to explore how to protect traditional knowledge and traditional cultural expressions, and who should be the beneficiaries of such protection.

38. Major gaps remain, as some advocate for governments being the beneficiaries, and others insist that the protection should benefit the holders of TCEs and TK. In addition, some advocate for protecting the public domain, and others characterize the public domain as a foreign concept,

to which they do not ascribe. Clearly much work needs to be done, but we are pleased by the high degree of involvement of the participants at the WIPO IGC.

39. In July, the WIPO IGC will review and take stock of the texts of the draft International Legal Instruments on Traditional Cultural Expressions, Traditional Knowledge and Genetic Resources and make a recommendation to the WIPO General Assembly on whether to convene a Diplomatic Conference.

40. The United States, like many WTO Members, has been actively participating in the negotiations of the WIPO IGC process, and we look forward to working to advance the WIPO IGC's discussions.

41. With respect to the requests regarding updating the three Secretariat papers and the CBD Secretariat briefing, the United States is not in a position to support at this time. That said, we continue to review these requests closely and would welcome further information from delegations in support of those requests. Mr. Chairman, we also welcome your guidance regarding talking with other Members and will take you up on that encouragement in the coming days and weeks.

6.13 Cuba

42. Cuba regrets to hear, once again, that there is no consensus on having an exchange with the CBD Secretariat, which many Members have been requesting for years, and that because of one Member's refusal it has still not been agreed that the WTO Secretariat should update the notes on these issues. Cuba therefore fully supports Ecuador's request regarding this matter and the related statements made by India, China, Brazil, Bolivia and other Members.

43. As regards the statements made by the United States, we would emphasize that work carried out in other forums such as WIPO on the misappropriation of genetic resources and traditional knowledge will be complementary and will not obviate the need to amend the TRIPS Agreement or supersede the mandated work of this Council.

44. We also request that open consultations be held to determine the best way to move work forward in these areas, based on proposals put forward by developing countries, e.g. documents IP/C/W/474 and WT/GC/W/590 that could serve as a good foundation, in accordance with the mandate established in paragraph 19 of the Doha Ministerial Declaration. However, we reiterate that discussions on the TRIPS-CBD relationship are being misinterpreted, as this is not about reaching a consensus to address an issue already expressly mandated in the Declaration.

45. With respect to Article 27.3(b) of the TRIPS Agreement, Cuba endorses the statements made by Bolivia, Ecuador and Venezuela and recognizes the importance of taking into account these Members' requests on this matter.

6.14 South Africa

46. We support the views expressed by Brazil, India, China, Indonesia and others that I may have omitted. We remain convinced of the linkages between TRIPS-CBD, traditional knowledge and folklore and for that reason we continue to be of the view that a disclosure requirement would be helpful in mitigating the risks that many others have articulated in respect of biopiracy and the like.

47. As it relates to the invitation of the Secretariat of the CBD to give a briefing to this house, we associate ourselves with that view and welcome the report that our colleague from the US has just given us on what is happening at WIPO. It is a very useful report and it is very useful to keep an eye on what is happening at WIPO. However, we still, like Cuba, believe that that work is complementary to what we are doing here and this Council has a specific mandate which we believe we have to live up to.

6.15 Japan

48. Regarding the patent disclosure requirement, this delegation shares the view expressed by other Members that effective measures should be taken against misappropriation of genetic

resources, traditional knowledge and folklore. Nevertheless, we still do not see any need to introduce such a requirement into a patent system for the reasons we have previously explained.

49. We believe that the WIPO IGC is the most appropriate forum for technical discussions on these issues. As the United States already explained, it continued having text-based negotiations regarding the protection of traditional knowledge and traditional cultural expressions at the last session in March and April 2014. Japan actively participated in that session and put forward additional proposals, together with Canada, Korea, the United States, and several other countries.

50. We will continue to take part in discussions on these issues in a constructive manner.

6.16 Canada

51. Canada firstly wishes to reiterate that it does not perceive any conflict between the TRIPS Agreement and the CBD and that these two agreements can therefore be implemented in a mutually supportive way. Canada also believes that WIPO is still the most appropriate forum for discussion and negotiation concerning the protection of genetic resources, traditional knowledge and traditional cultural expressions in the context of IP.

52. Despite the work still to be done, Canada welcomes the progress made in March and April 2014 at the meetings of the WIPO IGC. Canada will participate with interest in the Committee meeting in July, which will examine the cross-cutting issues relevant to the three texts, and will issue a recommendation to the General Assembly on the next steps to be taken. We will continue to work with all WIPO Member States with a view to achieving a balanced result.

6.17 New Zealand

53. New Zealand agrees with the views expressed by many Members about the importance of preventing the misappropriation of genetic resources and associated traditional knowledge. At a broader level, we have a systemic interest in preventing the granting of erroneous patents. Measures that contribute to high quality patent examinations are important to ensuring the health and integrity of the patent system.

54. New Zealand considers that there is a significant degree of common understanding amongst Members over these high level objectives. That said, there is still much disagreement over the appropriate policy responses that would best achieve these objectives.

55. New Zealand's domestic policy is still evolving in this area. We are however committed to engaging constructively in relevant international fora to address these important issues.

56. The WIPO IGC is undertaking a detailed consideration of the relationship between IP and genetic resources, as well as traditional knowledge and traditional cultural expressions. As noted by other members, the WIPO IGC is currently working on the text of an international instrument or instruments on the protection of these three subject matters.

57. Like Canada, New Zealand considers that the WIPO IGC is an appropriate forum to discuss in detail issues relating to the protection of traditional knowledge and genetic resources because it is able to look at these issues in a holistic and coordinated way. New Zealand is an active and constructive participant in the IGC, and is committed to the fulfilment of the IGC mandate.

58. New Zealand notes that the WIPO ICG negotiation is at an important juncture. Our view is that it will be important to ensure that appropriate political attention is given to this negotiation.

6.18 Trinidad and Tobago

59. We wish to thank the US delegation for its accurate summary of the work of the WIPO IGC. We have taken part in these negotiations and look forward to the next session in July. We would like to associate our views with respect to the WIPO IGC negotiations with those expressed especially by Cuba and South Africa. The progress in WIPO is complementary and should not hinder the work here mandated with respect to these three agenda items.

6.19 Chairman

60. In order to be sure that I understand clearly Cuba's suggestion concerning open consultations, I would ask it to clarify the form in which it envisages they should take place, and also under whose chairmanship.

6.20 Cuba

61. As part of the consultations that took place a few months ago, and with the aim of trying to move forward the work on these issues and to have some kind of concrete results, and since this keeps coming up each Council meeting, we suggested that we could establish open consultations. What we envisage would be to try to carry out these open consultations so that the working documents that already exist could be a good foundation to carry out possible work. Of course, this is something that would need to be put to the consideration of all Members.

6.21 Food and Agriculture Organization

62. Thank you for providing me with an opportunity to inform WTO Members about an event which is relevant to these three topics of the agenda that is being organized by the FAO on the occasion of the 10th anniversary of the International Treaty on Plant Genetic Resources for Food and Agriculture. This event will be held here in Geneva on 3 July 2014 and will be hosted in the Palais des Nations. The theme of this high-level meeting will be "Integrating plant genetic resources data and technologies for food security, conservation and climate adaptation in agriculture". Formal announcements will be sent through our normal channels of communication to all Members within the next one or two days.

6.22 Chairman

63. I would like to clarify the two points on which we might need to take a decision: the suggestion from Ecuador that the Chair continue consultations on the two issues mentioned by it; and on the matter just mentioned by Cuba.

6.23 United States

64. I wanted to come back on the two items that you identified, and thank you for clarifying those on behalf of all Members, we think that is quite helpful. With respect to the suggestion to hold continued consultations by you, Mr. Chair, I think we certainly could support that. With respect to the second proposal that was made today, I think that we do not have quite enough information to be in a position to support that at this time, so I think we will not be able to support that proposal, but I think a lot of questions, many of which you have raised yourself Mr Chair, need to be clarified, for more detail, and perhaps that could be done, but until we get that it is a little hard to make an evaluation. We always appreciate notice about any proposals to be made so that we can fully vet these at capital.

6.24 Chairman

65. I understand we have agreement that I, as the Chair, continue consulting on the suggestions that the CBD Secretariat be invited to brief the Council on the Nagoya Protocol to the CBD, and that the Secretariat be requested to update three factual notes that summarize the points delegations have made in the Council's past discussions on these three agenda items. Obviously, I also encourage Members to keep talking to each other directly and see whether they can bridge those divides and differences.

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AGENDA ITEM 7: NON-VIOLATION AND SITUATION COMPLAINTS

7.1 United States

66. We look forward to the opportunity to discuss the topic of non-violation and situation complaints under the TRIPS Agreement.

67. As we foreshadowed in the February meeting of the TRIPS Council, the United States has prepared a paper, which we understand has been circulated to Members, and which I understand is available today in the room, to facilitate the Council's intensified discussions on non-violation complaints.[1] As Members have only recently received our paper, we understand if the Council's discussion of its contents begins today and continues into future sessions.

68. In general terms, our paper is premised on three related propositions. First, such complaints are fully consistent with the TRIPS Agreement and the WTO Agreement as a whole.

69. Second, sufficient guidance already exists through GATT and WTO panel and Appellate Body recommendations and rulings to guide the application of such complaints in the context of the TRIPS Agreement.

70. And third, while Members have raised valid questions over the years, each of those questions has answers found in the text of the TRIPS and other WTO Agreements and relevant GATT and WTO dispute settlement findings. Our paper walks through those questions and offers a series of responses.

71. Turning to the first proposition, the U.S. paper identifies the relevant provisions of the TRIPS Agreement, the GATT 1994 and the Dispute Settlement Understanding. These provisions confirm the applicability of non-violation complaints to the TRIPS agreement.

- Article 64.1 clearly states that "The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding **shall apply** to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein." Article XXIII(1)(b) provides for non-violation complaints.

- Article 64.2 then provides that the provisions of non-violation and situation complaints in GATT Article XXIII will not apply for a period of five years following the entry into force of the WTO Agreement. It is clear that after five years, those provisions would apply to the TRIPS Agreement.

- Finally, Article 64.3 is explicit and unambiguous that any extension of the five-year period must be agreed by consensus.

- In the view of the United States, the TRIPS Agreement is clear on its face that non-violation complaints were envisioned by the drafters as applying to the Agreement. In fact, such intent is explicit in Article 64.1.

72. The relevant provisions of the covered agreements also provide clear guidance regarding the nature and scope of such complaints.

73. Specifically, they confirm that panels and the Appellate Body, in assessing any claims of consistency with any WTO Agreement, including with respect to non-violation claims regarding specific TRIPS Agreement provisions, cannot add or diminish the rights and obligations provided in the covered agreements. This fundamental provision – found in Article 3.2 of the DSU – should allay many of the concerns Members have raised about altering the balance of rights and obligations under the TRIPS Agreement, including with respect to flexibilities.

74. Further, Article 3.5 of the DSU provides that all solutions to matters raised must also be consistent with those agreements. And DSU Article 26 addresses the question of remedies in the context of non-violation complaints.

[1] Document IP/C/W/599.

75. Where WTO Members have sought guidance regarding non-violation complaints, the GATT and WTO dispute settlement system has provided such guidance. As we have discussed in our paper, panels and the Appellate Body have stressed the exceptional, but important nature of such complaints – that of protecting the reasonable expectations of competitive opportunities. Panels and the Appellate Body have also identified three required elements of a non-violation complaints:

(1) application of a measure by a WTO Member;

(2) a benefit accruing under the relevant agreement; and

(3) nullification or impairment of the benefit as the result of the application of the measure.

76. And panels and the Appellate Body have elaborated these three elements with respect to legitimate expectations. Thus, in order for expectations of a benefit to be legitimate, the challenged measures must not have been reasonably anticipated at the time the concession was negotiated.

77. Panels have further maintained that such complaints must be assessed on a case-by-case basis and that the scope of such complaints is not limited to tariff benefits. For example, such claims have been assessed with respect to benefits under the WTO Government Procurement Agreement.

78. Finally, we went back and gathered up the questions raised by delegations and provided our responses. A unifying feature of all of these questions is that the TRIPS Agreement is somehow unique and that, as a result, non-violation complaints are inapplicable or would otherwise alter the Agreement.

79. Yet, as we have explained, the TRIPS Agreement is not unique, and shares many similarities with the other covered agreements, including the Agreement on Technical Barriers to Trade and the Agreement on Sanitary and Phytosanitary Measures. Likewise, even the GATT 1994 is not limited to tariff concessions.

80. As we have also explained, only WTO Members can amend the covered agreements. Panels and the Appellate Body can only clarify provisions. This would also be true in the case of non-violation complaints under the TRIPS Agreement. Panels and the Appellate Body have provided sufficient guidance for such complaints. Such complaints would be assessed on cases-by-case basis pursuant to the appropriate requirements we have discussed.

81. As we have explained, the moratorium as it is presently constituted is unnecessary and ineffective. WTO Members are left to examine TRIPS Agreement provisions in the abstract, without the benefit of specific tangible facts.

82. We are all left to imagine hypothetical scenarios, invent possible consequences and speculate about how a WTO panel might interpret Article 64 of the TRIPS Agreement, particularly in light of past panel and Appellate Body decisions on NVNI disputes under the GATT.

83. But this is not the role of WTO Members. It is the role of the WTO dispute settlement system itself. Therefore, instead of the current zero-sum game in which the TRIPS Council finds itself on NVNI, it is time to consider an alternative approach. As the Chairman of the TRIPS Council stated at the 10-11 October 2013 meeting of the Council:

> "Members had indicated readiness to engage early next year in intensified work on the examination of the scope and modalities for such complaints with the intent of finding a way out of the current cycle of extending the non-violation moratorium from one Ministerial Conference to the next."

84. The United States is committed to finding a way out and looks forward to continuing to work with other delegations to reach that exit from the current moratorium together.

7.2 Bolivarian Republic of Venezuela

85. Venezuela has co-sponsored a paper which outlines the reasons non-violation complaints are not relevant to the TRIPS Agreement. We have only just received the US proposal and feel that it should not yet be discussed at the present meeting. That said, we agree that the moratorium is ineffective and that is why the Council should conclude that such complaints are not applicable to the TRIPS Agreement.

7.3 Switzerland

86. I would like to thank the US delegate for introducing their communication, which we have only recently received. After having examined it in depth, we will come back to it at the next Council meeting. From the first look, our impression is that the US is very extensively responding to the issues and concerns of those Members which in 2002 submitted communication IP/C/W/385 in which they have set out the concerns they expressed vis-à-vis the applicability of non-violation complaints in the TRIPS context. The US communication, from our preliminary reading, very comprehensively and elaborately sets out the view and position that Switzerland, to a large extent, shares.

7.4 South Africa

87. I start by thanking our colleagues from the US for their comprehensive paper. We have not had an opportunity to study it in detail and are not yet in a position to respond in any definitive way. The paper is quite comprehensive and raises a number of issues, and there is also jurisprudence in it, so we will need time to study it in detail and to respond. Without prejudice, at this point we would say that we continue to be convinced that the TRIPS Agreement is a *sui generis* agreement, it is not intended to promote market access, nor is it intended, in our view, to be a harmonization agreement or to provide harmonization amongst Members. It simply provides a minimum level of protection for Members. We will revert to it at the next Council meeting with detailed comments. We are flexible as to the way forward, including how consultations should be conducted.

7.5 Brazil

88. I would like to thank the US delegation for preparing the document IP/C/W/599 that was circulated yesterday to all Members. As this was recently presented, my delegation would like to reserve its right to comment on the document in the next session of the Council. The debate on the applicability of non-violation complaints to the TRIPS Agreement has been part of the Council agenda for many years and our delegation would also like to recall the importance of addressing the concerns raised by Members for more than a decade in document IP/C/W/385. Since the Bali Ministerial Conference, our delegation has intensified work on the study of non-violation and situation complaints. Until now, we could not find cases in multilateral, plurilateral or bilateral fora in which non-violation situation complaints have been applied to IPRs complaints. For the time being, our position remains unchanged. Regarding your request on the way forward, we understand that we have a permanent, regular agenda item in the TRIPS Council under which we can discuss among ourselves this subject matter.

7.6 China

89. As elaborated by many Members, the TRIPS Agreement is quite different from other agreements under the framework of the WTO, such as the GATT or GATS. The former is not intended to deal with market access or tariff concessions, but rather to define the minimum standards of IP protection. We should be quite careful to maintain the balance between the rights and obligations under the TRIPS Agreement. In addition, TRIPS does not include a general exception clause to protect measures designed to achieve important national policy goals, such as health and environment. The application of non-violation and situation complaints would also limit the use of the flexibilities outlined in the Agreement to secure objectives relating to public health and other issues of public interest. Thus, the application of non-violation and situation complaints under the TRIPS Agreement is not appropriate.

90. Most Members hold the position that non-violation complaints should be completely banned, or that the moratorium should be extended. In particular, around 14 developing country Members

submitted document IP/C/W/385 in October 2002, and gave details of the systemic concerns and reasons why there should be no application of non-violation and situation complaints to the TRIPS Agreement. When the Council discusses this issue, these options and positions should be borne in mind and fully taken into account.

91. With respect to the US document just circulated, as we don't have enough time to review it now, we would like to reserve our right to comment on it in future meetings. China would like to support Brazil's suggestion regarding the future work.

7.7 Bangladesh

92. We do appreciate the US for the valuable contribution. Thanks also to the US delegation for the elaboration. As we have just received this document, we would relay it to our capital and come back at the next meeting.

93. My delegation has a well-known position and I'd like to reiterate the following points:

- TRIPS Agreement is a unique agreement and hence its analogy with other agreements will not be logical.
- Legal grounds for NV&SC under TRIPS are not founded, hence unnecessary and weak.
- There is even no conceptual clarity as regards to scope of NV&SC in view of the unique nature and structure of the TRIPS Agreement – let alone the procedural issue.
- Any such measure will upset the delicate balance of rights and obligations and threaten the flexibility, as well constrain the principles as provided under Article 8 of the TRIPS Agreement.

94. Hence any bare minimum of NV&SC will dilute the *sui generis* system. Such measure will open the floodgate of questions, even allowing challenging any Member's legitimate measures that are based on the flexibility of the *sui generis* system.

7.8 Plurinational State of Bolivia

95. This is a matter that was dealt with under GATT. Therefore non-violation complaints are not relevant to TRIPS and this should be our decision in order to bring an end to the moratorium as has been suggested. The TRIPS Agreement is a *sui generis* agreement which is not relevant to other areas of the WTO. There is a delicate balance between rights and obligations, and that is why Bolivia reiterates its position that non-violation complaints are not relevant to IP. This is a position that we and many others have declared in IP/C/W/385 of October 2002. We will provide substantial comments on the US proposal that we just received at the next meeting of the Council. In the interests of moving forward, we do think that Brazil has made some helpful suggestions.

7.9 India

96. Let me thank the US delegation for circulating yesterday a communication on this agenda item. While we appreciate it, let me also recall that a detailed discussion on this issue took place in 2002 and the communication IP/C/W/ 385 dated 30 October 2002 on behalf of Argentina, Bolivia, Brazil, Colombia, Cuba, Ecuador, Egypt ,India, Kenya, Malaysia, Pakistan, Peru, Sri Lanka and Venezuela is still very much relevant.

97. The 2002 communication from the developing countries has in fact countered every assertion that has been made through the latest communication from the US. However while we are still analysing and comparing the communication from the US to understand if there are any new assertions, the comments that my delegation would be making today are very preliminary.

98. Chair, the TRIPS agreement is a unique agreement and is distinct from the GATT and GATS, contrary to the assertion made through the communication. In the GATT/WTO legal framework, the establishment of the non-violation procedure aims primarily to prevent the tariff concessions or specific commitments on trade in services from being adversely distorted by the additional trade measures taken. Its objective is to ensure that these domestic trade measures will not negate the negotiated market access concessions. When it comes to the GATT and the GATS as market access

agreements, the non-violation complaint is an additional tool with which to balance the rights and obligations concerning market access in the GATT and GATS respectively. Fundamentally differing from the GATT and the GATS, the TRIPS Agreement is not a market access agreement. It is not "about reciprocal market access rights of governments". Obviously, there is no such counterpart in the TRIPS Agreement to schedules of commitments in the GATT and the GATS respectively. In sharp contrast the core content in the TRIPS Agreement is the WTO Members' mutual commitments on the minimum standards in relation to IP protection. This Agreement emphasizes that the protection and enforcement of IPRs should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. Guided by these principles, the TRIPS Agreement provides minimum standards with regard to the acquisition or exploitation of IPRs and on their scope, as well as procedures and measures to enforce those rights, notably by enabling effective action against unauthorized use of those rights by third parties. While IPRs might facilitate trade and investment, the obligations under the TRIPS Agreement cannot be characterized as market access concessions. It is difficult to see the analogy between scheduled tariff concessions or specific commitments on trade in service, and the multilateral recognition of the minimum rights of nationals to be provided for by a WTO Member on the basis of the TRIPS Agreement.

99. Further, applying non-violation complaints to the TRIPS Agreement is not required to protect market-access commitments made in other WTO agreements. The primary goal of the TRIPS Agreement – unlike other agreements in Annex 1 of the Marrakesh Agreement – is not to protect market-access commitments under other agreements.. Whereas other Annex 1 WTO agreements protect market access for the like products of all Members, the TRIPS Agreement's minimum standards enable private interests in one Member to exclude all others from using the subject-matter of the right. A second difference is that while Annex 1 agreements such as the TBT and SPS Agreements do not contain explicit commitments to certain levels of market access, maintaining market access is their primary objective, and their substantive provisions are designed specifically to secure market-access commitments. Whereas other WTO agreements tend to increase competition, the basic effect of the TRIPS Agreement's rules is to reduce competition to provide incentives for innovation.

100. Finally, some key concepts of the non-violation provision have not yet been clarified. Such terms, like "benefit", "measure", "causality" and so on, appearing to be open-end and all-inclusive, has not been given clear-cut definitions. Panels have rarely been explicit in stating the elements of an Article XXIII:1(b) complaint. For example, Article XXIII:1(b) of GATT merely sets the grounds on which WTO Members can have recourse to the dispute settlement systems via non-violation complaints, without providing for any a priori exclusion as to what a "measure" might be. This term has not yet been explicitly defined by GATT/WTO non-violation cases. The Japan-Film Panel believed that it "should be open to a broad definition of the term measure for the purposes of Article XXIII:1(b) which considers whether or not a non-government binding action has an effect similar to a binding one". And the Panel further admitted that "it is difficult to establish bright-line rules in this regard and it will need to be examined on a case-by-case basis". In the TRIPS context, it will become much more difficult to define some key concepts: "benefit accruing directly or indirectly under the TRIPS Agreement", "nullification or impairment of such a benefit" and "impediment to the attainment of any objective of the Agreement".

101. Let me therefore conclude by saying that the TRIPS Agreement should be excluded from the application of non-violation and situation complaints as it would hamper the delicate balance and flexibilities inherent in the TRIPS Agreement and would have serious implications to the developing countries.

7.10 Japan

102. This delegation would like to thank the United States for its new communication to address this long-standing issue of this Council. This delegation believes that it will help us advance our discussions on this issue, although we need to study it carefully. As expressed at the previous meeting, Japan is willing to contribute to the discussions in a constructive and dedicated manner.

7.11 Egypt

103. We would like to thank the US for preparing this document which we will study and if we have any questions or remarks we will directly contact the esteemed delegation of the US. We continue to believe that violations of the type identified in Article XXIII 1(b) and (c) of GATT 1994 are not applicable to the TRIPS Agreement. In this regard we look forward to find a permanent solution by declaring non-violation complaints are not applicable to the TRIPS Agreement and, if that were to be difficult, we could at least renew the moratorium at the tenth Ministerial Conference.

7.12 European Union

104. The European Union, for the last couple of years, has been inviting the Members supporting this proposal to come forward with ideas for ways to push the debate forward and provide more information. I believe this is what has happened with the US paper, so I would like very much to thank the US. It is an informative paper. We could only have a preliminary examination, but we look forward to discussing it and the issue in general, as was agreed last October in the conclusions of the Chair of the TRIPS Council that there was an agreement to intensify on the work on examination of this subject. Like some previous delegations, we are flexible on the form. We believe that consultations should be possible and that we would have a good debate at that point.

7.13 Republic of Korea

105. We would first like to thank the US for its proposal. Due to time constraints, we have not been able to fully examine it, and we will come back to it at the next meeting. However, we have made our position clear at previous meetings. However, Korea would like to underline that, given that the non-violation and situation complaints have been intended for market access commitments, such complaints are not consistent with the basic nature of the TRIPS Agreement. In addition, given the uncertainties and concerns raised by Members in this Council this morning, we believe that the time has not yet come to consider an alternative way to change the current situation.

7.14 Cuba

106. Cuba's position on this issue has not changed. We wish to reiterate that Cuba does not see the relevance of these types of complaints to IP. As a co-sponsors of document IP/C/W/385, we believe that any attempted discussion should be based on this proposal, which reflects the positions of a large number of Members and the concerns that have led to renewal of the moratorium for years.

107. We also suggest that the discussion focus on issues such as the difficulties that would arise from the application of these complaints in the field of IP, possible imbalances between the interests of the rights holders and public policy considerations, limitations when accommodating the flexibilities of the Agreement, and practical problems in establishing these types of complaint. All of the above would have to be pondered in any proposal that is submitted on possible work to be done.

108. Moreover, Cuba draws attention to the fact that it will be very difficult to move ahead on this issue if we do not jointly pay equal attention to work on other issues of particular concern to a number of developing Members, such as the analysis of the TRIPS-CBD relationship.

7.15 Nigeria, on behalf of the African Group

109. The position of the African Group on this issue is well known. I would like thank the US for its paper, which we have just received. The African Group will revert to it at the next meeting.

7.16 Canada

110. Canada knows the importance of adhering to the TRIPS Agreement and having effective enforcement mechanisms in place. However we point to our intervention at the February TRIPS Council, where we had raised concerns about the application NVNI to the TRIPS Agreement in our

previous papers which we have submitted to the Council on this issue. We must recognize that the Membership has the duty to reflect the views of today in the implementation of commitments under the TRIPS Agreement. We think it is useful to continue discussions. We think it is useful to continue discussions and explore viewpoints on the function that NVNI serve, and to ensure that we share a common understanding of any obligation in this area, so as to avoid uncertainty. In this context we would like to thank the US delegation for sharing its latest communication with the Council. Unfortunately we have not had time to review it, but we will come back later with comments.

7.17 Russian Federation

111. Russia supports a moratorium on non-violation complaints. We believe that the TRIPS Agreement is quite different from GATT and GATS in specific goals for mechanism-inspected results. The TRIPS Agreement is designed to protect IP holders by establishing minimum standards of IP protection. We note that the application of non-violation complaints is highly inappropriate because of its possibility to upset the delicate balance of rights and obligations under the TRIPS Agreement, put obstacles for states in the way of national regulations in specific areas of public interest like healthcare, food and environment, and undermine the use flexibilities under the Agreement. We appreciate the US initiative on this particular item, and reserve our right to comment on this document at the next meeting of the Council.

7.18 Chinese Taipei

112. Non-violation and situation complaints have been a longstanding issue at the TRIPS Council. While some Members consider that they are appreciated in the context of the TRIPS Agreement and have long been part of the WTO, some others consider that in principle they were designed and applied to GATS and GATT rather than TRIPS. As the TRIPS Agreement requires Members to implement minimum standards of IP protection in their national laws, it might be not logical to look for any notion of expected benefit beyond the wording of the minimum standards. We feel that this is an extremely complex issue with many sides to be considered, and look forward to continuing constructive discussions in the coming year.

7.19 Ecuador

113. Ecuador is one of the co-sponsors of document IP/C/W/385. Our concerns are founded on the fact that the TRIPS Agreement does not protect market access, but is rather about protecting IPRs. We have not yet seen evidence as to why we would need to have this available in the TRIPS Agreement. So we think that the TRIPS Council should decide to remove the issue from the agenda definitively and put an end to this moratorium.

7.20 Colombia

114. We would like to thank the United States for the proposal they put forward, which we will comment at the next session of the Council. We would like to reiterate our position in document IP/C/W/385, which we have co-sponsored. For Colombia, non-violation complaints do not belong to dealing with the protection of IPRs because they are sufficiently protected and enshrined in the TRIPS Agreement, which is specifically mandated to protect the rights of holders and to prevent infringement of these rights for public interest. If we were to include non-violation complaints, we would lose the validity of the provisions of the TRIPS Agreement, because this would undermine the flexibilities that the TRIPS Agreement provides to each Member in order to legislate, on the national level, situations that could arise, for example, in the areas of health, environment or culture.

7.21 Peru

115. Peru would like to thank the US for their proposal, which we have sent to capital in order to provide comments at the next meeting of the Council. Peru's position is reflected in document IP/C/W/385. We believe that the Council's discussion on this topic should be balanced and should allow time also the proposals enshrined in IP/C/W/389 and other documents on this issue, including the Secretariat summary in document IP/C/W/349/Rev.2.

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AGENDA ITEM 10: TECHNICAL COOPERATION AND CAPACITY-BUILDING

10.1 Secretariat

116. Since 2009, we have worked with the guidance of the LDC Group of Members to undertake a series of workshops and seminars, both on a regional basis and here in Geneva. The workshop that will open tomorrow afternoon is the next step in this programme of coordination in this area. The focus of the workshop is exactly as the title indicates, namely *Realizing Development Objectives of the Intellectual Property System: LDC Priority Needs for Technical and Financial Cooperation.*

117. The workshop aims to improve the flow of information about available technical and financial cooperation and the matching of the available resources with the needs and priorities that have been identified by LDC Members in this area. The essential focus is on the promotion of the flow of information and coordination of programmes for greater effect for the benefit of LDC Members in line with the development priorities that they themselves have identified and communicated.

118. Since such a strong emphasis lies on information flows and coordination, the workshop will include participation from other intergovernmental organizations: WIPO in particular as a key player in this area, but also UNCTAD and the other technical cooperation partners in this area. Developed country Members with active programmes in this area are also participating. The format of the workshop is initially to review the current state of play, the existing programmes and activities, and the work that has been done to improve coordination; and then to look at the specific state of play in a number of LDC Members. It will then to move to very informal roundtable conversations firstly highlighting areas of priority and technical cooperation that link the IP system with development objectives, and secondly looking at ideas and proposals that have been put forward to improve the flow of information and the coordination of resources so as to meet the priority needs identified by LDC Members. The focus therefore is very much on the technical cooperation aspect and the improvement of coordination of technical cooperation programmes in this area. We can obviously provide any interested delegations with more details if that is helpful.

10.2 Bangladesh

119. I would like to thank the Secretariat for the information and the support provided. We see much value in the increased flow of information on technical assistance and financial support. However, one issue has been remaining outside the Members' review and for transparency reason it should be discussed in the Council – it is the measures taken by developed Members under Article 66.2 obligations. We do appreciate factual reports on the incentive measures to their enterprises as mentioned in Article 66.2 by the Secretariat, and the Secretariat has taken many initiatives to organize workshops on this issue. I believe that such information is with the Secretariat, which can provide us a report on this and we would like to discuss in the next meeting.

10.3 Nepal

120. First I would like to thank the Secretariat for its report and convening the LDC needs assessment workshop. My delegation believes that this workshop is going to be really meaningful and beneficial for all the LDC Members to identify their needs in the area of TRIPS Agreement and it will provide them with good insights on how to gain implementation. Many resources will be needed and we hope that having conducted this workshop the proposals and outcomes that are going to be developed will be supported by generous support from our partners. I also support the statement made by Bangladesh.

10.4 Australia

121. We wish to reiterate our interest and our engagement on the issue of LDC priority needs and our expectation and hope for an interesting and meaningful dialogue at the Workshop over the next two days.

10.5 Secretariat

122. For the sake of clarity, I thought I should respond to the important question raised by the delegation of Bangladesh concerning Article 66.2. As I understand it, this item would come up separately under "Other Business" in the context of planning for the continuing review of incentive measures notified under Article 66.2. As is customary, we are planning to convene a workshop on the margins of the next session of the Council so as to enable LDC Members in particular to review and raise questions about the notifications provided by developed country Members under this item. That would normally take the same format as in previous years but, of course, we will consult with the LDC Group in particular as the Members chiefly concerned on that process and on its agenda. Under item 15, the Council will take up the arrangements for the 12th Annual Review of the Implementation of Article 66.2.

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AGENDA ITEM 11: CONTRIBUTION OF INTELLECTUAL PROPERTY TO FACILITATE THE TRANSFER OF ENVIRONMENTALLY RATIONAL TECHNOLOGY

11.1 Ecuador

123. Ecuador once again wishes to thank other Members for participating in the consideration of the proposal on the "Contribution of Intellectual Property to Facilitate the Transfer of Environmentally Rational Technology", addressed at the Council's meetings in June and October 2013 and February 2014. At these meetings Ecuador emphasized that facilitating access to environmentally rational technology is critical to ensuring a transfer of technology that helps mitigate climate change, which is a phenomenon that affects all Members.

124. One of the reasons that prompts Ecuador to continue insisting that this issue should be addressed is that not one single Member has spoken out against the latent concern at the harmful effects of climate change. As we said before and emphasize again today, positions differ as to the way in which the problem should be tackled.

125. Ecuador shares the view that the rapid development and dissemination of technology for mitigation and adaptation purposes is a fundamental component of the global response to climate change, in which IPRs are a prerequisite for the transfer of technology.[2] It is accordingly necessary to prevent excessive protection from affecting the dissemination of such technology. Ecuador, as indeed other Members, has taken part in the Technology Needs Assessment Project for Climate Change, identifying the priority sectors for adaptation to and mitigation of climate change, which highlights a real interest on Ecuador's part in using ecologically rational technology as part of the development of these priority sectors. On the other hand, Ecuador has been working on national programmes aimed at promoting access to and the development of ecologically rational technology, including projects designed to encourage technology transfer.

126. It will be recalled that at the last meeting Ecuador requested Members to agree that the WTO and WIPO Secretariats should undertake a study of the new elements that could provide ideas and enrich the debate on this topic. Unfortunately, no agreement was reached.

127. In an entirely constructive spirit, Ecuador now proposes that a briefing session be held in which experts from the Intergovernmental Panel on Climate Change (IPCC) and the International Centre for Trade and Sustainable Development (ICTSD) would provide new elements to assist the Membership in further clarifying this problem. Both the IPCC and the ICTSD are fully competent and have all the necessary technical and scientific knowledge in respect of climate change mitigation mechanisms, and the information they would give us may prove an effective tool for decision-making in this Council. This briefing session could be held before the next meeting of the Council, with the WTO Secretariat providing the staff needed to arrange it.

128. With these considerations in mind, Ecuador emphasizes its intention to formulate new elements and include information that further supports the proposal submitted. It accordingly requests the Members of this Council to discuss the proposal in depth at its next meeting in October and to examine the new elements that Ecuador is currently working on. The proposal will incorporate any elements that may be added at the briefing session by the IPCC and ICTSD representatives suggested by Ecuador.

129. Ecuador hopes that its new suggestion will be endorsed by all Members, because, as we said before, this is an issue that closely concerns both developed and developing countries.

11.2 Chairman

130. I understand that Ecuador made two suggestions, first that an information session be organized prior to the October meeting, and secondly that there would be a discussion on the basis of a proposal which it will circulate for the next Council meeting.

[2] ICTSD: Programme on Innovation, Technology and Intellectual Property – Policy Brief No. 11, November 2011.

11.3 United States

131. We again thank Ecuador for sponsoring this agenda item, which provides an additional and important opportunity to discuss the positive relationship between IPRs and the environment, including but not limited to climate change.

132. This morning, we want to discuss success stories. Today, we will provide real world examples of how IPR protection can be a tool for promoting innovation and transfer of environmentally-friendly technologies. We have found a variety of inspiring and geographically diverse stories that add another dimension to this on-going dialogue.

133. The case studies we will describe today demonstrate the power of human ingenuity and the importance of innovative solutions to address global problems, such as energy conservation, environmental protection and climate change mitigation and adaptation.

134. These are the stories of hardworking scientists, engineers, and entrepreneurs, who have all championed the environment, and used IPRs as one among many tools to make a difference in peoples' lives – to contribute to the common good through technologies that provide sustainable and cleaner energy, reduce pollutants in water and soil and many other benefits. Of course, these are just a few examples. There are many more. But, we wanted to emphasize these role-model innovators in order to add a new dimension to what is already a multi-dimensional discussion of the numerous positive contributions of IPR to environmental technology innovation and transfer.

135. As delegations will recall, in past meetings of this Council under this item, we have discussed the economic data and related analysis in considerable detail supporting the position that IPR and green technology innovation and transfer are mutually re-enforcing. We note that we have yet to seen data submitted by the sponsor of this item, or other Members that supports the sponsor's position, and look forward to Ecuador updating its paper in this regard.

136. In addition to data, we have discussed needs. Specifically, in October of 2013, we discussed the Technology Needs Assessments submitted under the United Nations Framework Convention on Climate Change. These TNAs submitted by 31 developing and least developed countries identified numerous non-IPR obstacles standing in the way of our joint goal of promoting innovative solutions to our shared climate imperative.

137. As a UNFCCC Technology Executive Committee report confirmed, very few of those TNAs even mentioned IPRs. And when IPR was mentioned in a few select cases, IPR was not identified among the priority issues to be addressed.

138. And turning from needs to solutions, in February of this year we discussed several mechanisms that facilitate green technology innovation and technology transfer that rely on IPR solutions to address environmental needs.

139. As we discussed, these mechanisms target both financial and non-financial obstacles to green technology innovation and transfer, and offer the opportunity to overcome several of the barriers identified in the UNFCCC TNAs, while respecting IPR. These mechanisms included the US Association of University Technology Manages or AUTM, including its Better World Project and Global Technology Portal, the US Department of Commerce's Environmental Solutions Exporters Portal, WIPO's Development Matchmaking Database and WIPO GREEN, and the Asia Development Bank's low-carbon technologies marketplace, which is funded by the UNFCCC Global Environment Facility.

140. So, today, we want to focus on successes. In particular, we will focus on three success stories from around the world, which underscore the truly global nature of innovation. While specific chapters of these success stories find their heroes achieving great things in India, Switzerland, Uganda and the United States, many of these stories await new chapters and new successes in many as-yet unknown locations.

141. The first two success stories are included in WIPO GREEN and its sustainable technology marketplace.

142. One story highlights Simpa Networks' Progressive Purchase Technology for Home Solar Systems. As the WIPO GREEN case study indicates, an estimated 1.3 billion people around the world do not have any access to electricity and additional 1 billion lack reliable electricity.

143. Simpa Networks has taken a significant step in responding to this troubling reality, and is doing so in an environmentally-sustainable and technologically cutting-edge manner. Simpa has developed an innovative Progressive Purchase technology that brings affordable solar energy to poor consumers. The technology consists of a combination of product-embedded hardware and cloud-based software. The hardware, called the "Simpa Regulator", is a tamper-proof device that is connected to a solar home system, or SHS. The Simpa Regulator turns the SHS on when payments are made and a code is entered, and locks the system temporarily when credits run out.

144. The Simpa Regulator works in conjunction with the "Simpa Revenue Management System", a centralized software solution in the cloud that is accessible by SMS or online and which manages payment processing and accounts settlement. Progressive Purchase technology was developed for the Indian market, where there is not currently an easy way to send money using mobile networks.

145. It takes between 1 and 3 years to pay off the system, at which point it unlocks permanently and produces solar energy to be used by the family for the rest of its 10-year life. Progressive Purchase hardware and software were developed by engineers in the United States and in India. First established in the United States, Simpa Networks is now also a registered Indian company, with offices in Bangalore. Simpa is currently selling Progressive Purchase across India in several states.

146. Simpa Networks has WIPO Patent Cooperation Treaty and US Patent and Trademark Office patent applications for the Progressive Purchase system are pending. These applications, together with essential know-how, have been important to investors and channel partners who invest and rely on Simpa's technology and processes.

147. In part because of its IP portfolio, Simpa Networks has been fully capitalized and is now scaling up sales and distribution. The company has already received over 100 requests for technology licenses, from all parts of the world. Simpa Networks has uploaded its Progressive Purchase technology to WIPO GREEN and is open to license, offer services, for a research and development collaboration or joint venture.

148. Our second story starts here in Switzerland. In fact, the technology transfer office of the University of Geneva as well as a start-up just down the lake in Lausanne are key players in an ingenious method of addressing water contamination without using chemicals.

149. In this instance, the need was to reduce contamination in water from pesticides used by farmers and gardeners. The environmentally-friendly technology solution achieves an efficient process for degrading pesticides by treating them with diluted water and cycling them through vertical green biobeds, consisting of mixtures of soil, organic material and plants.

150. This innovation was refined by a team at the University of Applied Sciences of Western Switzerland, which created the vertical biobed, by applying expertise in agronomy to develop a more effective filter. The Vertical Green Biobed – VG Biobed™ -- is a wall made of a steel structure containing a special substrate, which was developed to enhance the biodegradation efficiency of pollutants by microorganisms and the good development of plants.

151. The VG Biobed, which is based on an automated system with specialized software, can be used to treat more than 800 to 1000 liters of effluent per square meter of wall annually. As the VG Biobed does not use any chemicals, it is a green way to address the risk posed by pesticides to local water supplies. The various innovative features of the VG Biobed, including the automated monitoring mechanism and software, are IP-protected in Switzerland – including through trademark and patent protection. A patent application is also pending at the European Patent Office. The University of Applied Sciences of Western Switzerland owns the patents, which are managed by UNITEC, the technology transfer office of the University of Geneva.

152. A Swiss start-up – ecaVert Sàrl – which is based near Lausanne, has been granted an exclusive license to the Swiss patent, to engage in further research and development in order to refine, improve, and test the effectiveness of the technology.

153. Our third story was featured as part of the U.S. Association of University Technology Managers Better World Project.

154. Like so many inspirations for innovation, this story began with a specific problem to be solved – that is, how to keep fresh milk cold in environments where energy supplies and power sources are in short supply. The inventor is William Kisaalita, a Ph.D., professor and tissue engineer at the University of Georgia in the United States. He and others invented a milk cooler about the size of a dishwasher to assist farmers along Uganda's "cattle corridor," which a 50,000-square-mile area, that is home to more than 2.5 million dairy farms.

155. Farmers milk their cows, which produce an average of 50 liters of milk a day. During the day, farmers sell the milk to local vendors, who transport the milk to cooling stations. But those stations are closed at night, leaving farmers with no way to cool their milk at night. This meant that farmers often lost 40 percent of their revenue every single night. This is where Dr. Kisaalita and 15 of his undergraduate students entered the story. They invented a power-independent cooler for short-term milk storage. The cooler uses a vacuum system and a mineral called zeolite to help keep the milk cold.

156. Yet, although this was a great idea, with significant economic and environmental potential, delivering this benefit to Uganda farmers would not have been possible without financing. And this important achievement was recognized by a variety of contributors. Dr. Kisaalita received research funding from a number of sources, including the University of Georgia Research Foundation Inc., the World Bank, U.S. National Science Foundation, U.S. Department of Agriculture and U.S. Environmental Protection Agency.

157. In addition to funding, this project also benefitted greatly from technology transfer. We understand that the first prototype of the cooling technology was not sufficient to market successfully. To solve that problem, Dr. Kisaalita partnered with an unlikely ally – a German company called Cool-System KEG GmbH, which had designed a self-cooling keg for beer drinkers. Cool-System helped redesign Dr. Kisaalita's cooler and produced an improved configuration called CoolChurn. The keg-like cooler chills 15 liters of milk within three or four hours, and keeps it cold for a full day.

158. Here we see not only technological innovation responding to environmental challenges, but innovation actually driving entrepreneurship that is both environmentally-friendly as well as revenue-generating.

159. In conclusion, these compelling stories are only chapters in a narrative that spans many volumes. They demonstrate in a very real and practical way, the opportunities innovation present, when properly fostered and incubated.

160. As we have discussed, and will discuss in more detailed under the next agenda item, innovation is fragile and critical work. IPR provides much needed nourishment of and protection for fledgling ideas.

161. To deliver progressive purchase technology and solar home systems to Indian families as Simpa Networks does, IPR is critical. In order for vertical green biobeds to degrade pesticides effectively without chemicals, IPR is vital.

162. Likewise, for Dr. Kisaalita and Ugandan ranchers to cool milk without electricity, IPR is essential. Conversely, the lack of strong IPR protection and enforcement can have significant negative environmental impacts. Without such IPR protection, Simpa Networks may not have been capitalized and may have been subsequently prevented from delivering solar energy to India.

163. In the absence of adequate IPR protection, the University of Applied Sciences of Western Switzerland may not have been able to secure its partnership with ecaVert Sàrl and may not have

been able to achieve those significant technological refinements that allowed the vertical green biobed to be deployed in Switzerland and beyond.

164. Take effective IPR protection away, and Dr. Kisaalita may not have secured funding from so many diverse sources, or may never have been able to receive much needed technology transfer from a keg-maker in Germany.

165. But, today we are taking about successes stories. Their success, both economic and environmental, as well as the related technology transfer and uptake by consumers, is due in part because of IPRs.

166. As the WTO Members in this room consider their environment-related innovation policies and the role of IPR therein, it is critical to remember these and other success stories. They teach us that more environmental innovation does not require less IPR protection, as Ecuador suggests. In fact, the opposite is true.

167. Lastly, regarding Ecuador's proposals introduced today, given that we have just heard the proposals, we cannot support the proposals at this time and would need to consult in capital first.

11.4 Switzerland

168. Switzerland fully agrees with Ecuador in that it is vital to find practical solutions in the combat against the harmful effects of climate change. Switzerland firmly believes that the international IP system in combination with other, non-IP related measures, can make a positive impact on innovation and the transfer of such technologies. In our view, the IP system plays a key role in the promotion, encouragement and dissemination of green energy technologies and can thus make a positive contribution in the fight against climate change.

169. As regards the transfer of ESTs, my delegation would like to emphasize the important information function that the international IP system has. As already noted, when applying for a patent, the applicant must disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art. WTO Member States may also require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date (see Art. 29 of the TRIPS-Agreement).

170. The United Nations Environment Programme (UNEP) and the European Patent Office (EPO) noted in their joint report "Patents and Clean Energy Technologies in Africa" of 2013 that the global patent information system is successful in that it:

- fosters "the dissemination of technological information by legally obliging inventors to publicise their inventions";
- allows R&D activities to build on existing inventions;
- helps to prevent that investments are put into the development of technologies that already exist, thus preventing a waste of resources and duplication of efforts, and
- enables technology developers to protect their investments;
- sets a framework for technology transfer both at a local and global level through licensing.

171. We agree with Ecuador that the topic of disclosure is closely linked to the issue of patent quality. To ensure patent quality is first and foremost the task of examining national patent offices. At the international level, patent quality is a topic proposed for discussion at WIPO's Standing Committee on Patents (SCP). Switzerland supports discussing the issues of patent quality at the SCP. My delegation hopes that countries like Ecuador, who flag their concerns about patent quality in the WTO but so far object to discussing the topic at WIPO's SCP, will in the future lend their support to the proposed substantive work on patent quality at WIPO's SCP.

172. Further, my delegation would be interested to learn more from Ecuador and its national policies and measures it has adopted to address the "information gap" it refers to in general terms and with regard to the issue of disclosure more particularly? For instance, are Ecuador's companies

using the publicly available search tools of EPO such as the "Espacenet public database" with some 88 million published patent documents and the "Patent Translate"? These tools enable the retrieval of technological information and multilingual access of knowledge in fields such as green energy technologies and other areas. Is Ecuador aware of the "Green Growth Knowledge Platform" and "WIPO Green database" which bring together suppliers and consumers of green energy technologies?

173. Having emphasized now the information function and disclosure regime of the patent system, it is crystal clear to my delegation that the patent system on its own is not enough for tech transfer to successfully happen, whether in the area of EST or any other field of technology.

174. Additional ingredients need to be added to the invention such as know-how, i.e. the knowledge how to operate and maintain/service the transferred technology, as well as technical instruction and continuous training. These additional elements need to be carried out within a capacity-building framework between the technology transferor and the recipient. This means that a cooperative partnership between the inventor and/or licence holder and the recipient of the respective technologies must be set up since very often the recipient may not possess the necessary skills and infrastructure to successfully carry out or operate the transferred technology on his own. We therefore agree with what Chile said at the last TRIPS Council in February, namely, that a coercive approach will be counterproductive rather than beneficial for the technology transfer of ERT and would also have a chilling effect on investment into the development of new and better environmental technologies".

175. In this regard, we would like to draw Members attention to the UN Framework Convention on Climate Change (UNFCCC) which offers a framework in which capacity-building can take place and climate technology needs for developing countries be addressed. John Ouma-Mugabe, professor of science and innovation policy at the University of Pretoria Graduate School of Technology Management, South Africa, examined the functioning of the UNFCCC Framework from an African perspective. In a recent article, Prof. Ouma found that the UNFCCC's Technology Mechanism "can play a critical role in supporting African countries' efforts to engage in climate-change adaptation and mitigation. According to him, "most of these countries possess relatively limited capabilities for developing, acquiring, adopting and using existing and new climate technologies." Making use of the UNFCCC's Technology Mechanism would help them develop their scientific and technological capacities and help them design as well as implement modern policies for research and innovation. Prof. Ouma's conclusions may not apply to African countries only but also to other developing countries. My delegation would be interested to know whether Ecuador is making use of the strategic support services that the UNFCCC's Technology Mechanism offers regarding the development and transfer of technologies for climate change mitigation and adaptation?

176. Coming now to the questions of the global distribution and who owns innovative ERT. In his study, John Ouma-Mugabe finds that "some developing countries are sources of new climate change mitigation and adaptation technologies. For example, Brazil is the world's leader in biofuel research and development and related technological innovation activities. South Africa is one of the leaders in coal-to-synfuels technology development. In short, some developing countries are among the world leaders in the production of a wide range of climate-friendly technologies." He concludes that "encouraging bilateral and multilateral technology cooperation between African and Asian countries and between African and Latin American countries can help promote climate technology development, transfer, and acquisition."

177. This confirms that the transfer of ESTs is not so much a north-south issue as it is sometimes portrayed, since a number of developing countries are today major players in this field.

178. At the last TRIPS Council meetings, my delegation presented the "Green Goods Trade Initiative" which was launched in Davos, Switzerland, in January 2014. This encouraging cooperation initiative seeks to promote trade in green goods and to foster the transfer of green technologies so as to achieve the move towards a green economy. A group of 14 WTO Members, including Switzerland, has agreed to pursue a global free trade in environmental products by eliminating tariffs on a broad list of green goods like wind turbines and solar panels. The Group envisages a pact that is based on the most-favoured-nation rule and hopes that as many WTO Members as possible will join in so that in the end all WTO-Members can profit from better access to the goods and technologies that protect our environment. We invite Ecuador and other

developing countries to join this promising Green Goods Trade Initiative as one way of promoting trade and the transfer in green technologies.

179. Finally, on the two proposals made by Ecuador in today's intervention: Should Ecuador table this agenda item again at a next TRIPS Council meeting, Switzerland is ready to continue discussing and contribute substantively to the Council addressing the issue of IP and ERT.

180. As concerns Ecuador's proposal that the TRIPS Council or WTO Secretariat organize a dedicated event with external stakeholders on IP and ERT: my delegation would need more information and details on what Ecuador exactly envisages and what the contents and purpose of such an event would be, before my delegation could support such a proposal.

11.5 Cuba

181. Cuba thanks Ecuador for its contribution and supports continuing the debate on document IP/C/W/585. The issues it raises are highly relevant given their link with IPRs and especially patents, with the transfer of environmentally sound technologies.

182. Cuba underlines the need to hold the briefing proposed by Ecuador and to continue discussing the matter based on the update that will be submitted in October 2014.

11.6 Ecuador

183. We would like to thank the US and Switzerland for their statements, and Cuba for its support of our proposal. While we take note of all of the cases mentioned by the United States, in my statement I asked us to postpone the discussion until the Council's October meeting where we intend to put forward another document with new elements that are currently being studied in the capital by an inter-institutional group.

184. The information session that I suggested could be quite short, perhaps just two hours long, and should include experts from the IPCC, because they have scientific technological expertise that we could use in our proposal. I think the Council could take a decision on it with a need to hold consultations with capitals. At previous meetings, Ecuador asked for examples of green licences granted to developing countries and we heard a great list of examples, but in reality we are not being told what number of licences have been granted to developing countries, or if there have been figures or statistics that show that this transfer of technology is actually taking place. In spite of the number of international commitments to promote technology transfer related to climate change to developing countries, these transfers are not taking place at a sufficiently rapid pace in order to allow these countries to mitigate and adapt to the effects of climate change.

11.7 Japan

185. This delegation would like to thank Ecuador for proposing this agenda item again and welcomes the opportunity to discuss this important issue in this Council.

186. First of all, this delegation is convinced that the existing IP system does not constitute a barrier to technology transfer. Rather, this delegation firmly believes that the current international frameworks that have been set up to handle IPRs can provide a solid and stable foundation for technology transfer. IPRs play a key role in terms of attracting investors, facilitating entry into new markets and enabling effective collaborations.

187. In order to show this, this delegation would like to touch upon one case, which, we believe, is worth sharing with other Members.

188. Takino Filter, a Japanese SME, is trying to green Indonesia with its environmentally rationale technology. The company developed a soil protection sheet containing water-shedding polyester. With its water retention capability, the protection sheet can prevent soil erosion.

189. What is noteworthy about this exemplar case is that this company, expecting that their technology could contribute to addressing environmental issues in other countries prone to natural disasters, started a series of field research in Indonesia to understand and identify their unique

challenges while filing patent applications abroad. They have also been collaborating with Japanese universities, as well as being financed by the Development Bank of Japan by using their patents as collateral. In cooperation with the Japan International Cooperation Agency (JICA) and a university in Indonesia, this company has been studying how to adapt their technologies to local conditions.

190. This delegation agrees that climate change is one of the defining challenges which we have to address, and that environmentally rationale technology is essential for making a suitable response.

191. In this regard, the WIPO provides various tools and platforms that enable developing countries and LDCs to use environmentally rationale technology.

192. Among others, this delegation would like to make a brief remark regarding WIPO GREEN, which is an industry-driven initiative in the field of environmentally rationale technology, as the United State and the Switzerland have already mentioned. Since its official launch last November, WIPO GREEN has been making steady progress. In the database, around 800 technologies are currently available for search by individuals or companies so that they can find and commercialize green technologies therein. Further development is expected for this initiative, accompanied by successful green technology transfers.

193. The Government of Japan has been providing various means of support in these areas through the WIPO/Japan- Funds-in-Trust. For instance, the "Workshop on Climate Change and Innovation in Africa" held in Kenya last June was partially funded by the WIPO/Japan Funds-in-Trust. This Workshop served as a means for building relationships among concerned parties, including IP experts, technology providers, research and development organizations, and investment institutions. It also succeeded in raising awareness on effective ways to use IP and licensing.

194. Again, this delegation would like to emphasize that the IP system can provide an important basis for promoting and encouraging technology transfer. This delegation is also of the view that we need to carefully consider appropriate ways and means for implementing technology transfer, by conducting a detailed analysis of the situation in each country.

195. Finally, this delegation reserves the right to make comments on Ecuador’s proposals.

11.8 Chile

196. Regarding this proposal, as we have said before, we agree with the need to make use of the TRIPS flexibilities regarding technologies that seek to reduce the harmful effects of climate change.

197. Likewise, we agree about the need to reduce barriers to access to the transfer of environmentally sound technologies.

198. We believe that there are already some TRIPS-consistent tools that could be used to achieve this goal, for example the negotiation of licences in relevant technological areas, and so we feel that the debate should focus on finding appropriate and efficient channels to apply these alternatives in practical terms. In the last session we cited a successful example of licence negotiation or patent pool, as is the Medicines Patent Pool (MPP) in the field of health.

199. Given the importance of the transfer of technology for countering the effects of climate change, we consider it pertinent to continue exploring the application of TRIPS flexibilities and tools in this matter, together with the different experiences that Members can share regarding the contribution of the IP system as a whole. We are therefore pleased that this topic is being kept on the Council's agenda for discussion and await the submission of Ecuador's new proposal.

11.9 European Union

200. A number of countries claim that IPRs constitute a barrier to green development. Nevertheless, only a minute proportion of patents for climate change mitigation technologies (CCMT) are actually filed in developing countries.

201. Ecuador has highlighted today the importance of bringing "new elements" to this important debate. The EU would like to present such new elements to inform the discussion of this matter. According to two recent studies conducted jointly by the European Patent Office (EPO) and the United Nations Environment Programme (UNEP), 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 2% of worldwide CCMT patent applications are filed in Latin America[3]. These studies highlight that Africa & Latin America have a huge untapped potential for generating clean energy. They also show that IPR does not hamper the use and 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. Additionally, approximately 2 million patent documents relating to climate change mitigation are made available via the internet on offices' patent information services and can be freely used for R&D purposes[4].

202. For instance – referring to the countries that took the floor today - in Ecuador were identified 8 patents for CCMTs, in Cuba 14, in Chile 6 and in El Salvador 3.

203. Therefore, filed patent rights are unlikely to be a major consideration in any decision to exploit CCMTs. Other factors, such as lack of financial resources, high investment costs, subsidies and tariffs are much greater barriers to accessing technology. According to a study conducted by the EPO, favourable market conditions and a favourable investment climate are also considered significantly attractive conditions in the decision to enter into licensing agreements[5]. Moreover, IPR do not inherently make green technologies more expensive, as R&D costs only account for a small proportion of costs compared to manufacturing expenses.

11.10 El Salvador

204. We would like to thank Ecuador for its contribution, which is a good basis for us to continue to explore existing flexibilities within the TRIPS Agreement, particularly with regard to the environmentally sound technologies. While we also begin an assessment process so as to bring greater flexibility to the patentability disciplines, these could be effective tools in order to adapt or effectively mitigate climate effects that developing country Members have adopted in their climate change strategies. We are interested in continuing to review this topic. We are looking forward to the new proposals that Ecuador has announced. We would also express our thanks to the delegate of the EU for the figures responding to the pending question on how many patents had been granted. In my country's case, the number given is three, which I will be checking with my national office. The number of patents does indeed show the interest in innovation that does exist for such technologies. We believe that an information session proposed by Ecuador would be very useful.

11.11 Canada

205. I would like to thank the delegation of Ecuador for bringing this issue to the Council's agenda once again. The patent regime is used as a driver furthering innovation, and many clean technology companies continue to rely on the patent regime as an important part of their business model. Canadian companies continue to be involved in developing sustainable technologies such as renewable energy and many of these companies depend on IP rights, financing and international engagement to succeed. Many factors impact the transfer of environmentally rational technology. An effective approach would be to rather focus on removing tariffs and non-tariff barriers, as for example, the on-going initiative on environmental goods. We would also like to highlight that there is a wide array of enabling factors such as domestic regulatory frameworks, foreign direct investment and international trade in general that promote environmentally sound technologies. An open non-discriminatory trade and investment regime, backed by national conditions that reward innovation are core requirements for technology transfer to occur. We would point to joint

[3] "*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

[4] "*Patents and clean energy technologies in Africa*", EPO &UNEP, 2013

[5] "*Patents and clean energy: bridging the gap between evidence and policy*", EPO & UNEP, 2010

ventures amongst company as an effective method of transferring technology on mutually agreed-upon terms.

206. We do not see the need for more regulation under the TRIPS Agreement for technology licensing. The development and promotion of environmentally sound technology can and should result from mutually agreeable arrangements between those involved in technology licensing. Moreover, several studies clearly demonstrate that IP rights are not an obstacle to technology transfer, and as others have highlighted in past meetings. Under the UNFCCC, the Technology Executive Committee Synthesis Report reveals that IP rights are not among the key barriers for technology transfer. Not a single Member has pointed to IP as an obstacle in this context. We thus fail to see the need for reviews of environmentally sound technologies under, for example, Article31 of the TRIPS Agreement.

207. Any compulsory licensing of environmentally sound technologies would likely create long-term problems by reducing investment in this sector and, in turn, reduce the development of innovative technologies.

208. Finally, Canada is very concerned with assertions of special reduction of the term of protection under Article 33 of the TRIPS Agreement. IP protection encourages development of technologies that that public need and bring these innovations to the public realm in a timely manner.

11.12 Brazil

209. Brazil would like to thank the delegation of Ecuador for raising this important debate on climate change and technology transfer in the context of the IP system's contribution to adaptation and mitigation efforts. Brazil welcomes the debate and would like to present some considerations on the relationship between climate change and the TRIPS Agreement.

210. Brazil would like to recall the principle of common but differentiated responsibilities that has led the international community in the debates on the UNFCCC. We also understand that developing countries have an important role to play in fighting climate change.

211. The TRIPS Agreement is the result of negotiations that struck a delicate balance between the objectives of fostering innovation and promoting public interest in sectors of vital importance to socioeconomic and technological development. One basic principle of the Agreement is that the protection of IP should contribute not only to technological innovation, but also to the transfer and dissemination of technology, to the mutual benefit of producers and users of technological knowledge and in a conducive manner to the social and economic well-being. In this sense, the use of flexibilities provided for in the TRIPS Agreement is essential to safeguard that these objectives (social and economic well-being) will be reached. In the same line, the latest UN report on climate change *Climate Change 2014: Mitigation Of Climate Change* stated that although strong IP rights may force green technology developments and transfer in developed countries, there is a lack of evidence to support the strengthening of IP in developing countries. It also mentions that problems could arise if new, very broad patents were granted that impede the development of future, more efficient technologies.

212. Taking into account the large number of questions raised by Members on the subject, Brazil could go along with the proposal of Ecuador of revisiting their proposal in light of the discussions we have had in the TRIPS Council.

11.13 China

213. China thanks Ecuador for raising this important issue again at the TRIPS Council. In order to fight against climate change for the common interests of the whole world, the principle of common but differentiated responsibilities has been established as the basis for closer international cooperation. Due to developing Members' low development level and shortage of capital and technology of the developing members, developed country Members should provide support to developing Members.

214. IPRs are an important element concerning the development and utilization of the environmentally rational technologies. According to the TRIPS Agreement, the promotion of technological innovation and to the transfer and dissemination of the technology are the objectives of the protection and enforcement of IPRs, and the abuse of IPRs by right holders or the resort to practices which adversely affect the international transfer of technology should be prevented. So, IPRs should contribute to, but not become a barrier to, the transfer and dissemination of environmentally rational technologies.

215. Nothing in the TRIPS Agreement prevents its existing general flexibilities from its application to the environmentally rational technologies. We hope the discussions on this matter could further identify the problems and find the most appropriate solution for effectively promoting and facilitating developing country Members' access to environmentally rational technologies, and provide a better environment and policy space for the transfer and dissemination of environmentally rational technologies from developed country Members to developing country Members.

11.14 WIPO

216. WIPO would like to thank the TRIPS Council for the opportunity to present WIPO's contribution in the area of green technology transfer. We would first like to highlight our Platform WIPO GREEN in the area of Intellectual Property and Transfer of Environmentally Sensitive Technologies.

217. WIPO GREEN is an interactive marketplace that connects green technology providers and those seeking innovative solutions to combat environmental challenges. It is an entry point for WIPO services in facilitating green technology transfer. We work on two principal components. The first one is the WIPO GREEN DATABASE which is freely accessible and offers a broad listing of needs for products, processes, know how transfer, collaboration and finance. It also offers products, services and IP assets. The technologies and needs cover: Administrative, Design or Regulatory Aspects, Agriculture / Forestry, Alternative Energy Production, Energy Conservation, Transportation and Waste Management.

218. The second of the principal components is the WIPO GREEN NETWORK that connects green technology providers and seekers, catalyzes mutually beneficial commercial transactions and offers other resources and services.

219. WIPO GREEN Charter has provisions on WIPO GREEN's Mission and Principles. WIPO GREEN is governed by the WIPO Secretariat and the WIPO GREEN Advisory Board. WIPO GREEN Advisory Board is composed of Partners. To become partners, organizations will have to agree in writing to the WIPO GREEN Charter and specify their contributions.

220. To list the benefits of WIPO GREEN when you join the network: you can get connected with large and small companies, intergovernmental and non-governmental organizations, universities, innovators and governmental agencies from around the world; identify green technology needs in different regions; find solutions to your needs; promote technologies; partner with others to develop, adapt and/or commercialize technologies; and access WIPO and third party resources and services to accelerate transactions and enter new markets.

221. WIPO GREEN addresses the following challenges: climate change and sustainable development along with achieving socially inclusive growth, enhancing the environment for innovation while enabling more efficient adaptation and deployment of green solutions and helping the public and private sectors stimulate innovation and technology diffusion. Another challenge is to reach out to different parts of the world with our mission.

222. The WIPO GREEN Network connects green technology providers and seekers and aims to catalyze mutually beneficial commercial transactions. The WIPO GREEN network features services offered by WIPO and third parties such as arbitration and mediation, roster of consultants and facilitators, links to funding opportunities, learning & training opportunities, IP management resources, opportunities to network, case studies illustrating tech transfer and collaborations, newsletter and twitter feeds.

223. The partner list of WIPO GREEN is growing continuously and as of today we have 47 partners. On WIPO GREEN our current emphasis is to facilitate deal making, broaden types of technologies and needs available on the database, integration with other platforms (e.g. AUTM, SS-GATE, HKTDC, Danish Patent & Trademark Office, etc.) and raise the profile of WIPO GREEN amongst the green tech community.

224. I would also like to inform you briefly on another platform, WIPO Re:Search. We at the Global Challenges Division have created this platform for sharing IP assets and resources (catalyzing R&D on NTDs, malaria, and tuberculosis) and work "beyond patents" with compounds, technologies, know-how, data, research facilities, hosting arrangements, etc.). BVGH, as the partnership hub administrator, actively facilitates specific collaborations between WIPO Re:Search Members. The broad aims of this platform are stimulating and sharing innovation to catalyze tech transfer and collaborations, reduce transaction costs, build on comparative advantages of multi-stakeholder approaches, and facilitate access to WIPO and third party services (e.g. Arbitration & Mediation) and constructively contribute to the global policy discourse. This is based on the recognition that IP rights are tools, not objects or objectives *per se* and users typically seek access to technologies, not just patent rights.

225. To summarize: WIPO Re:Search, encourages relevant public and private sector entities to join as providers and/or users, encourage national IP offices (or other relevant public entities) to join as supporters and funds-in-trust for hosting and training/capacity building. On the other hand WIPO GREEN informs public and private sector entities to use the platform to advertise their technologies or their technology needs, encourage relevant public and private join as partners to further develop the network and encourage national IP offices and organizations with relevant patents and products to cross-link data records.

226. The activities carried out by the Global Challenges Division find their basis on the following instruments: Agreement between the United Nations and the World Intellectual Property Organization(1974) - Article 1 of this Agreement provides that "The United Nations recognizes the World Intellectual Property Organization (hereinafter called the " Organization ") as a specialized agency and as being responsible for taking appropriate action in accordance with its basic instrument, treaties and agreements administered by it, inter alia, for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development…..". Similarly, the Agreement between the World Intellectual Property Organization and the World Trade Organization was signed in 1995 for a mutually supportive relationship between WIPO and the WTO. The Agreement provides cooperation in three main areas, namely notification of, access to and translation of national laws and regulations, implementation of procedures for the protection of national emblems, and technical cooperation.

227. The United Nations Framework Convention on Climate Change (1992) by Article 4.5 requires that the developed country Parties and other developed Parties included in Annex II shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to other Parties, particularly developing country Parties, to enable them to implement the provisions of the Convention. In this process, the developed country Parties shall support the development and enhancement of endogenous capacities and technologies of developing country Parties. Other Parties and organizations in a position to do so may also assist in facilitating the transfer of such technologies.

228. Within WIPO's Mandate, we work to contribute to global policy discussions at the interface of IP and climate change as well as facilitate green technology transfer in accordance with the UNFCCC (art 4.5). Within this mandate, Strategic Goal VII of WIPO addresses IP in relation to global policy issues. Program 18's goal is the functioning platform for uptake and diffusion of green technologies.

229. The development of the health and climate related platforms are also in line with WIPO Development Agenda Recommendation 2 which is on promoting the transfer of technology to the benefit of developing countries.

230. In light of the above, the Global Challenges Division was established in 2010 to deal with climate change, public health and food security. Our objective is to emphasize the positive

relationship between innovation and IP, and show how IP can best be used for economic and social development. We participate as an observer at the UNFCCC meetings and organize side events on IP related issues. WIPO is also a forum for discussion - in July 2011 WIPO organized the Conference on Innovation and Climate Change in Geneva. We prepared a report on Global Challenges on Intellectual Property and the Transfer of Environmentally Sound Technologies.

231. Other activities outside the Global Challenges Division as far as technology transfer is concerned are the following: WIPO provides patent information. WIPO GOLD is a free public resource which provides a one-stop gateway to WIPO's global collections of searchable IP data. It aims to facilitate universal access to IP information. WIPO also has prepared patent landscape reports on climate change and energy on specific areas like the Report on Desalination Technologies and the Use of Alternative Energies for Desalination, Patent-based Technology Analysis Report – Alternative Energy Technology, Solar Cooking and Electronic waste recycling.

232. WIPO provides capacity building support for the management and transfer of green technologies, including assisting in drafting IP clauses in technology transfer agreements. Technology and Innovation Support Centers (TISC) are established to provide innovators in developing countries with access to locally based, high quality technology information services and other related services.

233. In addition to the above, WIPO recently became a CTC Network member. WIPO GREEN will act as the entry point for assistance requests from developing countries on IP and transfer of green technologies through CTCN. UNEP/CTCN is also a WIPO GREEN partner.

234. The Climate Technology Centre and Network (CTCN) is the operational arm of the UNFCCC Technology Mechanism and it is hosted and managed by UNEP in collaboration with UNIDO and with the support of 11 Centres of Excellence located in developing and developed countries. The CTCN promotes accelerated, diversified and scaled-up transfer of environmentally sound technologies for climate change mitigation and adaptation, in developing countries, in line with their sustainable development priorities. As defined by the Intergovernmental Panel on Climate Change (IPCC) climate technologies cover any piece of equipment, technique, practical knowledge or skills for performing a particular activity that can be used to face climate change.

235. There is also the WIPO Development Agenda, which was initiated to ensure that development considerations form an integral part of WIPO's work. The effective implementation of the Development Agenda, including the mainstreaming of its recommendations into our substantive programs, is a key priority. There are 6 different clusters of Development Agenda recommendations. One of the clusters is on Technology Transfer, Information and Communication Technologies (ICT) and Access to Knowledge.

236. The relevant Development Agenda recommendations for our activities can be listed as follows:

- DA recommendation 19. To initiate discussions on how, within WIPO's mandate, to further facilitate access to knowledge and technology for developing countries and LDCs to foster creativity and innovation and to strengthen such existing activities within WIPO.
- DA recommendation 25. To explore IP -related policies and initiatives necessary to promote the transfer and dissemination of technology, to the benefit of developing countries and to take appropriate measures to enable developing countries to fully understand and benefit from different provisions, pertaining to flexibilities provided for in international agreements, as appropriate
- DA Recommendation 28. To explore supportive IP -related policies and measures Member States, especially developed countries, could adopt for promoting transfer and dissemination of technology to developing countries. To include discussions on IP -related technology transfer issues within the mandate of an appropriate WIPO body.

11.15 Peru

237. Peru would like to thank the Secretariat of WIPO for their useful presentation on WIPO GREEN. We would urge WIPO to also report to us on the negotiations taking place at the IGC, since this would enrich the Council's discussion under items 5 and 6.

11.16 Brazil

238. I would just like to add my voice to that of my colleague from Peru in thanking the WIPO Secretariat for sharing information on its activities related to technology transfer. We regret that TRIPS Council Members could not hear how WIPO reports on the work undertaken under the IGC despite of the request of a diverse range of Members.

11.17 Ecuador

239. I would also like to thank the delegate from WIPO for the very important information that she conveyed to us. You will remember that Ecuador has asked at previous meetings for this kind of information. because WIPO, in light of the agreement with the WTO, could provide studies on technology transfer. This is something that we withdrew because we saw that the discussion needed to continue and we will reserve the right to bring that up in the future. This kind of study is really helpful in enriching the discussion.

11.18 India

240. I would also like to thank the WIPO Secretariat for briefing us on this particular issue. Of course, we feel that it is not a balanced presentation in the sense that there are two views on this particular issue and WIPO Secretariat has a certain view. It is in our interest to understand what WIPO is doing on green technologies. In this regard I would also like to support the statement made by Peru to have a similar briefing from WIPO on IGC developments.

11.19 China

241. China would like to echo the comments by Peru and Brazil. The introduction by the WIPO is beneficial for the discussion under this item. We also believe that it would be helpful if WIPO, as an observer to the TRIPS Council, could introduce the recent development of the ongoing work taken by the IGC.

11.20 El Salvador

242. We would also like to join in thanking WIPO for this very succinct presentation. I would also like to join Peru, Ecuador, India, China and others in suggesting that WIPO could perhaps in the future provide information on the work that is taking place within the IGC on traditional knowledge and genetic resources.

11.21 Bolivarian Republic of Venezuela

243. I am just taking the floor to support those who came before me, and also to ask through yourself that the work of this Council could be more balanced and whenever any Member asks for some kind of information from another organization they could come here and give a presentation without needing to open up a long discussion on whether it is possible or not, or with arguments such as the fact that WIPO has a permanent observer status, I think it would be transparent and fair to request that WIPO would also report on what is taking place at the IGC.

11.22 Nigeria, on behalf of the African Group

244. Let me thank WIPO for their presentation which was informative. Most developing countries that are trying to get access to some of these green technologies. Regarding the proposal coming from Peru, given that it is new, we would need some time to reflect on it.

11.23 Chairman

245. My impression is that we did not achieve convergence on Ecuador's proposal for an information session. We will have to continue discuss bilaterally outside this meeting to explore it and see whether we could bring it up for further discussions and solution. Another point is the desire to continue discussions on this subject at the Council's next meeting, which would also benefit from Ecuador's updated or revised paper.

11.24 United States

246. I just wanted to clarify that, as we indicated in the Council's discussion in February, we would welcome a new or revised paper that Ecuador might wish to submit. But we are not in a position at this time, like at the February meeting, to agree to a Council decision on the inclusion of that item on the agenda for the Council's next meeting. If Ecuador would like to submit a request under the normal working procedures of the Council to have that item on the agenda, we would certainly support it.

11.25 Ecuador

247. I would like to have it recorded that Ecuador will respect the working procedures and we will make an official request for the topic to be included in the next meeting.

11.26 Chairman

248. The last point is the suggestion that the WIPO Secretariat provide information to the Council on the on-going work of the WIPO IGC. Since it is has an observer status in the Council, WIPO Secretariat could request the floor whenever it deems necessary.

[End of Annex II and of document]

AGENDA ITEM 12: INTELLECTUAL PROPERTY AND INNOVATION: INNOVATION INCUBATORS

12.1 Chinese Taipei

249. The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu is pleased to join the United States in sponsoring this agenda item. We also very much welcome contributions from other Members on this subject.

250. I would like to firstly explain very briefly the background to our Business Start-Up and Incubation Policy, then describe the aims and objectives of our Incubation Centre Programme, and finally share with you in more detail, as an example, our experiences with one of our particularly successful, and long-running, Innovation Incubators – the Nankang Software Incubator.

251. Being a developing Member ourselves, we have always recognized the crucial importance of small and medium enterprises (SMEs) to our economic and social development. The SMEs sector accounts for a major share of our production output and the total value of our exports. It is a key factor, in terms of both numbers of employees, and the numbers of enterprises as well.

252. In this new era of the "knowledge-based economy" and the challenges of global markets and heightened competition, we realize the growing importance of innovation and entrepreneurship. There is an urgent need to create a high-quality environment in which promising, early-stage start-ups can be identified, introduced to "investor angels" and taught how to benefit from regional industrial resources and to build up a comprehensive support network.

253. This is why we launched the "Start-up Taiwan Programme" in 2012, with the specific aims of further refining the incubation process and speeding up the achievement of excellence. In this context, one of the key elements of this latest Programme is the comprehensive "one-stop shopping" service for SMEs. Many new Incubation Centres have been established in order to provide a wide range of resources in an efficient and integrated manner to help SMEs upgrade and transform themselves. For example, they provide office space, access to equipment, R&D technology and funding, IP innovation, protection and management consultancy, and so on. Thus, the costs and risks that are often impossible for a new business to bear in its early start-up stages are significantly reduced.

254. For more than a decade, we have been working with other government agencies, research institutions, universities and the private sector to implement over 130 Innovation Incubators in 20 different regions and cities across the country. By the end of 2012, these Centres had successfully cultivated some 5,620 SMEs, created almost 99,000 jobs, and secured 3,300 patents and 1,559 technology transfers. 51 of the firms raised in Incubation Centres had secured stock-market or OTC listings.

255. One of the most successful of incubators over the years has been the Nankang Software Incubator (NSI). The NSI utilizes the accumulated experience and resources in technology development - market intelligence, science and technology law, industry promotion, professional talent training, etc. - to nurture emerging new companies with advanced technology and market development potential in applications such as multimedia (digital content), embedded systems, network communications, e-Business, science and technology services. The NSI also involves existing software companies in the transition of upgrading, thus helping to create the industry's future shining stars. It even provides help to related enterprises with fast orientation, facility support, on-site consultancy, sourcing and marketing, networking and project collaboration. And, needless to say, the NSI constantly supports the growth of SMEs, helping them to expand their international networks and to adopt best practices from around the world.

256. In recognition of its effectiveness, the NSI not only won the Incubator of the Year Award for 2013 from the Asian Association of Business Incubation, but it was also presented with the Soft-Landing Certificate by the National Business Incubation Association (NBIA), the world's leading organization for the advancement of business incubation and entrepreneurship.

257. One of the NSI's greatest success stories is Armorize. This enterprise, carefully nurtured in the NSI since 2005, has become one of the leading developers of cloud-based anti-malware products in its field. Its main product is HackAlert Suite Cloud, which offers a scalable cloud-based platform to protect businesses from sophisticated attacks from Advanced Persistent Threats (APTs) on the internet.

258. As a result of its effective creativity and innovation, Armorize was acquired by the NASDAQ-listed company Proofpoint, a leading service provider on cloud-based solutions for anti-malware in 2013. Without NSI, the innovation incubator, how can a baby, Armorize, become a shining star.

259. In conclusion, a tribute to the success of the NSI, which also goes to show that business start-ups and incubation are probably the most important factors in today's commercial world that is constantly striving for innovation and sustainable development.

260. We very much look forward to hearing from other delegations about current policies in this regard, and learning from the successes and experiences of their incubation centre programmes.

12.2 United States

261. We are grateful for the introduction and co-sponsorship of this item on innovation incubators by Chinese Taipei, as well as other co-sponsors whose interventions are welcome. In suggesting today's agenda item, the United States and Chinese Taipei wanted to build upon previous interventions on Intellectual Property and Innovation, especially the themes of small and medium sized entities and university technology transfer.

262. We are particularly interested in Chinese Taipei's insightful comments on small and medium-sized enterprises.

263. Incubators are organizations that provide critical support to entrepreneurs, start-ups and other new entities to assist in their early stages of development. The support incubators provide include assistance in securing financing, developing and implementing a business plan, finding partners, navigating regulatory issues, commercializing inventions, and securing, protecting and monetizing IPR. Innovation incubators also provide infrastructure, such as office space, information technology support, and even laboratory facilities.

264. Incubators are part of the enabling environment for innovation. As we focus on IP and the important role it plays in incentivizing innovation and creativity, we have also highlighted the context in which strong IPRs reside, including the larger protective environment that assists fledgling technologies to grow and develop.

265. According to a recent World Bank report by InfoDev[6] support for new innovators is especially needed in the context of business skills.[7] Like the technology transfer offices we discussed in February, innovation incubators can help innovators with those business skills.

266. The first "incubator" was built in Batavia, New York in 1959 by a building owner, who was himself a trendsetter in envisioning a new use for his building. He envisioned a place where inventors, designers and developers could receive mentorship and expert advice, assistance in obtaining financing, learn about and create new technologies, start their own projects, and collaborate on existing ones. Over fifty years late, his prediction has proven to be correct and Innovation Incubators are sheltering and supporting start-ups worldwide, often with considerable success.

267. Of course, investing in new businesses and new technologies can be risky, and many incubators have a less than 50% success rate. But others, such as the Innovation Hub in South Africa are said to have a success rate of 75 to 81% for companies in South Africa.[8]

[6] InfoDev is a global multi-donor program in the World Bank Group which "supports growth-oriented entrepreneurs through creative and path-breaking venture enablers."

[7] https://www.infodev.org/articles/model-sustainable-and-replicable-ict-incubators-sub-saharan-africa

268. Considering that in the United States small businesses provide 64% of new private-sector jobs, and that of high patenting firms, small businesses produce 16 times more patents per employee than large firms,[9] fostering new businesses is clearly important to the US economy and innovation incubators are one important means of promoting development.

269. In the United States, some innovation incubators are associated with Universities, such as at the University of Michigan-Flint, Harvard's HackLab[10] and Portland University.[11] Others are community based, such as the Innovations Science and Technology Incubator in Chandler, Arizona, as well as the Spark incubator in Ann Arbor, Michigan.[12]

270. And others involve partnerships with a national government entity such as the United States National Science Foundation's Innovation Corps.[13] Some are even a combination, such as the joint Google, Colombia University, and United States Patent and Trademark Office initiative in New York.[14] After reading the article by Ambassador John Kakonge (Kenya) in the April 2014 issue of WIPO magazine, we note that an intellectual property office can also independently provide incubation services, by providing training to inventors and creators on the use of the IP system.

271. Although all of the incubators that I have mentioned have physical locations, an incubator can also be a network. For example, the NSF Innovation Corps (I-Corps) is not a place, but a set of activities and programs that prepare scientists and engineers to extend their focus beyond the laboratory.

272. No matter where these incubators are located they can serve an invaluable function. Too often innovations with the potential to benefit society are undeveloped. These inventions, with guidance from experts and entrepreneurs, can contribute to addressing, if not solving today's challenges.

273. In 2010, the United States Agency for International Development, the National Air and Space Agency, the US Department of State, and NIKE joined together to form LAUNCH in an effort to identify, showcase and support innovative approaches to global sustainability challenges in both developing and developed countries.

274. Each year LAUNCH searches for ten innovations with the potential to have a significant impact in solving today's challenges, and creates a cross disciplinary network of leaders from business/finance, policy/government, science/technology, engineering/design, media/communications, and other areas to serve as a mentor group.

275. A LAUNCH Forum is then convened to bring together the innovators and the network of leaders, to discuss the innovators' most pressing business and program challenges. Finally, following the forum, the LAUNCH Accelerator provides individually targeted strategic support to each innovator to help integrate LAUNCH forum recommendations and action items, and move each innovation to successful implementation.

276. In April 2014, USAID began an even more ambitious project, the U.S. Global Development Lab, a new entity is a new entity within USAID "that seeks to increase the application of research, science, technology, innovation and partnerships to achieve, sustain and extend the Agency's development impact to help hundreds of millions of people lift themselves out of extreme poverty." Expanding upon and including LAUNCH and NEXUS which is another U.S. incubator program, the Global Development Lab will bring together a diverse set of partners to discover, incubate and scale breakthrough innovations in areas such as water, maternal and child health, food security

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[8] http://egatwip.usaidallnet.gov/sites/default/files/Systematic%20Review%20of%20Business%20Incubation%20Research.pdf

[9] http://www.sba.gov/sites/default/files/FAQ_Sept_2012.pdf citing another report.

[10] http://www.umflint.edu/outreach/innovation-incubator

[11] http://www.pdx.edu/impactentrepreneurs/incubator

[12] http://www.annarborusa.org/start-here/incubator-network/incubator-faqs

[13] http://www.nsf.gov/news/special_reports/i-corps/ecosystem.jsp

[14] http://www.nydailynews.com/new-york/google-cornell-innovation-campus-opens-article-1.1173034

and nutrition, energy, education and financial inclusion. To do this, USAID is planning to invest more than $146 million in the lab in the 2015 budget.

277. The United States and Chinese Taipei requested the agenda item, because we recognize that we are not alone in incubating innovation. As I mentioned in February, the Government of Botswana has created the Botswana Innovation Hub to attract foreign innovative companies to its market. The Hub is designed not only to mobilize mutually beneficial investment partnerships, but to translate university research into goods and services that benefit the consumers of Botswana.

278. In 2013, the East African virtual incubation pilot[15] was launched in Nairobi, Kenya, by the World Bank infoDev program I mentioned earlier as well as a consortium of partners from in Kenya, Rwanda, Tanzania, and Uganda led by AfriLabs, a pan-African network of technology hubs. The network includes: m:lab East Africa, a Kenyan mobile incubation center; NaiLab, a Kenyan start-up accelerator; the Technology and Business Incubation Facility, a Rwandan technology incubator; Dar Teknohama Business Incubator, a Tanzanian technology incubator; and the Hive Colab, a Ugandan collaboration, innovation, and incubation space. Unlike many incubators, this pilot will be virtual and offer services to rural communities. We hope to hear more about this work. A similar infoDev program reached over 500 entrepreneurs in Vietnam in one year.

279. Another innovation incubator is the Sultanate of Oman's National Business Center which helps "start-up companies define their ideas and develop their business plan so they can be evaluated."[16] Once a business plan is developed, an incubator can help find financing, provide mentoring and business advice and provide office or laboratory space.

280. Yet another incubator is the Cape Town, South Africa based, Reconstructed Living Lab (RLabs) which describes itself as a "global movement and registered Social Enterprise that provides innovative solutions to address various complex problems" which provides "an environment for community driven innovation and reconstruction."

281. According to Jonathan Ortmans, President, Public Forum Institute, Brazil's incubator network "has developed from 136 in 2000 to over 400 today." He quotes a 2007 Networks Financial Institute working paper to say that "Brazil leads one of the most successful incubation movements in Latin America, with incubator models that are bottom-up, service-oriented, suited to indigenous needs and have universities as their facilitators." The government of Brazil also fosters innovation by providing financing to start ups, and by providing, by law, that federal university professors may take temporary leave to create a startup.

282. For those WTO Members that do not yet have incubators, I commend to you a recent study Incubating Success: Incubation Best Practices that Lead to Successful New Ventures, by the Economic Development Administration of the US Department of Commerce.[17] This study discusses best practices in incubators, and is a useful reference.

283. Common to all of these examples of innovation incubators is the importance of environments that support, protect and promote innovation. These incubators, like IPR, can play not only a critical catalytic role and but also make the difference between success and failure. They can provide shelter from funding scarcity, potential refuge from theft, and possible safe haven from market realities. Such incubators, particularly when coupled with strong IPR, represent another innovation best practice.

284. In sum, the innovation life cycle is complex and delicate. The TRIPS Council can play a role in identifying and encouraging enabling environments to allow innovators to thrive. Incubation centers are one way to nurture young innovators. As stated by Ambassador Kakonge, "much can be gained by exchanging experiences and views with other emerging economies…where rates of IP use are on the rise." We hope to hear from these delegations today.

[15] https://www.infodev.org/articles/east-african-virtual-incubation-pilot-launch-nairobi-kenya
[16] http://www.nbc.om/preincubation/services.aspx
[17] This study was from the U.S. Department of Commerce, Economic Development Administration, the University of Michigan, the University at Albany, State University of New York, the National Business Incubation Association and Cybergroup. http://www.edaincubatortool.org/pdf/Master%20Report_FINALDownloadPDF.pdf

12.3 Panama

285. For Panama, IP and innovation are of prime importance. This is why our country boasts the National Secretariat of Science, Technology and Innovation (SENACYT), an autonomous institution created by Law No. 13 of 15 April 1997 and subsequently modified by Law No. 50 of 21 December 2005, which granted it autonomy in its administrative tasks. The Secretariat's work is underpinned by the guidelines established in the National Strategic Plan for Science, Technology and Innovation (PENCYT) 2010-2014. All SENACYT's activities, projects and programmes are aimed at strengthening, supporting, influencing and promoting the development of science, technology and innovation with a view to raising the level of productivity, competitiveness and modernization in the private, government and academic research sectors and in the population at large. SENACYT encourages business sector participation and investment in projects which generate products, processes and services.

286. In addition to SENACYT, Panama houses the City of Knowledge, which is a private initiative and knowledge management platform focused on boosting the innovative and competitive capacities of the users who share the Campus. In this space, integration, dynamic networking, and joint efforts facilitate the transference of knowledge. This allows for an unusual concentration of innovative firms, international organizations focused on development, and academic and research institutions, resulting in a lively and successfully collaborative community. In order to strengthen these dynamics, the City of Knowledge provides access to a series of benefits and services aimed at the needs of its users.

287. Among its various programmes, the City of Knowledge offers a business acceleration programme known as the Don Alberto Motta business acceleration programme, a regional platform promoting exchange, collaboration and creativity, which together foster innovation. It is also a focal point for resources and initiatives to further the growth and visibility of innovative start-ups with high growth potential on a local and international level. Generally speaking, these types of businesses have limited assets and capital and depend largely on their innovative capacity and human capital to obtain satisfactory results.

288. The City of Knowledge supports these businesses through the City of Knowledge Business Accelerator, which offers five resources to innovative start-ups: (1) the Mentor Programme initiative, in which entrepreneurs are assisted by business people and experienced high-profile executives who give them guidance, support and a sense of empowerment; (2) access to Specialized Knowledge, which enables entrepreneurs to receive expert advice on key business issues, for example tailored advice about registering their innovations to obtain exclusive rights over their use, an area in which IPRs are a very useful tool; (3) access to seed capital, i.e. access to seed funds so that key team members can dedicate themselves to creating prototypes and speeding up the discovery process through trial and error; (4) visibility, achieved by giving entrepreneurs communication mechanisms and meeting spaces to promote their business and attract the attention of international clients, investors, allies and partners; (5) infrastructure opportunities, which enable entrepreneurs to make use of workspaces in the City of Knowledge, where they can stay in constant contact with other entrepreneurs and professionals.

289. The City of Knowledge will be participating in the next innovation fair, which will take place next October during the meeting of this Council. We therefore hope that delegations will show an interest in learning more about Panama's successful innovation incubator model.

290. Lastly, we would like to thank the delegations of the United States and Chinese Taipei for including this item on the agenda, and to state that we would be glad to appear as its co-sponsors.

12.4 Hong Kong, China

291. We would like to thank Chinese Taipei and the United States for adding this item and their introduction. Hong Kong, China welcomes the opportunity to share our experience and learn from the best practices of others.

292. Innovation is a key enabling element for the betterment of people's lives. It contributes to the enhancement of quality of life, creation of business and employment opportunities, and facilitation of commercial transactions. Hong Kong is therefore mindful of the importance of

fostering an innovative culture in society and promoting technological entrepreneurship. With a view to supporting innovation and technology start-ups, the Hong Kong government has been facilitating the provision of structured support for them.

293. Many would-be-entrepreneurs around the world share a common headache – they have brilliant ideas that have the potential to be transformed into great problem-solvers or multi-billion-dollar businesses. However, they do not have the capital or knowhow to start a commercial venture. In Hong Kong, to address this, the Hong Kong Science Park runs incubation programmes to help technology start-up companies to get on track. Under these programmes, they are provided with subsidised office space and facilities; financial aid; assistance in technology, management, promotion and development; and business support such as investment matching.

294. These incubation programmes have produced very heartening results. Among the 309 graduates, about 75% are still in business. Since April 2003, they have filed more than 730 IP registrations, and have attracted about US$109 million in angel or venture capital investment.

295. To give stellar performers an additional lift, the Hong Kong Science Park launched the Leading Enterprises Acceleration Programme, or LEAP, earlier this year to provide enhanced services for start-ups under incubation or recent graduates that have the potential to achieve a significant business scale. The services include access to well-connected business leaders who can advise on development; access to accounting advice on IPO, M&A and fundraising; subsidies for engaging consultants; access to a panel for financial, taxation and legal advice; and assistance in reaching out to markets outside Hong Kong.

296. In our view, regional and international collaboration is also beneficial to technology start-ups. In a couple of weeks, the Hong Kong Science Park will formally open its Soft Landing Centre with a view to attracting technology transfer offices from renowned universities, and their start-ups and spin-offs, to establish outposts in Hong Kong for collaboration with local and southern China companies. An array of support services will be provided, including office space and facilities; business matching; fundraising; referral to professional services on company set-up; and talent recruitment. The Centre has secured InvestHK and the Consulate General of Israel in Hong Kong as strategic partners. It has also identified other potential partners in Hong Kong, Taiwan and the mainland of China.

297. In addition to the Hong Kong Science Park, the following entities in Hong Kong also provide different forms of assistance and incentives for technology start-ups:

- Hong Kong Cyberport operates the Cyberport Creative Micro Fund Scheme to help start-ups to translate their innovative ideas into prototypes.
- The Office of the Government Chief Information Officer runs "iStartup@HK", an interactive portal which provides useful information on business set-up and serves as a platform for business promotion and outreach to potential investors and venture partners.
- The Innovation and Technology Fund, or ITF, provides funding on a dollar-for-dollar matching basis for start-ups and other SMEs to undertake in-house R&D projects. In the coming year, the government funding ceiling will be nearly doubled, to about US$1.3 million per project. Under new funding terms, the recipient companies will also retain all the IP rights.

298. We certainly have not missed the potential contributions that can be made by academia. From this year, the ITF will provide annual funding of up to about US$3 million for teams from universities in Hong Kong (which may comprise students, professors, alumni or a mix of them) to set up technology businesses and commercialise their R&D outcome.

299. Thanks to the entrepreneurship and the "can-do" spirit of Hong Kong people and companies, we have seen a mushrooming of technology start-ups in recent years. We are very happy that the support measures already in place have played a constructive role. We hope that the new initiatives will make Hong Kong an even better destination for innovators and investors alike.

300. Hong Kong, China looks forward to further opportunities for listening and discussion.

12.5 Japan

301. This delegation would like to express its gratitude to Chinese Taipei and the United States for their efforts in proposing "Intellectual Property and Innovation: innovation incubators" as an agenda item. Japan appreciates this opportunity and wishes to share its view and experiences in this field with other Members so as to create a common understanding of how incubators play an important role in promoting innovation.

302. This delegation recognizes that SMEs and venture companies are engines for innovation, and thus have a key role to play in economic growth both in developing and developed countries. In order for SMEs and venture companies, especially for technology-based companies, to contribute to economic growth by promoting innovation, their achievements that resulted from research and development activities need to be well protected by IP. At the same time, effective utilization of IP is also indispensable for their business development. On the other hand, it is not always feasible or even not possible for SMEs and venture companies to utilize IP effectively on their own. This is the very occasion where innovation incubators play crucial roles.

303. In this regard, this delegation would like to share with Members one successful case, which would deepen Members' understanding on the incubators' role. In this case, Aim-tech, a Japanese venture company, successfully started its business operations with the support of various incubators, and keeps growing through the effective utilization of IP.

304. The founder of this company had an idea to automate gas-leak testing. This ideas was based on his years of experiences in his previous gas company. He was convinced that his idea could respond to industry needs, although he had no idea where to start. There were two incubators that led him in the right direction for his future success.

305. First, he consulted a patent licensing advisor, who was sent by the government. He received a wide range of advice on IP, from how to file patent applications up to how to make use of various subsidies in order to acquire a patent for his invention. It became a valuable opportunity for him to recognize the importance of IP and IP strategy in maintaining a competitive advantage over other companies.

306. Then, he visited a local technology foundation to seek some advice. He was not only allowed to make use of research facilities owned by the foundation but also encouraged to have a meeting with a local university who might be interested in his technology. The meeting resulted in an initiation of academy-industry collaboration between his venture company and the university.

307. The significant support from these incubators paved the way for the commercialization of his idea of the gas leak tester. When it comes to IP, the company strategically acquired patents in Japan and abroad for its technologies developed through the collaborative research with the university. More interestingly, Aim-tech was able to obtain a loan from a local financial institution, using its IP as collateral. The financial company was highly impressed by the technological capabilities of the company and the marketability of their patented products. Aim-tech's IP surely is contributing factor toward the further growth of the company, since the financial loan was also utilized to develop new products.

308. In conclusion, this delegation would like to emphasize, once again, that incubators play an important role in terms of facilitating IP-based innovation. In line with this, it should also be noted the crucial role of IP, such as patents, in creating new businesses. This delegation welcomes further share of experiences of and discussions on these issues among Members at this Council and also would like to continue to make active contributions by sharing our views and experiences that we hope are useful to other Members.

12.6 Chile

309. We find it interesting that the topic proposed by Chinese Taipei and the United States on IP and innovation was placed on the agenda, because innovation incubators are in many cases the first and only support that new business ventures receive. We welcome the inclusion of this subject on the agenda.

310. The Chilean State's incubator creation programme began in 2001 with the setting up of four incubators. The Chilean incubator model emerged in the context of universities, so the majority of the incubators in operation are contingent on a place of learning.

311. The creation of a co-financing instrument to establish business incubators in Chile was promoted by the Ministry of the Economy and the Chilean Economic Development Agency (CORFO). It was formally established in 2000 as the outcome of a process of reflection on the role of instruments for setting up and strengthening incubators, which are designed to be executing entities for policies relating primarily to innovation and, secondly, to regional economic development.

312. When this incubator promotion instrument was launched, it called on recipients, universities and technological entities to focus on projects that foster innovative and technological businesses, stressing "the necessity of sharing the initial financial effort and improving links between universities and emerging business sectors", and highlighting "uses of information technology in the areas of electronics, computing and communications" as desirable areas of specialization.

313. There are currently 15 business incubators spread across the country. The CORFO agency INNOVA Chile continues to co-finance the operation through various schemes to which these entities must apply, undertaking to produce quantitative and qualitative results in return.

314. Lastly, in the field of innovation and IP, it is important to note the commitments undertaken by the Chilean Government pursuant to its agenda for productivity, innovation and economic growth, which includes action to create new institutions and/or programmes, or to strengthen existing ones, by supporting business ventures in the early stages, the regionalization of the Start-Up Chile programme, which seeks to attract entrepreneurs from different parts of the world, and other initiatives.

315. We believe it important to encourage a discussion within this Council aimed at exploring alternatives that could strengthen innovation incubators. This should take place with a view to taking concrete steps in this field, such as developing support materials and training seminars for professionals from business incubators. Similarly, we are willing to actively discuss other areas relating to the link between IP and innovation, a topic which we believe is of the greatest relevance to all our countries and this Organization.

12.7 New Zealand

316. We have heard a lot already this afternoon about how incubators can work, so I will limit my comments to some observations about the policy rationale as to why the New Zealand Government is providing further support to encourage technology incubators.

317. High-growth start-up firms play an important role in driving productivity gains, commercialising IP and growing emerging sectors. Often start-ups and other new firms exploit novel opportunities that have been overlooked by more established businesses and in doing so can make an important contribution to economic growth. Robust and predictable IP regimes are an important fundamental for technology start-ups, but IP protection is not enough on its own.

318. The New Zealand Government has been working to explore possible policy tools that can help to reshape New Zealand's economy and increase economic growth by increasing the number of high growth, technology-based, firms.

319. Start-ups commercialising complex, difficult to replicate, IP that has typically (but not exclusively) been developed in public research organisations face particularly acute barriers. Two key barriers are:

- Access to risk capital: Start-ups commercializing complex IP are often capital intensive, requiring substantial up-front investment to develop their product and business. This is when the risks and uncertainties are the highest, firms are not yet fully 'investor ready' and the period before returns on investment can be realized can be long. This differs from start-ups from creative and services industries which can require little initial funding for commencing operations.

- Entrepreneurial capability: Complex IP based start-ups are a growing New Zealand strength, but our track record is still limited. Consequently, the specialist entrepreneurial and management skills required to successfully establish these start-ups are in short supply.

320. New Zealand has had an Incubator Support Programme in place since 2001, which was designed to address New Zealand's lack of high-growth potential firms by enhancing the survival and growth of these firms via the development of high-quality incubators. This programme has been successful in catalysing founder-focused business incubators which work with entrepreneurs and build on business propositions. New Zealand research institutions are good at developing new ideas and concepts, but we have been far less successful in commercialising complex technologies to the extent seen in other countries.

321. To address this problem, New Zealand has recently launched a new technology incubator programme. This will see incubators established with public and private sector funding, which will work with IP intensive firms to provide capability training that will help these start-ups advance to the 'investor-ready' point. Rather than building a start-up around an entrepreneur, these will create a business around an idea. These technology focused incubators will operate under a market-based, profit-driven focus to establish and nurture businesses based particularly on complex products and technologies, often derived from R&D.

322. The technology incubators will identify suitable IP-based ideas or technologies, and then work to build a business team around the IP. A small amount of pre-incubation funding will also be available to help incubators to establish whether a start-up idea may be commercially viable, which will include steps such as conducting a patent search to establish the freedom for a new firm to operate, having a business plan, but the generation of the IP does not need to have been completed.

323. This new technology incubator model is complementary to other business development tools that support New Zealand's Business Growth Agenda, including elements such as R&D grants, and support for seed or venture investment funds

12.8 Canada

324. Both government-sponsored and private sector innovation incubators serve to help facilitate innovation. Incubators play an important role in the development and promotion of new technologies. There are many benefits from the development of new technologies: not only do they innovate to address or solve an existant problem, but they also serve to increase the knowledge base of innovative products or processes

325. The innovation development process can lead to many far-reaching benefits such as through the transfer of physical goods or services. The spread of technical and business information and knowledge on which a product, process or service is based and the transfer of skills and know-how. In Canada, a significant proportion of scientific research takes place within multi-disciplinary partnerships and networks formed by researchers and private industry government research institutions and academia.

326. In fact, networks have become a major contributor to the Canadian way of pursuing research excellence. This collaborative approach holds true across all research sectors whatever their focus – aerospace, advanced manufacturing, information and communication, life sciences or resource and environmental technology.

327. The Canadian Digital Media Network is a Canadian federal centre of excellence in commercialization and research. It creates and enables connections and collaboration between entrepreneurs, companies, research institutes, governmental and intermediary organizations. The Canadian Digital Media Network works together as part of an ecosystem throughout Canada and around the world with 28 hubs and partners. The Canadian Digital Media Network proactively started establishing a stronger working relationship with Brazil in response to the bilateral science and technology agreement signed between the two countries.

328. As a result of organised initiatives and events, Canadian and Brazilian companies are now working together leading to richer relationships in an effort to accelerate small and medium-sized company growth and technology transfer between companies.

329. Universities in Canada are working on ways to improve innovation and are addressing this by creating new innovation spaces, programmes and opportunities to increase internships that promote the two-way exchange of ideas. Universities are important entities in the international innovation ecosystem. They help to generate and produce new technologies that increase innovation across all sectors. For example the Association of University Researcher Parks represent 26 research and technology parks across Canada and its mission is to support, champion and advocate on behalf of its parks member in a meaningful way that will result in the growth and development of new and existing Canadian research technology parks and advance the knowledge economy.

330. Finally, we would like to thank the US and Chinese Taipei for adding this item on the agenda for this Council's meeting, and we look forward to pursue a discussion with other Members on IP and innovation at future meetings.

12.9 Switzerland

331. My delegation would like to thank the US and Chinese Taipei for proposing the discussion topic "Innovation incubators" for this Council meeting.

332. We agree with what was said by the two delegations that an enabling environment is important to allow innovators to thrive. We also agree that innovators and start-ups who seek to market their idea or invention face many challenges.

333. There is no shortage of good ideas. The challenge is to turn them into real innovations that can reach the market and potential customers. What is lacking is often very basic knowledge about "how to do things". A minimum of support, basic information and good advice can often decide about whether a start-up undertaking will be undertaken at all, whether it will succeed or fail.

334. Incubator tools can make a difference, even if it is only through providing information and useful contacts through a dedicated internet website.

335. The Swiss Federal Polytechnical School of Lausanne (EPFL) provides an incubator space for innovative, aspiring entrepreneurs. Called "la Forge" (= blacksmith shop, standing for a place where new things get forged). Situated at EPFL's Innovation Park, it provides a co-working space to starting entrepreneurs for an initial period of 6 months to shape their ideas into companies. In this time window, embryonic start-ups can undertake important first steps to shape their ideas into companies, can grow and evolve.

336. "La Forge" opened its doors only last November but today hosts already 16 future companies in fields as diverse as computer science, life sciences and communications. Some make "la Forge" their temporary headquarter, others meet there from time to time with their team while other use it for appointments with potential partners.

337. "La Forge" provides an ideal venue for its residents to interact, share ideas and network. Coaches consult new entrepreneurs on the development of their project, target markets or sample the availability of research and development funds. Informal meetings are regularly organized at "la Forge" with seasoned entrepreneurs, professional investors and other players in the start-up ecosystem. Talking to their peers, whose companies are at the same stage of development, provides insights, follow-up ideas, inspiration and visibility.

338. As mentioned, future start-ups may use the venue for a six month period, renewable once after submitting a progress report. "La Forge" is an example of an innovation incubator, providing young entrepreneurs sufficient time to assess whether the initial spark of their invention can evolve into a concrete project, manages to raise necessary funds to develop a marketable product and advance from there to the next stage of implementing their business plan.

12.10 India

339. We thank the delegations of the United States and Chinese Taipei for tabling an agenda item on "Intellectual Property and Innovation", which we understand is a stand-alone item.

340. Let me just recall our intervention when the agenda item on IP and Innovation was first introduced in the TRIPS Council. Our statement is still relevant when we are discussing the Innovation Incubators under the broad theme of IP and Innovation. In that meeting India pointed out that the word "innovation" appeared just once in the TRIPS Agreement, in Article 7 which states that IPRs "should contribute to the promotion of technological innovation and on the transfer of and dissemination of technology," and not for the sake of innovation itself, but "to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations." Thus the TRIPS Agreement makes it very clear that the purpose of the IP system is not solely to protect the commercial interests of the IP holder but it is one of the many tools available to the society to achieve technological development, its social and economic welfare and innovation. Further, there is no direct correlation between IP and innovation and the countries have to define the path depending on their level of socio economic development.

341. Even today, the view that IP does not necessarily have a positive effect on economic development is still predominant among economists. For instance, based on an analysis of historical studies, Bessen and Meurer (2008) concluded that "nations with patent systems were no more innovative than nations without patent systems. Similarly, nations with longer patent terms were no more innovative than nations with shorter patent terms". According to Boldrin and Levine, "[I]ndeed, historical evidence provides little or no support that innovative monopoly is an effective method of increasing innovation." It is not only economists who have this view; it is shared by a growing sector of business actors. For instance, the Computers and Communications Industry Association (CCIA), whose members include Google and Microsoft, says in its Mission statement, "Innovation – how to foster it, protect it, and benefit from it – requires us to understand the dynamic process that has worked to get us to where we are. We do not think it is an accident that innovation has flourished in a society that values an open, competitive economic marketplace, nor where original independent and free speech are enshrined in law. Therefore, our commitment to vigorous competition, freedom of expression, and openness is a natural product of the understanding of what has helped our industry thrive, and what it needs to continue to do so."

342. Further, the World Health Organisation (WHO)'s Consultative Expert Working Group on Research and Development: Financing and Coordination also recommended open approaches to research and development (R&D) and innovation. It found that there is insufficient R&D for diseases that prevail in developing countries and endorsed the adoption of a binding convention that guarantees the results of R&D will be public goods i.e. not subject to appropriation but free for use, to generate medicines needed particularly in developing countries. They also recommended prizes as incentives to innovation, in particular milestone prizes.

343. Chair, since we are discussing about the innovation, let me also refer to the book written by Anna Lee Saxenian: Regional Advantage: Culture and Competition in Silicon Valley and Route 128. The book is a comparative study of the two biggest electronics and ICT innovation centres in the US, viz. the Silicon Valley and Route 128 corridor in Massachusetts, and explains the reasons for the success of the Silicon Valley and failure of the Route 128. The results of the analysis are relevant to the discussion of this agenda item to counter the point being made by the proponents that high level of IP is good for development and innovation. The two innovation clusters commenced together in the 50s with heavy investment from the government and without any market competition. Both developed around the Universities of Stanford and MIT respectively so that the local industry could develop on account of its proximity to these centres of excellence. Both focussed on similar areas of technology.

344. Behind the reason for the success of the Silicon Valley the author gives different reasons. The Silicon Valley evolved a culture of interdependence between the firms with the venture capitalists acting as hubs to ensure synergy between different businesses and services. The Route 128 on the other hand had a culture of independence of the firms with vertical integration. While there was collaboration, openness and informal exchange of information and knowledge between these firms in Silicon Valley, the culture in Route 128 was of closure and secrecy. High job mobility in Silicon Valley that spread new knowledge: moving to another firm was not seen as being

unfaithful but as a common thing. New companies made to develop projects that were not possible in other companies: employees that exited to create startups were not badly considered but instead their previous employer could start to be client or supplier of the new firm. On the other hand, in Route 128 people stayed in the same firm for 20 years or more and employees were seen as traitors if they exited to start their own company. Thus innovation cannot be promoted through the culture of secrecy propounded by the IP regime but through open collaborative models, free exchange of information etc.

345. There is no doubt that the innovation incubators promote the development of new technologies. But their success depends on several factors like infrastructure, resources, level of education, quality of universities and their linkages with industry, quality of manpower etc. We are afraid that by looking at innovation through the narrow prism of IP, we would not only undermine the spirit of innovation amongst the people but would create barriers in providing affordable, low cost and appropriate technologies to the developing countries. Further, the IP-centric model would discourage basic research needed in varied fields of science and would block access to affordable medicines to the millions of poor, hamper the efforts of the developing countries to address environmental issues etc.

346. India strongly believes in innovation and has setup several such incubators in the Universities and Premier technical institutes to promote low cost innovation. The Cluster Innovation Centres, India Innovation Fund, One MP, One Idea etc. under National Innovation Council have been successful in providing innovation to the small and medium industries in different areas. These ideas and centres, based on open source models, have been successful in providing low cost solutions to the industries, farmers, entrepreneurs etc. Even the private companies like Microsoft have set up several such innovation centres to tap the IT skills of the students in India.

347. Let me therefore conclude by saying that there is not direct linkage between IP and innovation. While innovation incubators can deliver depending on individual capacities of the countries, it would be too simplistic to say that IP focussed model can promote innovation incubators.

12.11 Botswana

348. Let me join other delegations in thanking the delegations of Chinese Taipei and the US for introducing the subject of innovation incubators. Botswana is a relative newcomer to this initiative. Botswana Innovation Hub has established as part of the Botswana Excellence Strategy, which proposes a three-prong national strategy, the goal being economic diversification, job creation and moving the country towards a knowledge-based economy. Botswana Innovation Hub was incorporated as a company to develop and operate Botswana's first science and technology park. The company is mandated to support new ventures in existing companies as well as attract companies, universities, research and advanced training institutes to establish a science and technology park. This is intended to help transform Botswana into a technology-driven and knowledge-based economy by promoting a culture of innovation and competitiveness among its associated companies and knowledge-based institutions. In order achieve one of its mandates, that is of supporting new ventures, the Botswana Innovation Hub established a technology entrepreneurship development programme, branded First Step Venture Centre, which is a hybrid business technology accelerator incubator.

349. The first venture centre started its operation mid-2013 and serves technology entrepreneurs in the following priority sectors: biotechnology; clean technology; mining technology; and ICT. In addition to providing subsidised working space within the science and technology park, the centre of qualified support services include business advisory services, IP and legal advice, corporate compliance and business coaching and mentoring. The centre has also just opened a technology transfer office which is responsible for, among others, interrogation of ideas and claims to innovations on issues of patentability or any other IP protection; convention on conceptual and detailed designs for prototyping, helping creation of spin-off companies to facilitate take-up innovations from the Centre to the market stage.

350. As mentioned earlier, Botswana's innovation incubator is relatively new, and like any new establishment is facing teething problems, biggest and most challenging being inadequate financial resources. Currently, the First Steps Venture Centre is 100% government-funded and has to

compete for the little resources with other competing national priorities. In an effort to try and be self-sufficient the Centre is considering to try activities such as hot-desking to try and generate income. Assessing suitable finance for the start-ups is also the biggest challenge in that sense. The Centre is still looking into assisting its clients with bridging funding within the programme. In addition, to try and make the programme more sustainable, the Centre is looking into equity holding of not more than 5% in the businesses that they support. The suitability of this idea is still being evaluated.

351. This is to mention but a few challenges and efforts by the Centre to try and overcome these challenges. The Centre is looking for collaboration with partners than can facilitate the attainment of intended objectives of this important initiative. We are therefore looking forward to support or collaboration with Members who are currently at a more advanced stage than we are.

12.12 El Salvador

352. El Salvador would also like to welcome the inclusion of this item on the agenda. This issue goes hand-in-hand with a series of activities that El Salvador is constantly trying to drive forward through raising awareness and providing incentives for innovators and promoting young talent by encouraging them to continue in research. For example, sometimes our institution that is responsible for IP devotes a week to a national activity for invention and this is the contest for inventors and independent inventors to take part in this as well as young students from universities, and this is leading to innovation incubators.

353. For example, as a success story, we have an invention called Turbo Kitchen, which is aimed at trying to protect the environment. We also are encouraging young talent to continue research and development, and gaining some economic benefit from their inventions, particularly in terms of finance. Our Government has been investigating entrepreneurship issues for SMEs through agencies and others that have been encouraged by the Ministry for the Economy. Our new government plan for 2014-2020 has highlighted innovation and science and technology as issues. We very much hope that in the next meetings of this Council, once this item is included in the agenda, we will be able to continue sharing our experience with you.

12.13 United States

354. I wanted to thank Members for their interventions. I thought that this was an extremely productive discussion and exchange of national experiences, and obviously look forward to the EU's intervention on this as well, and we of course thank India for its statement which ultimately did get to incubation at the end of its intervention as well. We wanted to respond to India's remarks, and its analysis of US innovation models. India identified one author's view of two different models, or two different incubation centres including some views on successes and failures of those models. What I think India does not identify and clarify, however, is that whether you look at innovation in California or Massachusetts or anywhere else in the United States, and as we have heard today, this is true for many Members who have spoken in the Council on this issue, that IPRs are important to innovation and certainly in the United States, no matter what state you are in, no matter where you are doing innovation. Strong IP protection and enforcement is a critical feature of the models you describe whether you are in Massachusetts or California. IPRs are present and form a critical part of the innovation model.

12.14 European Union

355. The EU does not have an extensive presentation, given the short deadline. Since the EU is a heavy machine, we could not assemble the information to be at the level of debate today which was once again excellent. We are very supportive of this extremely enriching discussion, during which a lot of information was provided. We would like to thank Chinese Taipei, the United States and Panama for co-sponsoring this item.

356. On the intervention of India, I would say that it is equally over-simplistic and equally, in our view, not correct to claim that IP is the main or the only driver for innovation, that is to say that it is the main or only obstacle to innovation. Issues are advanced: IP is very important element, it is not the only one of course, you need universities, you need research, you need many other things to have innovation.

12.15 Brazil

357. Brazil would like to thank the US, Chinese Taipei and Panama for proposing this agenda item and we welcome the debate on innovation incubators. At the outset, I would like to recall that it is important to highlight that patents, as mentioned by our colleague from the EU, are far from being the single elements driving innovation. It is only one of a larger mix of different tools that promote innovation.

358. One initial comment is that discussion on IP and innovation must be based on the realisation that the granting of exclusive IP rights can only be justified to correct a potential failure in the markets for technology and knowledge in order to foster innovation. That correction of market failure entails costs for society. By establishing monopolies, however provisional they might be, protection of IP can impair market efficiency in allocating factors of production and other resources. To compensate for the possible costs of misallocation, the IP system demands, in return for the granting of exclusive rights, full disclosure of the know-how of the protected invention in such a way that society as a whole might benefit from it and build upon it. In this regard an imbalanced IP system can impede innovation once the granting of low-quality patents can restrict activity of innovative companies encourage the creation of known innovative companies such as the non-practicing entities, also known as patent trolls.

359. Regarding specifically innovation incubators, providing access to technological knowledge, technological infrastructure and guidance are some of the activities of these structures. According to the National Association of Innovative Enterprises, there are 384 innovation incubators in Brazil. I believe that there is a difference between the data that US has provided, perhaps 16 providers were incubated between the time you presented your data. These innovation incubators host 2,640 companies that employ 16,000 workers. These innovation incubators originate in more than 2,500 companies with an income estimated at R$4.1 billion, around US$1.9 billion, employing 29,000 workers. These companies can receive support, either from universities as we discussed in at the last Council meeting in February, or from the national system to support small and medium enterprises.

360. Regarding start-up programmes, we would like to mention specifically the programme "Start Up Brazil" developed by the Ministry of Science and Technology with the aim to incubate 100 information technology companies with a special objective of establishing links with international foreign SMEs. Regarding SMEs, the national system aimed at fostering small and medium enterprises has also developed a programme called SEBRAETEC that provides mentoring in different areas of technology and in the use of instruments such as industrial design, geographical indications, trademarks and patents.

12.16 India

361. India would like to respond to the statement made by the US colleague. We have no issue with discussing technology innovators and business incubators anywhere, but we think that the TRIPS Council is not a place for that, and that is the reason why we had mentioned that the word innovation is mentioned in the TRIPS Agreement only once. Since the TRIPS Agreement is a flexible agreement, and we do not think that there is a direct correlation between IP and development, Members have to take in innovation according to their level of social economic development.

362. Regarding the Silicon Valley and Route 128, my point was basically about the open-source models where, just as in the field of telecommunication, disputes are happening between Samsung and Apple. In fact, it is actually public-funded researchers that have contributed most of the research, whether it is in Samsung or Apple, it is not just that the original research hasn't happened in these companies. So that is my point – that ultimately no-one is the originator.

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AGENDA ITEM 13: INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

13.1 Uruguay

363. The delegation of Uruguay is pleased to announce that, on 7 May 2014, the Parliament approved Law 19,125 ratifying the Protocol Amending the TRIPS Agreement. The Uruguayan Government will be depositing its instrument of ratification in the next few weeks.

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