



Council for Trade-Related Aspects of Intellectual Property Rights

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 24-25 FEBRUARY 2015

Chairperson: Ambassador Mothusi Palai (Botswana)

Addendum

The present document contains statements made during the Council for TRIPS meeting held on 24-25 February 2015.

Subjects discussed

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\* A record of statements as delivered. Some statements have been lightly edited as appropriate to ensure the consistency of presentation.

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## AGENDA ITEM 1: NOTIFICATIONS UNDER PROVISIONS OF THE AGREEMENT

### 1.1 Colombia

1. Colombia informs the Membership that it has issued Decree No. 2264 of 11 November 2014 regulating the compensation prescribed for infringement of trademark rights.
2. Pursuant to Andean Decision No. 486 of 2000, Member countries may, through their domestic legislation, establish the appropriate legal framework for parties claiming trademark infringement to request the competent national authority to order compensation for damages.
3. Law No. 1648 establishing measures to enforce industrial property rights came into effect in Colombia in mid-2013. It makes provision, *inter alia*, for the prescribed compensation for trademark infringement and orders the implementation thereof.
4. Based on the above, and with the aim of providing a procedure that allows trademark holders to be awarded suitable damages for infringement of their trademark rights, this Decree implements the prescribed compensation. Colombia will officially notify the Decree to the Secretariat within the next few days.

### 1.2 WTO Secretariat

5. In line with past directions from the Council, this statement updates Members on progress towards improving the service provided to them by creating a more user-friendly, accessible and efficient system for capturing, handling and disseminating the information contained in the notifications made under the TRIPS Agreement. This statement therefore simply supplements our successive past reports and, in particular, the more extended report given at the October meeting of the Council last year. Therefore, today, I will be brief and just focus on current developments. However, I do stress again that the framework for managing notifications remains entirely within the requirements established by the Agreement itself and by the guidelines already agreed by the Council.
6. The work we are undertaking, therefore, is to improve operations by creating an information management system behind the scenes that enables streamlined and more efficient handling of the large volumes of data that have been collected and will continue to flow into this system in the context of notification and review. In turn, this information management system will form the basis of a more workable system for submitting notifications, so that it is more user-friendly for Members at that point; and then for accessing information and details of what has already been notified. It is no secret that it can be very challenging today even to get a clear understanding of what exactly has been notified by a particular Member. We do occasionally have discussions with Members exactly along those lines, as they seek to determine even what they have themselves notified. As the notifications build up – since we now have in some cases received a series of notifications spanning nearly 20 years – the structure, the pattern and the linkages between successive notifications becomes rather more complex, and indeed it can be hard to get a snapshot, even for one's own notifications, let alone to get a broader picture. So there is no doubt that the work is needed, and is very timely, given that the first stage of notification of initial legislation is effectively concluded for the most part.
7. In particular, we are seeing a trend away from an initial notification, that is to say the first notification of a trademark law or a design law or a patent law, towards one of two other categories, either (i) an amendment or a revision, so that a notification says that this or that law has been amended in a certain way, or (ii) a replacement law or a text consolidating amendments which constitutes a complete stand-alone law in that area. This means that the linkages and the categories become all the more important and we know that from the pattern of past notifications, this structure can be very difficult to follow. We are thus working to improve and enhance the links between notifications, firstly so that all Members are more easily able to review the notifications that have already been provided to identify any gaps that may need to be filled; and then secondly, to make this material more workable. At the moment, it can be very difficult to access.

8. We have recently had approval confirmed for the development of an information management system as an information technology project that will be developed in the course of this year. Our consultations with Members and with delegates will intensify, particularly between now and the June meeting of the Council and we will be in touch more informally with any interested delegation to work with you, so as to develop and design this system in a way that meets your needs. As stressed, it is not a rewriting of rules or the procedures for notifications; it is simply making the system work better 'under the hood' or 'under the bonnet', and making the flow of information more effective. Part of this work is the development a prototype reporting tool that has been based on our experience with recent notifications; this can be circulated this to any interested delegations.

9. New Zealand, for example, has made a recent notification recently that very helpfully exemplifies the work we are undertaking and the benefits of improving the system. If you check on the system, the initial notification by New Zealand of its Patents Act 1953 dates back to 1996, nearly 20 years ago. If you follow the link to that notification, you will find 19 separate files, which divide up the Patents Act 1953 somewhat arbitrarily into 19 separate pieces, all of them PDF image files, which technically means it is impossible to search them for any particular key word. And it is very difficult, indeed, to use this as an information resource at all. This configuration is not anyone's fault – and it is certainly not intended to single out New Zealand, as this is a widespread structural problem, and this is simply a topical example - it is just because of the technical constraints at the time, this approach to managing notifications was needed as an immediate working solution.

10. By contrast, New Zealand has recently notified a replacement law in the same field, specifically the Patents Act 2013. The document concerned, IP/N/1/NZL/5, enables you to see very briefly the main elements of the new law, an indication that it is a replacement of an already notified legal text, that is the previous Patents Act, and provides a link to that previous notification, the 19 files just mentioned along with other addenda, as well as providing a link to a much more manageable accessible online version of the text that is much easier to consult. Thus this new notification format provides for a brief outline of the key elements of the law, so that it is easy to understand what the key changes are, as well as other technical data related to the notification.

11. So we would simply draw this to the attention of Members as part of our attempts to develop a more workable system and to illustrate certainly the need and the benefits of this work that is underway. And we look forward to reaching out to Members and consulting with you in the course of the next few months as we in effect modernize the system to bring it up-to-date, so that we can provide a better service for you.

## **AGENDA ITEM 2: REVIEWS OF NATIONAL IMPLEMENTING LEGISLATION**

### **Agenda Item 2.3: Follow-up to reviews already undertaken**

#### **2.1 Switzerland**

12. Switzerland welcomes your proposal that your successor, as the incoming Chair, should contact Fiji and Saint Kitts and Nevis to offer the Secretariat's assistance with regard to outstanding responses to questions under their reviews of legislation dating back to early 2000. Switzerland, as one of the WTO Members that submitted questions to Fiji and Saint Kitts and Nevis at the time, offers its support for this outreach by the incoming Chair and any assistance it can provide to the latter and to the two delegations with a view to bringing this matter to a conclusion.

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**AGENDA ITEM 3: REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B)****AGENDA ITEM 4: RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CONVENTION ON BIOLOGICAL DIVERSITY****AGENDA ITEM 5: PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE****5.1 Ecuador**

13. Ecuador's position on the issues under consideration, as outlined by my delegation on numerous occasions, is well-known and does not therefore need to be restated. We do, however, wish on this occasion to express our concern over the impasse that characterizes these three issues.

14. We have attended the consultations held by a number of TRIPS Chairs at the request of this Council, but note with regret the lack of willingness to move forward. My delegation has suggested that the Secretariat prepare a compilation of the discussions and proposals of the past nine years on these issues, with a view to finding elements that help identify approaches that open the way for constructive dialogue. The positions of certain countries are, however, impossible for us to understand and we call for flexibility to be shown in these divergent positions.

15. Why not allow the Secretariat of the Convention on Biological Diversity (CBD) to report on the outcome of the Nagoya negotiations on the establishment of a Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization?

16. My delegation considers that, on the basis of such information, countries could either adopt new positions or, where appropriate, endorse those already advanced, but new elements would at least be available. Ecuador believes that this information could be used to analyse the feasibility of establishing regulations governing the access to and use of genetic resources and derivatives thereof and defining aspects relating to prior informed consent, mutually agreed terms and benefit sharing.

17. Furthermore, knowing the work of the CBD Secretariat would allow clear parameters to be established, thereby enabling the CBD and the TRIPS Agreement to be mutually supportive and thus fulfil their individual objectives.

18. Lastly, Ecuador endorses the documents submitted by Bolivia in 2010 and 2011 in respect of the review of Article 27.3(b), which set out the adverse effects of the patenting of life forms and parts thereof.

**5.2 Chairman**

19. Let me just obtain a clarification on two points. Did I understand you to be putting on the floor again a request that (1) the factual notes be updated; and (2) that you wish to renew the request for the CBD Secretariat to brief the Council?

**5.3 Ecuador**

20. Ecuador's proposal is that these three factual notes should be updated with new documents and at least my delegation has not received any update on those notes. That was my request.

**5.4 Bangladesh on behalf of the LDC Group**

21. I am taking the floor on behalf of the LDC Group to address these issues of extreme importance.

22. The review of the provisions of Article 27.3(b) has been a longstanding item on the agenda of this Council, however still without any substantial progress. Even our Ministers, as early as in the fourth WTO Ministerial Conference held in Doha in 2001, emphasized this particular issue.

23. The Members of the LDC Group consider that the review of Article 27.3(b) is an important aspect of the work of this Council. Based on standards of morality and ethics, we cannot support patentability of life forms for trade and trade-related gains and these should not be subject to patent protection.

24. In the same vein, it is important to maintain the flexibility on the form of a *sui generis* regime developed for the protection of plant varieties based on individual country systems and requirements. This will contribute towards improving the food security situation of indigenous people by ensuring that their inventions are protected and access to seed is guaranteed.

25. Regarding the relationship between the TRIPS Agreement and the CBD, the LDCs appreciate the work that has gone into these discussions, including the efforts undertaken by the Director-General to narrow the differences among Members.

26. For LDCs, biodiversity is a core issue and an important source of livelihood for the majority of populations living in most of these countries. Yet they have been denied their due right to benefit sharing. We also believe that genetic resources, traditional knowledge and folklore are absolutely sovereign to states. The benefits derived from the appropriation of biological resources by external entities are almost never shared with the communities concerned. This continues to be a matter of great concern for LDCs. LDCs maintain that inserting a mandatory requirement in the TRIPS Agreement on disclosure of country of origin of the genetic resource and the associated traditional knowledge used in the invention is the only effective way to move forward to ensure proper benefit sharing. In addition, patent applicants should also declare that they have obtained prior informed consent from the competent authorities in the country of origin of the genetic resources and the arrangements entered into to facilitate the sharing of benefits arising from the appropriation of such resources and traditional knowledge.

27. We need to strengthen the work on this issue and close the remaining gaps which, in our view, can be achieved with political will.

#### **5.5 Plurinational State of Bolivia**

28. Bolivia would like to reiterate its concern about the possibility of patenting of life forms or part of them according to Article 27.3(b) TRIPS. It raises various questions on an ethical, cultural and economic level and it should be reviewed. Since the adoption of this Article, there has been a provision that allows for the patenting of genetic resources. This should be reviewed by this Council.

29. The TRIPS Council has a mandate to review Article 27.3(b) and this should have been subject to a review four years after entry into force of the WTO Agreement. The Doha Ministerial Declaration in paragraph 19 states that Ministers agreed to review this paragraph in light of Article 71 of the TRIPS Agreement. This review is still pending to date.

#### **5.6 Brazil**

30. I will be brief in my comments to avoid repeating Brazil's well-known position regarding the importance of promoting the mutual support between the TRIPS Agreement and the CBD. For Brazil, enhancing the transparency in the utilization of genetic resources and associated traditional knowledge, through the introduction in the TRIPS Agreement of a mandatory requirement for the disclosure of the origin of these resources in patent applications, is a priority. I would thus just like to restate here the terms of the proposal detailed in document IP/C/W/59, particularly regarding the mechanism it foresees to prevent the misappropriation of genetic resources and the grant of erroneous patents, reiterating the understanding that patent offices would not be overloaded with extra work, since they would be just checking-points in the new system.

#### **5.7 China**

31. TRIPS/CBD has been an important outstanding issue at the TRIPS Council. Once again, China calls on Members to work effectively in order to resolve the matter. The fact that the related issues are being discussed in another forum does not and should not hinder the work in

the Council, especially in view of the uncertainty of the 2015 work programme of that forum on this issue. We thank the Secretariat for briefing us on the work undertaken in the past within the context of the WTO on TRIPS/CBD yesterday, and hope that this briefing will provide Members with a comprehensive overview regarding the work achieved thus far and contribute to further discussion.

32. China wishes to express its support for amending the TRIPS Agreement with a view to introducing a mandatory disclosure requirement of the origin of genetic resources and/or traditional knowledge in patent applications. This position is shared by the majority of Members and can be found in documents TN/C/W/52 and TN/C/W/59. The proposed solution can contribute to preventing the misappropriation of genetic resources and the grant of erroneous patents due to lack of information, to improving the transparency of the utilization of genetic resources, and to enhancing legal certainty.

33. China considers it would not be burdensome for a patent applicant to provide 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 are inadequate for the protection of genetic resources.

34. China is considering starting the domestic procedure to accept the Nagoya Protocol. Once again, China would like to express its support for the proposal that the CBD Secretariat be invited to make presentations on the Nagoya Protocol, providing a perspective different from WTO Members. China would also like to support the suggestion that the three summary notes should be updated by the Secretariat.

#### **5.8 Bolivarian Republic of Venezuela**

35. Venezuela would like once again to support Bolivia as to the need of a review of Article 27.3(b). The Bolivarian Republic of Venezuela prohibits within its constitution the patenting of any life form and this mandate is also established in Article 27.3(b) and it is now time that this Council addresses the issue.

#### **5.9 Egypt**

36. The protection of biological resources, traditional knowledge and folklore is an important developmental issue for Egypt. We consider that this protection is a critical part of the implementation-related issues and concerns as contained in the Doha Work Programme. Therefore, we urge all Members to engage in this issue of prime importance to developing countries as a part of the Doha Development Agenda. In this regard, we continue also to urge other Members to reconsider their positions regarding the relationship between the TRIPS Agreement and the CBD.

37. Technical discussions on this matter have been ongoing for almost a decade so far. Egypt considers that the TRIPS Agreement should be modified so that an applicant for a patent relating to biological materials or associated traditional knowledge shall be required to disclose the source and the country of origin of the biological resources and traditional knowledge used in the invention. Further, Egypt considers that the TRIPS Agreement should require an applicant to provide evidence of prior consent and evidence of fair and equitable benefit sharing under the relevant national regime.

38. Finally, Egypt encourages the Director-General to continue to engage in his mandated consultative process on the relationship between the TRIPS Agreement and the CBD.

39. We look forward to the outcome of these consultations and call on other Members to engage in this process, taking into consideration that this issue is central for developed countries and least developed countries.

#### **5.10 Colombia**

40. Colombia has repeatedly stated its view that the protection and sustainable use of genetic resources, traditional knowledge and traditional cultural expressions is only really possible

through the introduction of international rules and obligations to guarantee adherence to the principles and objectives assumed under the CBD and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. The only way of achieving a genuinely inclusive intellectual property system is to find solutions that can benefit all Members, solutions that include these issues of particular importance to the developing countries and the least developed countries.

41. The Doha Declaration states that work in the Council should also look at the relationship between the TRIPS Agreement and the CBD, while fully taking into account the development dimension.

42. And yet, 14 years later, we have seen no progress. We now have an opportunity to breathe new life into the negotiations by defining the post-Bali work programme. We accordingly urge the Council to ensure that this interest, which is shared by the majority of Members, is at long last taken on board, and to steer us towards a satisfactory conclusion to this pending issue.

### **5.11 Indonesia**

43. We would like to request that the statement made by Indonesia at the last meeting of the Council for TRIPS is reproduced. (See previous IP/C/M/77/Add.1 paras 110-113).

Indonesia would like to reiterate its view regarding this matter and the importance of ensuring cohesiveness of these two international instruments. Our delegation believes it is prevalent that the implementation of the TRIPS Agreement and the CBD be carried out in manner which is mutually supportive and does not run counter to their respective objectives.

For this purpose, Indonesia believes that special attention should be given to the objectives, definitions and principles of the TRIPS Agreement, the CBD, and the Nagoya Protocol, in particular its provision on prior informed consent for access and fair and equitable benefit sharing. The discrepancy of these provisions in the TRIPS Agreement with the CBD and the Nagoya Protocol creates contradictive approaches in implementation. The TRIPS Agreement does not prevent a person from claiming patent rights on an invention based on genetic resources and associated traditional knowledge (GRTK) and does not oblige States to take necessary measures for fair and equitable sharing of benefit. Meanwhile, the CBD and the Nagoya Protocol require prior informed consent for access and fair and equitable benefit sharing for any invention based on GRTK. These contradictions leave room for misappropriation and the grant of erroneous patents.

Indonesia, as a proponent to document TN/C/W/59, remains consistent with its view on the urgency the mandatory disclosure requirement to be included in the TRIPS Agreement. Indonesia further emphasizes that the disclosure requirements in Article 29 of the TRIPS Agreement are incomplete without the disclosure of origin of genetic resources and associated traditional knowledge. Including a mandatory requirement for the disclosure of origin would enhance transparency about the utilization of GRTK.

Indonesia believes it is essential that we address this issue in order to ensure that GRTK are utilized in an appropriate manner that ensures the fair and equitable benefit sharing through mutually agreed terms in accordance with the objectives of the CBD and the Nagoya Protocol.

### **5.12 Cuba**

44. Cuba is in favour of discussions in the Council for TRIPS with a view to a review of the relationship between the TRIPS Agreement and the CBD, and the protection of traditional knowledge and folklore. These are negotiating issues expressly mandated under paragraph 19 of the Doha Ministerial Declaration as well as outstanding implementation issues.

45. We therefore once again support consideration being given to Ecuador's request that the three factual notes be updated so that consultations can be held with the CBD Secretariat.

46. We also thank Bolivia, a country with a significant interest in these issues, for its statement.

47. Specifically, Cuba wishes to emphasize its concern over the failure to reach consensus in these areas at the WIPO General Assemblies in September 2014. The question mark left hanging over the future of the Intergovernmental Committee and its negotiations is further exacerbated by the lack of progress in the WTO. We therefore believe that any results achieved in the WIPO framework will come in addition to, and not exclude, the need for an amendment to the TRIPS Agreement, through the establishment of specific tasks within the WTO.

48. In this respect, we highlight the validity of the proposals in documents IP/C/W/474 and WT/GC/W/590, of 2006 and 2008 respectively, which, in addition to other documents submitted in order to deliver on the Ministerial mandate before the Council, would be a good basis on which to work.

### 5.13 South Africa

49. South Africa would like to associate itself with the statements made by Egypt, Brazil, China, and other like-minded countries and further supports the inclusion of the proposal of WT/C/W/59 in the TRIPS Agreement.

50. South Africa believes that there is a fundamental conflict between the spirit of the two agreements. We believe that there are three areas of conflict that are identifiable, based on the objectives of the two agreements. Firstly, Article 3 of the CBD provides that states have a sovereign right over their biological resources and the TRIPS Agreement overlooks sovereignty as it recognizes private intellectual property rights over biological resources. Secondly, the CBD provides states with an opportunity to demand benefit sharing from the commercial use of biological resources and the TRIPS Agreement negates that legal authority. Thirdly, the CBD is aimed at reducing cases of biopiracy by requiring prior informed consent, whereas TRIPS does not. This means that patent applications can be submitted over biological resources or knowledge of a certain local community in any country. This is because TRIPS recognizes rights on the basis of novelty, which does not take into account traditional knowledge and cultural practices.

51. It is for the reasons stated above that South Africa supports the disclosure of origin obligation which has been suggested by a large number of developing countries. The adoption of such an obligation may constitute the first step in developing a regime aimed at avoiding the monopolization of biological materials and related traditional knowledge. The disclosure of origin may fulfil three main functions relevant to the operation of the patent system: firstly, it would improve the substantive examination of patent applications involving such material and knowledge; secondly, it would also improve the determination of inventiveness by patent offices or courts; thirdly, the disclosure of origin may in some cases facilitate the actual execution of the invention, such as why a biological material is endemic to a specific location.

52. South Africa also believes that there is a need to avoid erroneous applications for patents for inventions that involve the use of genetic resources and related traditional knowledge. There is also a need to secure compliance with national access and benefit-sharing regimes.

53. Having stated the above, it is therefore clear that the application of the TRIPS Agreement may threaten the preservation of biological resources and traditional knowledge. The noted conflicts are what the CBD under Article 16.5 advise against. It is stated that intellectual property rights must not conflict with the sustainable use of biodiversity. What could aid in reconciling the two agreements is the proper legal review of both agreements with the aim of making amendments when necessary to ensure mutually supportive application.

54. South Africa believes that under the current review of Article 27.3(b) of the TRIPS Agreement, amendments can be made to incorporate the CBD objectives under the TRIPS Agreement in order to preserve biodiversity, prevent biopiracy and include protection of local community rights in accordance with the spirit and purpose of the CBD.

55. Lastly, there have been substantial discussions over the issue of formally inviting the CBD Secretariat for a briefing of the Nagoya Protocol. We therefore support inviting the CBD Secretariat for a formal briefing in the interest of the large majority of developing Members and urge Members holding a different position on this issue to reconsider their position.

#### 5.14 India

56. First we would like to associate ourselves with Brazil, China, Egypt, South Africa and other like-minded countries.

57. Extensive discussions on these agenda items have been ongoing for many years. In the course of these discussions, many Members have not only highlighted the misappropriation of genetic resources and traditional knowledge, but have also proved beyond doubt that such misappropriation and granting of wrongful patents is possible because of the inadequacy of the TRIPS Agreement to address these issues.

58. India is a megadiverse country that harbours seven to eight per cent of all recorded species, including over 45,000 species of plants and over 91,000 species of animals, on only 2.4% of the world's land area. India is rich in traditional knowledge associated with biological resources, as recorded in ancient texts of Indian traditional medicine, and transmitted as orally undocumented traditions.

59. In the past, there have been several instances of misappropriation of genetic resources and/or associated traditional knowledge. India has been a major victim of biopiracy. Pursuant to the ratification of the CBD, India developed a comprehensive legislation on biodiversity, enacted the Biological Diversity Act in 2002 and notified the Biological Diversity Rules in 2004. In 2003 the National Biodiversity Authority (NBA) was set up. In pursuance of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, in November 2014 India notified the "Guidelines on Access to Biological Resources and Associated Knowledge and Benefits Sharing Regulations, 2014". 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.

60. While India has pioneered the Traditional Knowledge Digital Library (TKDL) to overcome language and format barriers, the results could only be limited. Improving prior art searches through the TKDL was only one part of the solution. Further, the TKDL represented a subset of the universe of available traditional knowledge. The realm of traditional knowledge in areas other than herbal cures and genetic resources was not covered by the TKDL. The flip side of databases in general was that they might attract undesirable attention and might actually become a tool for misappropriation of genetic resources and traditional knowledge and further aggravate the problem if they were not handled carefully.

61. While India is undertaking a number of measures at the national level in order to prevent misappropriation of genetic resources and/or associated traditional knowledge, the problem has an obvious international dimension and needs an international solution, in order to be addressed effectively. The TRIPS Agreement continues to ignore the numerous IPR-related obligations in the CBD which are of interest to developing countries.

62. The disclosure proposal (IP/C/W/474) which was submitted in 2006 was followed up by the submission TN/C/W/52 in June 2008 with the support of 108 countries. The latest submission on this issue, TN/C/W/59 "Enhancing mutual supportiveness between TRIPS and CBD" has been proposed by a vast majority of the WTO Membership. A mandatory disclosure requirement in patent applications to include disclosure of origin and evidence of prior informed consent and access and benefit sharing, would, in addition to combating biopiracy, further strengthen the credibility of the patent system by facilitating assessment of the novelty and inventiveness criteria.

63. The Nagoya Protocol of the CBD entered into force on 12 October 2014. So far 59 countries have ratified the Protocol. By providing legal certainty on the use of genetic resources and associated traditional knowledge, and by strengthening the opportunities for fair and equitable

sharing of benefits arising from their use, the Protocol will create incentives to conserve biodiversity, and sustainable use of its components, and further enhance the contribution of biodiversity to sustainable development and human well-being.

64. There is now an urgency to request the CBD Secretariat to brief the TRIPS Council regarding the implications of the entry into force of the Nagoya Protocol. We reiterate our demand for a formal briefing by the CBD Secretariat in the interest of the large majority of developing countries.

65. We also support Ecuador's proposal for updating the three factual briefs by the Secretariat.

66. I conclude by stating that the TRIPS-CBD issue is one of the outstanding implementation issues and positive outcomes on outstanding implementation issues are one of the most important deliverables of the Doha Round for developing countries.

### **5.15 Nepal**

67. At the outset, the delegation of Nepal aligns itself with the intervention made by Bangladesh on behalf of the LDC Group, India, Egypt, South Africa and other like-minded developing Members on this subject matter.

68. The delegation of Nepal does see some value in reviewing Article 27.3b as mandated by the Doha Declaration paragraph 19. However, Nepal does not support the review that allows the use of life forms from plants and animals and patenting of them. As such the review of Article 27.3 (b) of the TRIPS Agreement is essential to protecting against the harmful and unethical effects in different spheres of life and nature, my delegation is against patenting of life forms.

69. On the relationship between the TRIPS Agreement and Convention on Biological Diversity (CBD), we underscore the need for linkage, consistency and coherence to be established between these two important agreements. In this regard, we welcome the views expressed by Members that the CBD Secretariat be invited to this Council to provide a briefing on the Nagoya Protocol. It is our firm belief that states should have full right and authority to protect and preserve their genetic resources, traditional knowledge and folklore based on their own method and requirements. As reaffirmed by the CBD, we are of the strong view that countries deserve full right to take economic advantage of genetic resources and traditional knowledge through legal provisioning, as appropriate in their national context.

70. At present, in the absence of due legislation, the small biodiverse countries are becoming victims of misappropriation of their precious genetic resources, traditional knowledge and folklore on a massive scale and they are deprived of enjoying adequate advantage from them. To protect them from being deprived further, we emphasize that genetic resources, traditional knowledge and folklore must be given due legal recognition and protection. In light of this, we demand that the TRIPS Agreement should be modified in such a way that it requires patent applicants for biological material, and provides information on source and the country of origin of biological resources and the traditional knowledge used in the invention. Provisions related to mandatory disclosure requirement, if included in the TRIPS Agreement, will contribute to preventing misappropriation of genetic resources and associated traditional knowledge, as well as improving transparency in the utilization of genetic resources and associated traditional knowledge.

71. Furthermore, we are of the view that patent applicants must also provide proof of prior informed consent and agree on benefit sharing with authorities and/or the relevant persons of the relevant national origin. This obligation of information and the mandatory provision of benefit sharing will assist in reducing the number of patents granted erroneously or through biopiracy and at the same time enable developing and least developing country Members to gain some economic benefit from the use of their indigenous resources.

### **5.16 Peru**

72. First of all, we would like to thank the Secretariat for the briefing that was given to us yesterday. That does seem to be a very useful complement to the work here in the Council.

73. In five months we are supposed to submit our work programme under the Doha Development Agenda, in keeping with General Council Decision WT/L/141 of November 2014, in respect to the post-Bali programme. For Peru, as for many delegations who have taken the floor this morning, this work programme must include intellectual property items, particularly those related to a TRIPS Agreement amendment. The Doha Ministerial Declaration in 2001 recommended that this Council consider the links between the TRIPS Agreement, the CBD and the protection of traditional knowledge and folklore. We really must ask ourselves whether simply including this item on our agenda is enough to ensure that we are actually fulfilling our mandate. For my delegation, regrettably, that is not the case.

74. Some Members have referred to other issues where support is being requested with respect to declarations of origin. We do feel that there is a need for us to establish mechanisms, if we are to look carefully at genetic resources because there is a risk of biopiracy. We have to find ways of ensuring that developing countries do not have to spend enormous amounts of money in dealing with possible cases of biopiracy and this also means that we will avoid enormous expenditure on issues relating to patentability of life forms.

75. These are matters that we must deal with and we have to bear in mind that since last year we have had the entry into force of the Nagoya Protocol. The Protocol provides an international platform with a legal framework for the users of genetic resources and their derivatives. The Protocol also does ensure that resources used must be utilized in keeping with the legislation of the countries concerned, which ensures that there is equity when it comes to the exploitation of such resources.

76. We have to look at WIPO and the need to reach an agreement there. We would like to express support for the proposal made by China that the CBD be invited to come and brief on the Nagoya Protocol and that we also here from WIPO. These are requests that have been made on previous occasions but unfortunately nothing has happened yet.

77. The WTO seems to be the only forum where these issues can be thoroughly debated. Developing countries have considered the best way of tackling these issues in ways that take into account the concerns expressed by Members, particularly the developing country Members.

#### **5.17 Switzerland**

78. We would like to express our thanks to the Secretariat for the informative briefings organized yesterday on the two outstanding implementation issues discussed in the WTO Doha context, namely, the extension of the level of protection of TRIPS Article 23 to the products of all WTO Members, meaning beyond wines and spirits; and more specifically of relevance to our discussion under these agenda items, the inclusion in the TRIPS Agreement of a disclosure requirement for genetic resources and traditional knowledge in patent applications.

79. These two briefings yesterday afternoon were in addition to the briefing session that the TRIPS Special Session Chair organized yesterday morning on the third TRIPS issue under discussion in the Doha Round, namely, the multilateral register of geographical indications for wines and spirits.

80. For these three TRIPS issues a large part of the Membership has submitted modalities language in TN/C/W/52 to which reference had been made yesterday afternoon.

81. These informative briefings provided an excellent update and summary of all the work undertaken in the context of the WTO Doha Round on the three TRIPS issues over the last 15 years, thus assisting the current process among WTO Members in accordance with the Bali Ministerial Mandate with a view to drafting a Doha work programme by the end of July of this year.

82. My delegation found the slides used by the Secretariat for these briefings very useful and we consider that it would also be a valuable resource for the delegates in the Council here for our discussion under the respective agenda item and would ask that they can be made available to interested delegations.

### 5.18 United States of America

83. I want to intervene briefly on a few items raised this morning by some delegations. Firstly, with respect to Article 27.3(b) of the TRIPS Agreement and the suggestion that this review has not occurred, the United States notes that this item has been discussed at every TRIPS Council meeting for at least a decade, and the TRIPS Agreement provides the flexibility for each Member to decide.

84. Regarding the relationship between the Convention on Biological Diversity (CBD) and the TRIPS Agreement, we continue to have serious concerns regarding the proposed amendment to the TRIPS Agreement for a mandatory disclosure requirement with respect to genetic resources and associated traditional knowledge for the reasons that we have previously discussed in detail.

85. We note that WIPO will be holding a Seminar on Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions: Regional, National and Local Experience from 30 March to 1 April 2015.

86. We appreciate that the experts at WIPO have been struggling for over a decade to discuss these difficult issues and that the sharing of national experiences will be important to understanding these differences.

87. While we are not in a position to support the requests this morning to update the three factual notes, to invite the CBD Secretariat to provide a briefing and any other requests, we are open to your suggestion made at the beginning of these items that delegations consult with each other and would welcome that opportunity, as we have previously.

88. Finally, we take note of efforts by some delegations to incorporate this issue into the work of this Council. I think we would have some concerns with that because no TRIPS Council decision was taken in that regard.

89. In addition, we note that there have been several references to the W52 document as the state of the art, or as the most recent alliteration of this issue. We would, however, recall that there have been subsequent documents with respect to the relationship between the TRIPS Agreement and the CBD, such as document TN/C/W/59, which from my recollection represents a considerable subset of the W52 total.

### 5.19 Korea

90. As there have been no developments regarding our position on these agenda items, we would like to reiterate our position briefly.

91. Korea is not in favour of a revision of Article 27.3(b) as we believe that the current provisions offer the necessary flexibilities to allow Members to protect biotechnological inventions with their specific protection systems. In this regard, we believe that our work should focus more on implementation issues such as information sharing on individual Members' practices regarding the patentability of life forms and their implementation.

92. We do believe that the implementation of the TRIPS Agreement and the Convention on Biological Diversity (CBD) should be supportive of each other. However, we do not support the proposal to revise the TRIPS Agreement to ensure the implementation of the Convention on Biological Diversity, since the objectives and subject matters of the two agreements are different.

### 5.20 Japan

93. My delegation believes that our position on this long discussed issue is well-recognized among Members, so we would like to make our intervention brief.

94. At the outset, our delegation would like to reiterate our position that an appropriate approach should be taken to prevent the misappropriation of genetic resources, traditional

knowledge and folklore. In addition, the approach we take should ensure that no adverse effects are imposed on the intellectual property system and that innovation is not hindered.

95. In particular, our delegation still does not see any need to introduce a mandatory disclosure requirement into the patent system, since we believe that such a disclosure requirement might impose undue burden on applicants and also cause legal uncertainty about the patent system itself. The consequence of this would be that innovation, which utilizes genetic resources and associated traditional knowledge, will be discouraged.

96. Finally, Japan believes that WIPO is the most appropriate forum for technical discussions on these issues. Japan remains willing to contribute to discussions on these issues in a constructive manner.

### **5.21 Canada**

97. Firstly, on Article 27.3(b), Canada believes that the Doha Declaration's instruction for this Council to review Article 27.3(b) of the TRIPS Agreement is meant to focus on Members' implementation of the provision rather than on revising the content of Article 27. Flexibility should be maintained in Article 27.3(b) of the TRIPS Agreement, in order to allow Members to implement it domestically, as appropriate.

98. Secondly, on the TRIPS-CBD relationship, Canada has been steadfast in its position that the TRIPS Agreement and the CBD are mutually supportive and that there is therefore no need to amend the TRIPS Agreement.

99. We recognize the challenges WIPO is facing in reaching agreement on an instrument or instruments for the effective protection of traditional knowledge, traditional cultural expressions and genetic resources. We take note of the lack of decision last September by the WIPO General Assembly regarding the future work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). Despite the current slow-down, we continue to believe that WIPO is the most appropriate international forum in which to engage in any technical discussions on intellectual property issues that arise in the context of genetic resources, traditional knowledge and traditional cultural expressions. We recognize that reaching a consensus is a challenging endeavour, but these are complicated and multidisciplinary issues.

100. There is value in continuing to learn more about other Member States' practices regarding these issues, in order to further advance discussions on the questions at the WIPO IGC. We believe it is through this type of exchange and engagement that we can work towards a mutually agreeable and successful outcome that will ensure the effective intellectual property protection of genetic resources, traditional knowledge and traditional cultural expressions.

### **5.22 Australia**

101. Our views on these matters are well known, so we will keep our comments brief.

102. Australia regards the current flexibilities under TRIPS Article 27.3(b) as sufficient to allow Members to take decisions on the patentability of life forms in accordance with national policies. We regard it to be appropriate to retain these flexibilities.

103. With regard to the relationship between TRIPS and the Convention on Biological Diversity (CBD), as we have stated at previous TRIPS Council sessions, Australia considers that the TRIPS Agreement and the CBD are consistent. Australia fully implements our obligations under both agreements, which we view as mutually supportive.

104. In terms of genetic resources, traditional knowledge and folklore, Australia regards WIPO as best placed to consider the complex intellectual property issues relating to genetic resources and traditional knowledge. In addition, Australia wishes to see WIPO members conclude this important, substantive work on which considerable progress has already been made.

105. As we and many other delegations stated last October, it is disappointing that the 2014 WIPO General Assembly was not able to agree on an IGC work programme for this year. While not the outcome we wanted, the break in negotiations should be used to bring new momentum to the negotiations when they resume. We encourage Members to reflect on their positions and return to negotiations committed to achieving a meaningful and balanced outcome.

106. As other Members have referred to it today, we would also like to highlight the WIPO seminar scheduled for three days from 30 March-1 April. We strongly support this WIPO initiative and have provided funding to assist WIPO to cover the cost of participation of developing countries attending from capitals. We would encourage Members, where possible, to send their experts to contribute their own perspectives to what we believe will be a rich and useful exchange on this subject and one that will help build understanding in this complex area.

### 5.23 Chile

107. We welcome the valuable comments put forward and the presentation of Members' divergent views. It is our understanding that activities are underway within WIPO that will provide greater clarity on these points. We remain attentive to future developments and will continue to support constructive dialogue.

## AGENDA ITEM 6: NON-VIOLATION AND SITUATION COMPLAINTS

### 6.1 United States of America

108. We again look forward to the opportunity to discuss the topic of non-violation and situation complaints under the TRIPS Agreement with delegations today. We have also welcomed the intensified discussions in the TRIPS Council on this issue of late, and look forward to further exchanges today. As the Chairman noted, the United States submitted a communication to the TRIPS Council on 10 June 2014, which was circulated to Members as IP/C/W/599, to facilitate the Council's intensified discussions on non-violation complaints.

109. That communication consists of three parts: Our analysis regarding the consistency of non-violation complaints with the TRIPS Agreement and the WTO Agreement as a whole; the sufficiency of existing GATT and WTO panel and Appellate Body guidance regarding the application of such complaints in the context of the TRIPS Agreement; and answers to questions raised by delegations.

110. In October, we focused our discussion in this Council on those questions and answers. Today, we wanted to return to four issues raised in October to further elaborate our responses.

#### *Balance of Rights and Obligations/TRIPS Agreement Flexibilities*

111. The first issue we wanted to come back to is the perception of a possible impact on the balance of rights and obligations under the TRIPS Agreement, including flexibilities. Some delegations have suggested that the application of non-violation complaints to the TRIPS Agreement would alter the balance of rights and obligations under the Agreement, including to impact the use of flexibilities contained therein. We would welcome further elaboration from those delegations on how this might occur in practice, particularly given the dictates of Article 3.2 of the Dispute Settlement Understanding, which states:

"Recommendations and rulings of the Dispute Settlement Body cannot add or diminish the rights and obligations provided in the covered agreements".

112. And as we have discussed, WTO panels and the Appellate Body are bound by Article 3.2, including in the context of claims under the TRIPS Agreement.

113. Beyond the absence of practical examples supporting this perception, it remains unclear why non-violation would impact the balance of rights and obligations under the TRIPS Agreement, but not under other WTO Agreements, were non-violation claims do apply today.

114. For example, as delegations know, GATT Article XX contains general exceptions to the commitments contained in the GATT 1994. These include:

- the protection of public morals;
- the protection of human, animal or plant life or health;
- the protection of national treasures of artistic, historic or archaeological value; and
- relating to the conservation of exhaustible natural resources.

115. There have been no findings by GATT or WTO adjudicators that non-violation claims give rise to any incoherence between these GATT exceptions and the commitments contained in that agreement. In other words, non-violation complaints have not affected the balance of rights and obligations in the GATT 1994, and have not impacted the ability of members to rely on the exceptions contained in the GATT.

116. Here, it is important to note that non-violation complaints have also been incorporated into the WTO GATS Agreement in Article XXIII.3. And like the GATT 1994, the GATS also contains a general exceptions provision in Article XIV. As with the GATT, there has been no finding that non-violation claims alter the balance of rights and obligations under the GATS and no finding that such claims impair the ability to assert a general exception.

*Incoherence between Agreements*

117. Second, some delegations have also suggested that the application of the NVNI provisions of the GATT 1994 to the TRIPS Agreement will introduce incoherence between WTO agreements. We continue to look forward to concrete examples of how this would be the case.

118. In particular, we would be interested in understanding the intrinsic quality of non-violation claims that would lead to such a result. In contrast, we are not aware of any WTO findings regarding any incoherence that has been found in the use of GATT non-violation disputes under other agreements, such as the Government Procurement Agreement. In the *Korea – Procurement* dispute the panel considered GATT Article XXIII non-violation complaints under the WTO Agreement on Government Procurement. No incoherence was found in that instance.

*Foreseen at the Time of the Uruguay Round*

119. A third issue raised by some delegations is with respect to the nature of the measure in question. As delegates will recall, the panel in the *Japan – Measures Affecting Consumer Photographic Film and Paper* dispute identified three required elements of a non-violation complaint, which are the:

- (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.

120. The panel's analysis of the second element regarding benefit tied the question of legitimacy of the expected benefit to the question of whether the measure was reasonably anticipated. According to the panel:

"If the measures were anticipated, a Member could not have had a legitimate expectation of improved market access to the extent of the impairment caused by these measures."

121. Therefore, one of the conditions that panels have held must exist for a non-violation complaint to succeed is that the action complained of should not have been foreseeable at the time of the negotiations.

122. On this point, there appears to be a need for greater clarity in the Council. Under the *Japan – Film* analysis, the question is not whether the measure in question existed at the time of the Uruguay Round, but whether the measure could be reasonably anticipated.

123. This is prevalent with respect to the TRIPS Agreement, including with respect to flexibilities. As we recalled in our June 2014 Communication to the TRIPS Council, Switzerland addressed this issue well.

124. As Switzerland has explained, "a non-violation complaint cannot be brought against another Member for utilizing a flexibility foreseen in the TRIPS Agreement. One of the necessary conditions that the complaining party must demonstrate is that the offending measure could not have been foreseen. That a Member may make use of a flexibility provided in the TRIPS Agreement is, just as any other right under the TRIPS Agreement, foreseeable by other Members."

#### *Bona Fide Good Faith*

125. Fourth and finally, some delegations have reiterated the suggestion that the rule of *pacta sunt servanda* or good faith treaty performance and good faith treaty interpretation is the equivalent of or a substitute for non-violation complaints.

126. We continue to disagree and are not alone. In fact, the WTO itself, through Dispute Settlement Body recommendations and rulings have drawn a clear distinction between good faith and non-violation.

127. Again, in the *Korea – Procurement* dispute, the panel explained that the "non-violation doctrine goes further than just respect for the object and purpose of the treaty" as protected under the principle of *pacta sunt servanda* principle under international law.

128. The panel in that dispute also noted that the non-violation provision is needed because, while most of the time actions taken by Members will be consistent with both the letter and the spirit of the treaty, "upon occasion, it may be the case that some actions, while permissible under one set of rules are not consistent with the spirit of other commitments."

#### Conclusion

129. With that, we will conclude our remarks. I realize we did devote some time to this item. We felt it was important to respond to the questions raised in October and look forward to a good exchange today.

### **6.2 Bangladesh on behalf of the LDC Group**

130. I am taking the floor on behalf of the LDC Group. LDCs are concerned that non-violation and situation complaints may pose unnecessary problems to LDCs which can be otherwise avoidable if we do not implement this provision under TRIPS. Our fundamental understanding is that TRIPS is not a market access agreement. The TRIPS Agreement was designed in a manner which only provides minimum level of territorial protection to IP by the Members. Its operation is also unique and quite different from any other WTO agreement. While some other agreements are explicit about facilitating market access and concessions, TRIPS provides for the minimum level of protection and flexibility with a view to achieve the socio-economic objectives. Therefore, drawing any parallelism in terms of non-violation and situation complaints with other WTO agreements, to our best judgment, does not fit with the context of TRIPS.

131. Consequently we don't see any scope of non-violation and situation complaints process in a *sui generis* system like TRIPS as the nature and scope of obligations under the TRIPS Agreement permit Members to determine the level of protection according to their respective domestic legal system and practices. From the systemic point of view, non-violation and situation complaints will infuse huge legal uncertainty in the total system. Hence, the LDCs support a further extension of the moratorium.

### 6.3 Venezuela, Bolivarian Republic of

132. Venezuela would like to once again say that these kind of claims do not apply to TRIPS, as we have mentioned along with other countries in document IP/C/W/385 of 2002, and the US has tried to reverse the meaning of Article 64 of the TRIPS Agreement, because they want to see this kind of claim implemented. They should provide to this Council proof of how these kind of actions would work. We would like to ask that this Council recommends to the Ministerial Conference of December that these claims are not applicable to intellectual property and as such we could put an end and close this long-standing issue.

### 6.4 Peru

133. We would like to thank the contribution made by the US in document IP/C/W/599 and the reflections made this morning that allow us to have this discussion. In that respect, we would like to share also some preliminary comments about the paper. For us document IP/C/W/599 has not sufficiently addressed the possible consequences that it fears will result from not including non-violation complaints. In other words, we have not found a concrete idea under which scenarios the US envisages benefits accruing under the TRIPS Agreement beyond those that arise from the expectation of the good faith performance of regulation under the TRIPS Agreement. In this respect, I would like to recall the content of paragraph 46 in document IP/C/W/385 that states "We would welcome examples from the proponents of the non-violation remedy of what they would consider as falling within and outside the definition of the term 'measure', as a contribution to the TRIPS Council's work on this agenda item." As I just recalled, this paragraph dates from the original 2002 submission and even in the last contribution made by the US, they do not provide any examples of the kind of measure that they believe can be addressed by non-violation complaints rather than claims of violation. So far, and according to our research, there have only been three cases in which non-violation complaints have been successful in more than the 60 years of the multilateral trading system. Also there have never been successful records of the non-violation remedy in any of the WTO disputes in which Article XXIII.1(b) has been invoked. Moreover, there have been no non-violation cases under the GATS. The panels that have addressed non-violation claims in recent disputes, have followed an order of analysis under which they have ruled on the claims of alleged violation, before exercising judicial economy on the non-violation claims. Non-violation complaints are a rare and exceptional remedy; even for non-violation claims under the GATT and other agreements relating to trade in goods, panels are likely to exercise judicial economy where they have upheld claims of violation of a specific variation.

### 6.5 Canada

134. Canada is pleased to contribute to the discussion on NVNI in the TRIPS Council. Canada notes the importance of adhering to the TRIPS Agreement and having effective enforcement mechanisms in place. We wish to refer Members to our previous interventions wherein we raised concerns about the application of NVNI to the TRIPS Agreement as well as our previous papers submitted to the Council on this issue, in particular, IP/C/W/127. We wish to reiterate our concerns with proceeding with respect to NVNI.

135. First, Canada believes that any determination on the applicability of non-violation and situation complaints to the TRIPS Agreement requires careful analysis and a shared understanding as to what constitutes, for the purposes of the TRIPS Agreement, a "benefit" such that it could be nullified or impaired by the otherwise permissible actions of a Member.

136. Second, we recognize that the *Dispute Settlement Understanding* provides for a "mutually satisfactory adjustment" in the resolution of non-violation, unlike the more stringent measures it applies to "regular" disputes. Canada remains concerned that Members could nevertheless feel compelled to withdraw any given measure at issue if only to avoid the litigation of non-violation complaint, which could effectively compromise or create a chilling effect on Members' capacity to implement or introduce certain fiscal or regulatory measures.

137. Finally, in Canada's view, the TRIPS Agreement is not a market access agreement. As we have previously mentioned, it is "not principally concerned with questions of market access and does not include a commitment to a certain level of market access". We think it would be helpful to continue discussions and explore viewpoints on the function that NVNI serves and to ensure

that we share a common understanding of any obligation in this area so as to avoid uncertainty. We look forward to hearing the views of other Members on this important issue.

## 6.6 Norway

138. Norway would like to echo many of the delegations that have taken the floor before us, including the LDCs, Venezuela, Peru and Canada. It is our view that non-violation and situation complaints should not be applicable to the TRIPS Agreement. We therefore favour a ministerial decision to this effect. Should no consensus on such decision be reached, the Ministerial Conference should extend the present moratorium.

## 6.7 Brazil

139. As a co-sponsor of the document IP/C/W/385, we reiterate the understanding that non-violation and situation complaints cannot be applied to disputes in the area of intellectual property rights. As mentioned in the last session of this Council, we have no doubt that any development that allows for this kind of complaint in the context of TRIPS would upset the delicate balance of rights and obligations in that Agreement, besides risking to cause systemic problems for the Organization.

140. Even though intellectual property rights may in some cases facilitate international trade and investment, the TRIPS Agreement is not, by any standard, a market access agreement. Any attempt to compare its nature with that of GATT or GATS is inappropriate, since there is no exchange of concessions in TRIPS, and so it would be equally inappropriate to apply the concept of non-violation and situation complaints to the area of intellectual property.

141. Furthermore, we are concerned that the application of non-violation and situation complaints to TRIPS would restrict legitimate policy space that countries have to implement national policies in several areas, particularly health, where the multilateral rules have been clear on the need to preserve the existing flexibilities. Despite the guarantees that have been mentioned in this Council before, as the one presented by Switzerland and quoted in document IP/C/W/599, the vagueness that characterizes the concept of non-violation and situation complaints cannot but raise concerns for countries to defend their policies with legal – and frequently complex – arguments. Clearly, the introduction of such concept would affect the balance that the TRIPS negotiators desired when drafted Article 7, that is, between the interests of producers and users of technological knowledge.

142. Brazil is not convinced that non-violation and situation complaints can be applied to the context of TRIPS. We believe that, rather than relying on the legally imprecise and vague notion of non-violation, a focus on the text of the Agreement, supported by other principles of international law, is preferable. In this sense, we recall that this norm can be changed only if consensus is achieved on the scope and modalities of application of this type of situation, as clearly stated in Article 64.3 of the TRIPS Agreement.

## 6.8 South Africa

143. South Africa, as a Member of the WTO, is fully committed to upholding its obligations and commitments as set out in the different WTO laws and regulations with specific reference to the TRIPS Agreement. The purpose and aim of Article XXIII is to ensure compliance with the GATT rules and principles by providing Members with an opportunity to make the claims should the situation provided for in sub-paragraphs 1(a) and 1(b) arise. This is different to the TRIPS Agreement. The TRIPS Agreement is a *sui generis* agreement, it is not aimed at promoting market access or harmonizing the standards of Members with regard to the protection and enforcement of intellectual property rights. It is there to provide the minimum standards of protection and enforcement on intellectual property rights.

144. The insertion of Article XXIII.1(a) and 1(b) of GATT 1994 under the TRIPS Agreement will undermine the sovereign rights of the respective Members in as far as putting in place the laws that will protect intellectual property rights within their borders are concerned. The insertion will further more restrict the flexibilities provided to Members and defeat the balance that has been maintained under the TRIPS Agreement. South Africa recognizes the need for the protection and

enforcement of intellectual property rights, however we believe that the insertion of non-violation and situation complaints will not be practical under the TRIPS Agreement.

### **6.9 China**

145. Regarding non-violation complaints under the TRIPS Agreement, most Members hold the position that they shall be banned. In particular, the systemic concerns and reasons of non-application are explained in detail in document IP/C/W/385. When the Council discusses this issue, these options and positions should be fully taken into account. At the last TRIPS Council meeting, China has provided some comments on the US Communication (IP/C/599).

146. China would like to remind Members that first there is no agreement on whether non-violation complaints are appropriate for TRIPS. No article under the TRIPS mandates the application of non-violation complaints to the TRIPS Agreement. Its application depends on the approval by the Ministerial Conference as provided in Article 64.3 TRIPS.

147. Second, as colleagues from the LDC Group and other Members put, TRIPS is quite different from other agreements under the framework of the WTO, such as the GATT or GATS. It should be noted that the TRIPS Agreement, unlike market access agreements, does not involve an exchange of rights and obligations where concessions are made in exchange of concessions received.

148. Third, applying non-violation complaints to TRIPS will amount to establishing a new cause of action under TRIPS, which definitely will introduce incoherence and upset the balance between various WTO agreements, because under Article 3.2 of the DSU, the DSB cannot add to or diminish the rights under the covered agreements. The application of non-violation complaints will limit the use of the flexibilities outlined in the Agreement to secure objectives relating to public health and other issues of public interest. We should be quite careful to maintain the balance between the rights and obligations under TRIPS. To conclude, China believes that the application of non-violation and situation complaints under the TRIPS Agreement is not appropriate.

### **6.10 Japan**

149. We recall that we exchanged our views on this topic at the last Council based on document IP/C/W/599, which was submitted by the United States. Japan's view on this issue is the same as that which it has expressed repeatedly. Both clarity and predictability should be ensured when applying non-violation and situation remedies to the TRIPS Agreement. From this point of view, making factual analyses on specific and concrete circumstances, in which non-violation and situation complaints should be available, would facilitate examination on the scope and modality of such complaints in the area of TRIPS. This delegation has been and is willing to engage in discussions at this Council in a constructive and dedicated manner.

### **6.11 Argentina**

150. Argentina maintains the position expressed in IP/C/W/385. We consider that non-violation and situation complaints indicated in Paragraph 1 of Article XXIII of GATT 1994 are not applicable to the TRIPS Agreement. Therefore this should be determined and decided at the next Ministerial Conference.

### **6.12 Korea, Republic of**

151. I take the floor to echo the concerns expressed by many other delegations over applying non-violation and situation complaints to the TRIPS Agreement as such complaints were designed to apply in relation to market access commitments which are not the main features of the TRIPS Agreement.

### **6.13 Switzerland**

152. Non-violation and situation complaints (NVCs) in the WTO provide a means of recourse in the event of a dispute over an expected benefit lost due to a measure by another Member that

was not foreseeable. By providing systemic relief and necessary legal certainty for such situations, NVCs protect the balance of rights and obligations under the WTO Agreements concluded in the Uruguay Round. Protecting this balance includes the flexibilities foreseen in the TRIPS Agreement. Recourse to such a flexibility is a foreseeable measure, and is thus not be considered a non-violation situation.

153. The purpose of the original five year moratorium was – if found necessary by Members – to discuss the exact scope and additional modalities of the application of NVCs in the TRIPS context. In Switzerland's view, Art. 64.1 of the TRIPS Agreement and the DSU provide appropriate and sufficient guidance on the applicability and use of NVCs also under TRIPS. Further guidance can be found in past decisions by the dispute settlement body relating to NVCs.

154. If other delegations are of the view that this set of scope and modalities needs to be complemented with additional guidance for the application of NVCs in the TRIPS context, it is up to those delegations to propose such modalities.

155. However, in spite of the repeated extension of the moratorium, no proposals for such modalities or for specifics on the scope of NVCs under TRIPS have been made by Members during the last couple of years. It remains thus my delegation's view that a further extension of the moratorium is not useful and that, accordingly, the moratorium shall expire at the end of this year.

#### **6.14 Ecuador**

156. Ecuador is one of the countries which through IP/C/W/385 of October 2002 argued that the state of non-violation and situation complaints did raise concerns that required to be dealt with in this context. The position expressed in this document has been reiterated on a number of occasions. The TRIPS Agreement is not a market access agreement, it is not one that grants concessions which means that it deals rather with matters of intellectual property and the scope and acquisition of such rights. That is why we do not feel that there is a need to continue discussing this matter – there is no way in which the TRIPS Agreement lends itself to this consideration and we do feel that we should agree to delete this item from our agenda.

157. In June 2014, the United States presented IP/C/W/599 and we would like to thank them for this document. We do not agree with it. Article 64 of the TRIPS Agreement deals with dispute settlement and also with non-violation and situation complaints. It is also stated that when the time-limit set out in paragraph 2, that is to say five years after the coming into force of the WTO Agreement, would be respected. That is why we therefore feel that this is not an automatic process; there should be agreement on the matter. No consensus will be reached on this issue. We therefore support Venezuela's request. The next Ministerial Conference should delete this item from our agenda.

#### **6.15 Colombia**

158. As a co-sponsor of document IP/C/W/385, Colombia reiterates its position on this issue, which is that non violation complaints should not be included in the scope of the TRIPS Agreement. In particular, this being a sui generis agreement, it was not designed to protect market access or the balance of tariff concessions, but rather to establish minimum standards of IP protection.

159. For this reason, and for those stated in the document and expressed to the Membership on several occasions, Colombia believes that extending this type of remedy to the TRIPS Agreement might also entail consequences for the predictability and security of the multilateral trading system.

160. Any benefits accruing under the Agreement can be adequately protected by applying the text of the Agreement in accordance with accepted principles of international law, and without introducing the legally uncertain notion of "non-violation" and "situation". Consequently, we believe that complaints on the grounds of nullification or impairment of the type identified in

Article XXIII:1(b) and (c) of the GATT 1994 should be determined inapplicable to the TRIPS Agreement.

#### **6.16 Egypt**

161. We would like to associate ourselves with Colombia, Ecuador, Brazil and others. Our position is well-known, we continue to believe that non-violation complaints of the type identified in Article XXIII:1(b) and (c) of GATT 1994 are not applicable to the TRIPS Agreement.

#### **6.17 Cuba**

162. Cuba reiterates and defends the premise that this type of complaint is not applicable to intellectual property. We therefore support the positions of the large number of Members which consider that this type of complaint under the TRIPS Agreement should be prohibited.

163. Cuba is also a co-sponsor of document IP/C/W/385 and upholds the relevance and validity of the extensive arguments it puts forward in support of the inapplicability of this type of complaint. In our opinion, it is not feasible to engage in discussions on this issue ad infinitum, and even less so when the vast majority of Members consider that the adoption of any kind of measure would prove impossible in practice.

164. We fully support the forthcoming Ministerial Conference taking the judicious decision to bring this discussion to a close, eliminate the moratorium once and for all and determine the inapplicability of such complaints.

#### **6.18 Chile**

165. We appreciate and welcome the comments by delegates, which once again illustrate the different perceptions of this issue. Our position, namely support for the maintenance and extension of the moratorium, is well known.

#### **6.19 Chinese Taipei**

166. Non-violation and situation complaints have been a longstanding issue at the TRIPS Council. We feel that this is an extremely complex issue with many sides to be considered.

167. The concept of non-violation and situation complaints is allowed if one government can show that it has been deprived of an expected benefit because of another government's action, or because of any other situation that exists. The aim of the concept is to help preserve the balance of benefits struck during multilateral negotiations. However, there are many concerns among Members over the applicability of non-violation and situation complaints to dispute settlement under the TRIPS agreement. We look forward to in-depth discussion on the issue among Members, in particular with regard to the possible scope and types of complaints applicable under the TRIPS Agreement.

168. My delegation would like to associate itself with others that welcome the debates with a constructive spirit and look forward to continuing the discussion in the TRIPS Council.

#### **6.20 Russian Federation**

169. Non-violation complaints were designed to preserve the benefits of agreements achieved in multilateral trade negotiations. The idea of having an additional regulatory tool is reasonable, but the question is whether it is applicable or not. Looking at the linkage of non-violation and TRIPS we see that there have always been doubts about the application of this tool. The experience of dispute settlement demonstrates the rather superficial view of non-violation complaints. The objectives laid down in Article 7 TRIPS are all about the fragile balance between rights and obligations and we believe this balance must be carefully maintained. Many of the TRIPS provisions are based on existing WIPO conventions. TRIPS obviously does not deal with market access. Even without non-violation complaints, TRIPS already contains effective provisions necessary to achieve a balance of interests. TRIPS already has imported a unique provision on enforcement, the issue of imbalance is important for the Doha Declaration on

TRIPS and Public Health. For these reasons, the lifting of the moratorium may deteriorate the balance of interest. Taking into consideration the importance of this issue, the Russian Federation is ready to work with other Members to reach a consensus.

### 6.21 Nepal

170. The delegation of Nepal would like to join Bangladesh and other developing country Members who expressed their deep concern under this agenda item. We welcome the decision taken by Ministers in Bali in 2013 to extend the moratorium on non-violation and situation complaints (NVNI) with respect to TRIPS. In our understanding, the application of such complaints, which is, originally a GATT provision fits only in trade in goods and services but not in any *sui-generis* type system like TRIPS. As NVNI is basically related with market access, it has less possibility of application with regard to TRIPS which basically intends to provide minimum protection to IP-related instruments. Application of this to TRIPS will reduce flexibility and policy space for many developing countries in general and LDCs in particular and prevents them from pursuing developmental goals through legitimate exercise of policy choices in the field of IP. So, we are not in the position of supporting any proposal put forth by any Member to bring TRIPS non-violation and situation complaints issue within the ambit of WTO dispute settlement. We express our deep concern on views expressed by Switzerland and other delegations that MC10 should end the moratorium. While disagreeing with these views, we call upon Members for the continuation of the moratorium for all developing countries, and if not, for LDCs at least.

### 6.22 India

171. India would like to thank the chair for initiating the discussion on non-violation and other situation complaints under the TRIPS Agreement today. Our position with respect to the applicability of non-violation complaints remains unchanged. Our concerns on the ambiguity, incoherence and limit on flexibilities of Members due to the applicability of non-violation complaints in the TRIPS context continue. Neither does past GATT/WTO jurisprudence nor do explanations to the contrary allay our fears.

172. In today's meeting, India would like to highlight only some of the issues that we consider pivotal in understanding our concerns on the applicability of NVCs to TRIPS.

173. It is clear that when negotiating the TRIPS Agreement, non-violation complaints (NVCs) were made inapplicable to TRIPS under Article 64.2. This is in stark contrast to the GATT and GATS which the US refers to, where NVCs were made applicable without any discussion on scope and modalities. This itself clearly indicates the serious concern the membership had in applying NVCs in the special context of the TRIPS Agreement.

174. Further, Article 64.2 clearly mandated that there had to be an agreement on the scope and modalities of NVCs in the TRIPS context. This, again, is not present in the context of GATT and GATS. The entire thrust of Article 64 clearly shows that Members viewed TRIPS in a very different way in the context of applicability of NVCs. If this was not the case, there would have been no issue in applying NVCs like in the case of GATT without any debate or consensus on scope and modalities. TRIPS would also not envisage a consensus on scope and modalities. If NVCs were to automatically apply after a time frame, there would be no need for Article 64.3. The fact that scope and modalities need to be discussed and agreed upon recognizes the unique nature of the applicability of NVCs to TRIPS. The negotiators recognized this and we must not interpret it otherwise.

175. The fears that many delegations, especially developing country Members, have expressed on the ambiguities that NVCs bring cannot be underestimated. It strikes at the very ability of governments to function as well as the ability to deal with challenges to that ability. What are the circumstances in which they will be used to suppress Members' sovereign policy space. What are the limits? What are the various policy measures that will come under its scanner? I am afraid, there are no satisfactory answers to it.

176. The TRIPS lays down a delicate balance between rights and obligations of Members. NVCs, we fear, will tilt that balance. The US today sought further elaboration of practical examples of

how the balance will be impacted. However, the very nature of NVCs makes it impossible to lay down various practical scenarios. A new cause of action arises even when there is no textual violation of the TRIPS Agreement. Reference to Article 3.2 of the DSU does not address the issue. Article 3.2 of the DSU states, *inter alia*, that the DSB recommendations cannot diminish the rights and obligations provided in the covered agreements. And that is exactly the point. The applicability of NVCs to TRIPS will widen the rights and obligations of Members under TRIPS beyond the express terms of the TRIPS Agreement. This is how the delicate balance that now exists will inevitably be affected. As China rightly stated a new cause of action will arise with the applicability of NVCs in TRIPS.

177. The US has referred today to Japan – Measures Affecting Consumer Photographic Film and Paper to indicate that there are 3 elements for an NVC to apply. The mere enumeration of these three elements does not take away the fact that NVCs are inherently ambiguous and lack clarity in the context of TRIPS.

178. Ambiguity and incoherence is a lawyers' paradise. The ambiguity and lack of clarity that NVCs will usher in in the TRIPS context will especially affect developing countries and LDCs severely. Lack of legal capacity to handle such cases will be a serious issue. It would inevitably lead to addition of litigation cost. The vast array of measures that will suddenly be open to potential challenge will be insurmountable. India believes that this is an unnecessary burden that was not intended by the TRIPS Agreement. That is exactly why the scope and modalities need to be agreed upon. The failure to agree on the scope indicates the vast divergence of members on the need of NVCs in TRIPS. Switzerland has referred to the need of additional modalities. It would be necessary to remind ourselves that Article 64.3 mentions about "scope and modalities" and not "additional scope and modalities".

179. India requests Members to seriously reflect on the concerns expressed by the overwhelming number of delegations in this meeting and earlier, and should join the consensus that complaints on the grounds of nullification or impairment of the type identified in Article XXIII:1(b) and (c) of the GATT 1994 be determined inapplicable to the TRIPS Agreement, in the interest of the stability and certainty of the multilateral system.

### **6.23 United States of America**

180. Thank you for interventions by other delegations, and I welcome the indulgence of the Chair and Members and the Secretariat as I endeavour to respond in turn to some of the ideas that were raised this morning, in no particular order.

181. With respect to concerns about levels of development and the possible implications or asymmetrical implications that non-violation complaints may have on certain Members, I would recall that the dispute settlement system is a critical piece of both the GATT and the WTO to ensure equality of all Members. In fact the WTO dispute settlement system has been hailed as promoting the ability of all WTO Members, regardless of their level of development to preserve their rights and the benefits owed to them that accrue under the agreements.

182. With respect to any uncertainty that might arise out of the application of non-violation complaints under the TRIPS Agreement, we take a different view. In fact, we see the opposite outcome: non-violation complaints will contribute to clarity. Noting that NVNI is part of the GATT 1994 and that the GATS and, that it has been applied to other agreements, we note also the discussion in our papers and interventions that there is substantial clarity from panels and the appellate body regarding the elements of an NVNI claim. We do not see the ambiguity that some Members have identified.

183. We turn to Article 3.2 of the Dispute Settlement Understanding, which again goes to this very point of uncertainty which says "the dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system" This is, of course, something that all Members have agreed. DSU Article 3.2 continues: "the Members recognize that it, the Dispute Settlement System, serves to preserve the rights and obligations of Members under the covered agreements and to clarify the existing provisions of those agreements in accordance with the customary rules of interpretation of public international law". Some other delegations had discussed a concern, or perceived concern, about a possible chilling

effect, or impact on 'policy space'. As you might imagine we do not see this and would welcome specific examples. Or to add some clarity, where under existing regimes has this happened in practice, given that we have had specific cases under the GATT and under the WTO, and knowing that NVNI provisions exist under the GATT, GATS and the Government Procurement Agreement? No Member is in a position to have come up with hypothetical examples. If they exist in the cases that have been brought, it would be welcomed from our side to hear more.

184. In terms of the request that we have heard from time to time to provide examples of NVNI cases, as Members will recall, and as the WTO Dispute Settlement Understanding provides, WTO Members are not in the position of determining the WTO consistency of the measures of other Members – such unilateralism is antithetical to the multilateral system of which we are part. Of course this is the role of the WTO dispute settlement system.

185. As to consensus, there is the suggestion by a few delegations that because we are yet to reach consensus on this issue, we should no longer discuss it. Of course, this is interesting from a precedential perspective and has significant implications for many Members' other items of the TRIPS Council. We would encourage further consideration by those delegations on that point.

186. With respect to the suggestion that there have only been three successful cases of NVNI, we welcome this point, which we believe should further allay any concerns of any Members of a potentially sweeping nature of this type of claim, because this would be targeted and limited as the delegation identified and as the WTO DSB has determined.

187. With respect to market access, this has been a recurring point in the discussions - we of course, as other Members know, are of the firm view that the TRIPS Agreement is a market access agreement. As stated in the preamble, the TRIPS Agreement is intended to reduce distortions and impediments to international trade, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade. So at the very outset of the TRIPS Agreement, market access is a critical component.

188. The standards and procedures established are for the identification, grant, enjoyment and enforcement of private rights in most cases, but it does so in the same way that the Agreement on Technical Barriers to Trade, and the Agreement on Sanitary and Phytosanitary Measures establish minimum requirements that governments must meet before imposing limitations on goods that may be sold in their markets based on health and environment, or other factors.

189. One additional item that was raised was with respect to the scope and modalities and the language of Article 64.3 of the TRIPS Agreement, and one delegation suggested that reaching an agreement on scope and modalities is somehow a prerequisite for non-violation complaints to the TRIPS Agreement. However, by the clear terms of both Article 64.3 and we must of course read Article 64.2 which is clearly cited in 64.3, that states "during the time period referred to in Paragraph 2" which is of course 5 years, or until 2000, "the TRIPS Agreement shall examine scope and modalities". That examination occurred, there was no conclusion, and from that point non-violation complaints are fully appropriate as pursuant to Article 64 of the TRIPS Agreement. So we welcome again the perspective of other delegations and invite them to this particular paradise.

190. In summary, with respect to NVNI the US view is that they are appropriate under the TRIPS Agreement, that consensus is required to continue the moratorium and the US continues to support the end of this moratorium this year.

#### **6.24 Venezuela, Bolivarian Republic of**

191. The delegate from the United States is confusing us again – the DSU is not a panacea, it is better than what we had under GATT, it is not the same thing as saying the DSU is a paradise, whether on earth or in heaven. International lawyers are required to access the DSU, and when you look at the list of countries that bring cases to the DSU, well often it is the same countries that are bringing cases forward. Regarding what he said about Article 64 and the immediate application to end the moratorium, Article 64 says that there needs to be a consensus, whereas Article 27.3(b) does not require consensus, it merely says that the provision needs to be

reviewed after four years. Contrary to the US, we think that in both cases there should be a consensus because all decisions within the WTO need to be based on consensus.

## **AGENDA ITEM 8: REVIEW OF THE APPLICATION OF THE PROVISIONS OF THE SECTION ON GEOGRAPHICAL INDICATIONS UNDER ARTICLE 24.2**

### **8.1 China**

192. We would like to inform the Council that an Article on geographical indications protection is included in the respective FTA between China and Costa Rica (namely Article 116), as well as China and Switzerland (namely Article 11.13).

193. The China-Costa Rica FTA entered into force on August 1, 2011. The China-Switzerland FTA entered into force on 1 July 2014. Both texts are available in the RTA database on the WTO website.

### **8.2 Ecuador**

194. In order to allay any doubts, Ecuador would like to support the joint proposal on this item regarding participation in the system, we support the establishing of a multilateral system and register according to Article 23 of the TRIPS Agreement, this is voluntary, and no Member is obligated to take part in it. Similarly we would echo the document relating to consequences and legal effects of these registers. We therefore support the positions regarding geographical indications and establishing a system that would allow us to establish an adequate measure to implement the provisions of the Agreement within Members' own legal system.

### **8.3 European Union**

195. The European Union is party to a number of bilateral and regional free trade agreements, with provisions that address, among other things, the protection of geographical indications. My delegation is pleased to share this information with other Members on some of the EU agreements that deal with this subject. The details of these agreements can be found at the website of the Director-General for Agriculture of the European Commission at [http://ec.europa.eu/agriculture/markets/wine/third/index\\_en.htm](http://ec.europa.eu/agriculture/markets/wine/third/index_en.htm).

## **AGENDA ITEM 9: FOLLOW-UP TO THE TWELFTH ANNUAL REVIEW UNDER PARAGRAPH 2 OF THE DECISION ON THE IMPLEMENTATION OF ARTICLE 66.2 OF THE TRIPS AGREEMENT**

### **9.1 Bangladesh on behalf of the LDC Group**

196. LDCs are pleased to note that we are now at the twelfth annual review of Article 66.2 of the TRIPS Agreement, in line with the Decision adopted by Ministers in Doha in 2001. Article 66, in particular 66.2 is the center of the delicate balance that was struck in the TRIPS Agreement. The faithful implementation of obligations under Article 66.2 would respond to that object and purpose for which Article 66.2 was crafted.

197. We also appreciate the wide ranging support by developed country Members, as demonstrated in their reports, in our pursuit of achieving social and economic goals.

198. That said, we would like to thank those developed countries that have continued to provide reports to the TRIPS Council on incentives they provided to their enterprises and institutions in their territories, with a view to promoting and encouraging transfer of technology to LDCs, in order to enable our countries to create a sound and viable technological base.

199. We also observed that some Members had made an effort to follow the structure that we had proposed in our submission IP/C/W/561, to make the reporting system structured and simple. We request others to follow the format suggested by the LDC Group because the type and nature of the report is of critical importance for efficient monitoring of implementation. The Doha mandate and this Council decision IP/C/28 further provided guidance on the reporting format and substance. However, from the submitted reports, it is extremely difficult to identify

and sort out activities that are specific to the obligation under Article 66.2 due to the absence of a common structure and format.

200. While we thank all Members for their reports, we would particularly appreciate information on the incentive regime put in place along with other elements as contained in paragraph 3 of the IP/C/28 and according to our submission IP/C/W/651.

## **9.2 Nepal**

201. I would like to align myself with the statement made by Bangladesh. Technology and innovation are key factors in addressing developmental needs of many poor and LDC Members in the IP regime. In order to enable LDCs to reap due economic benefit from the intellectual property regime, they need to have a sound and viable technological base, which is very often beyond their capacity to afford. In light of this, incentives to be provided by developed country Members to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to LDC Members in line with Article 66.2 TRIPS is of great significance and relevance. As mandated by the TRIPS Council decision, for the last few years, we have been attending workshops dedicated to this issue where several delegations make their presentations on the incentives provided by them with a view to encouraging their national enterprises and institutions to remain engaged in technology transfer to LDCs. We are glad to note that developed countries have been gradually extending their support in the field of technology transfer through various means. For that we extend them our sincere appreciation.

202. However, as there remains some overlapping between Article 66.2 and 67 TRIPS in their reporting, we encourage Members to be more specific while preparing reports on Article 66.2 of TRIPS and distinguish it from the reporting under Article 67 which talks about technical and financial cooperation in the IP sector. In order to avoid duplication in reporting, we would also like to underscore the need of adopting and applying a uniform template by all developed Members while reporting on this issue for the sake of simplicity, uniformity and reducing paper cost. In this regard, the template submitted by Angola in October 2011 on behalf of the LDC Group would be a solid piece of document to be considered and later on to be adopted by developed country Members while reporting on Article 66.2. We encourage Members to extend their support further in the field of technology transfer to LDCs in the years to come so that LDCs could develop sound technological bases to enjoy the benefits coming out of IP sector.

## **AGENDA ITEM 10: TECHNICAL COOPERATION AND CAPACITY-BUILDING**

### **10.1 The Gulf Cooperation Council**

203. Article Twenty of the GCC Economic Agreement states that "member States shall develop programs encouraging talented individuals and supporting innovation and invention; cooperate in the field of intellectual property and develop regulations and procedures ensuring protection of intellectual property rights; and coordinate their relevant policies towards other countries, regional blocs and international and regional organizations."

204. The Cooperation Council for the Arab States of the Gulf started working to amend the Patent Law in the GCC States to comply with the national patent laws of the Member States as well as with international treaties. It established the "intellectual property training centre for the Gulf Cooperation Council" in the State of Kuwait which continually organizes training programmes in various fields of intellectual property for the benefit of Member States.

205. It has also been working on the adoption of the structure to coordinate activities between the Patent Office of the Gulf Cooperation Council and the patent offices of Member States. The structure includes patent policy, patent filing, patent examination, awareness and invention promotion, organizing joint activities, training and human resources, patent information, information technology, and international treaties and organizations.

206. The GCC of the Secretariat General, since October 2013 provides several activities on technical cooperation on TRIPS, including launching a project of electronic filing of patent applications; the project aims to facilitate the filing procedures for all applicants in general and for applicants from the Member States in particular. It also provides consultation and financial

support for the "Gulf Inventors Campaign" which is organized by the "Federation of Gulf Cooperation Council Chambers". The campaign was aimed to support Gulf Cooperation Council inventors as well as to enhance innovation in the Member States. The GCC has also sponsored the participation of inventors from its Member States in some of national and International Exhibitions of Inventions.

207. In the area of training courses, the Gulf Cooperation Council Secretariat General Patent Office made a number of presentations and courses on various relevant topics for different beneficiaries, such as talented students in the research centre of the King Faisal specialist hospital in Saudi Arabia. This included a presentation on the role of the Patent Office of the Secretariat General in supporting innovation. It also organized other training courses in 2013 which were attended by a number of patent examiners from Saudi Arabia's Patent Office.

208. In addition to this, the Gulf Cooperation Council Intellectual Property Training Centre in the State of Kuwait organized during the year 2014 a number of training courses including courses on intellectual property and trademarks for fresh graduates, a course on formal and substantive examination of patent applications, as well as a course on copyright.

209. The above activities are only the beginning of an ambitious programme to enable the GCC countries to protect inventors' rights and their inventions. It requires continuous follow-up from all parties for the application of the regulations and of international laws followed in this regard and its development as driven by the public interest.

## **AGENDA ITEM 11: INTELLECTUAL PROPERTY AND INNOVATION: WOMEN AND INNOVATION**

### **11.1 Norway**

210. To enhance women's economic empowerment and rights is one the main objectives of the Norwegian Government's policies on promoting gender equality. The topic "Women and Innovation" fits very well into Norwegian policy, and Norway is therefore proud and pleased to co-sponsor this agenda item.

#### *Labour market*

211. Today, women in Norway participate on an almost equal footing as men in the labour market. The majority of Norwegian women are in employment, and three out of five students at universities and colleges are women. We have come a long way. At the same time, our labour market still has gender differences. These differences largely correspond to the division between the public and private sectors, and are kept alive through stereotypic choices of education and work.

212. Although women now account for a substantial part of the labour force, they are still clearly in minority in management positions and in innovation.

213. Norway is a small country. We cannot defend utilizing only parts of our human capital. Gender equality is a prerequisite and a key factor for economic growth. In short, gender equality is smart economics.

#### *Female entrepreneurs*

214. When it comes to innovation, women are still under-represented amongst entrepreneurs in Norway. In the last 10 years, the level of female entrepreneurs constitutes about 30%. The Norwegian Government therefore supports "Young Entrepreneurship", an organization with specific programmes aimed towards teaching female pupils about entrepreneurship. In addition, the Norwegian Government agencies responsible for promoting innovation employ an integrated approach to gender balance throughout their operations. This includes increasing the shares of women participating in government programmes for entrepreneurs and in industry clusters.

215. In 2009, the Government launched an award of one million Norwegian Kroners to a "Female Entrepreneur of the Year". This has resulted in more focus on female entrepreneurs and female participation in innovation.

#### *Globally*

216. At the global level there are even bigger gaps between women and men in access to economic opportunities and participation in innovation. This is simply bad economics. Studies show that eliminating barriers that discriminate against women working in certain sectors or occupations could increase labour productivity by as much as 25% across a range of countries.

217. Our common objectives, as reflected in the Marrakesh Agreement, are ensuring full employment and sustainable development. To achieve this innovation is needed in all sectors of society. There is good evidence to say that applying a gender perspective on innovation can extend the concept of innovation, identify structures that block innovations and demonstrate new forms of innovation systems. This can open new markets and new products.

218. In order to meet some of these challenges, the Norwegian Government has decided to integrate gender equality considerations in allocating funding for business development, social partners and the Norwegian Investment Fund for Developing Countries (Norfund). At the end of 2013, the companies in Norfund's portfolio employed more than 314,000 persons, with women accounting for 37% of all employees. Norfund has chosen financial institutions and SME funds as two of its investment areas. These sectors employ large numbers of women, and the share of women in managerial position is also relatively high (31%). Access to credit is important for women's economic empowerment and participation in innovation. We are happy to note that approximately 26 million women are registered borrowers of Norfund's investments in financial institutions.

219. Furthermore, the Norwegian action plan for Aid-for-Trade identifies gender equality as one of its three thematic areas. This action plan will help to ensure that the gender perspective is included in national trade policy strategies and in our dialogues with multilateral actors. It provides a basis for targeted efforts to promote gender equality in regional trade organizations and for providing support for women entrepreneurs and exporters.

220. We look forward to learning from other Members' experiences and to an interesting discussion under this agenda item.

#### **11.2 Turkey**

221. We have the honour to co-sponsor and to join the discussions under the agenda item "Women and Innovation".

222. Strengthening gender equality in employment and putting a particular focus on small and medium-sized enterprises are among Turkey's priorities in 2015 as the current President of the G-20. Moreover, during the 45<sup>th</sup> annual meeting of the World Economic Forum, Prime Minister Ahmet Davutoğlu stated that he hoped to bring 100 million more women into the global workforce by 2025 through ensuring the implementation of the G20 gender gap commitment.

223. Having said that, allow me to give you some information regarding the activities in Turkey aimed at strengthening women entrepreneurship and innovation.

224. I would like to start with the activities carried out by the Ministry of Family and Social Policies. In February 2012, the Ministry held a workshop in cooperation with the Association of Entrepreneurial Business Women in Ankara. The workshop helped to develop an understanding of the need to foster women entrepreneurship and resulted in the establishment of a Working Group with a mandate to assess the needs of women entrepreneurs. At the end of its mandate, the Working Group concluded that the main difficulty women entrepreneurs face was financial constraints. In order to support women financially, a protocol between the Credit Guarantee Fund and Halkbank was signed. As of January 2014, out of 680 applications, 165 women received credit for their enterprises.

225. Currently, the Ministry of Family and Social Policies has been implementing a five-year project to promote women's access to economic opportunities. The project started in 2012 and will end in 2017. It is being conducted in cooperation with the Swedish International Development and Cooperation Agency and the World Bank. Various workshops, comparative analysis and consultations with different groups have been carried out within the framework of this project. The preliminary results and the reports of the project are being finalized and will be announced shortly.

226. In October 2014, the Ministry of Family and Social Policies organized a conference in cooperation with the Development Agency and the Union of Commerce and Commodity on Women Entrepreneurship and Women in Innovation for Sustainable Development in Ankara.

227. Let me now mention some of the activities conducted by the SME's Development Organization. In 2014 the Organization approved the five-year Entrepreneurship Strategy and the Action Plan. The Strategy and Action Plan aim to spread the culture of entrepreneurship and to establish a friendly eco-system for entrepreneurs in Turkey. Identifying the problems of women entrepreneurs and providing support to them are among the strategic targets of the Action Plan.

228. The SME's Development Organization has been organizing business start-up training courses. Three thousand participants have attended the training programmes since 2010, 45% of them being women.

229. In addition to training programmes, the SME's Development Organization provides financial support for future entrepreneurs. Women entrepreneurs, as well as young entrepreneurs enjoy favourable support ratio rates. 48% of the beneficiaries of the financial support fund are women.

230. Let me now address some of the work carried out by the Ministry of Labour and Social Security. "Women in business" is one of the Ministry's main projects aimed at enhancing the employment of women. The project has a budget of €38million and commenced with the signing of a direct grant contract between the Ministry of Labour and Social Security and the European Construction and Development Bank (EBRD). It aims to back up SMEs, which are owned or managed by women by providing them with favourable credits. The project also targets the creation of a loan mechanism for the benefit of women entrepreneurs.

231. The credit guarantee fund, which is envisaged to be established within the framework of the project, will have a capacity of 300 million €. 150million of the total fund will be allocated by Turkish banks, while the other half will be allocated by the EBRD. The project aims to support women-owned or women-managed enterprises by ensuring they have access to funds and by providing them with technical assistance and know-how.

232. Last but not least, please allow me to mention some of the awards received by Turkish female innovators in some international fairs and exhibitions.

233. In 2008, Ms Arzu YÖNEY was awarded a silver medal for her innovation "The sun is now cooling" at the Nuremberg International Trade Fair. In 2012, Dr Fatma Gülrü ERDOĞAN was awarded a gold medal for her innovation "Screw nail correcting apparatus" at the 40th Geneva International Exhibition of Invention. In 2013, Ms Dürdane DANACI, a needlework teacher, was awarded a gold medal for her innovation "Picture and industrial signboard production method with a sewing machine" at the 6th Korea International Women Inventors Exposition. At the same exhibition, Professor Kamile Nazan TURHAN was awarded a bronze medal for her innovation "Squeezable teabag" and Ms ÖZBİR, a music teacher, won the special award for her innovation "Electronic screen system able to automatically change sheet music" at the same exhibition.

234. In 2014, Ms Aynur AŞKI was awarded a gold medal for her innovation "Ornament, decoration, jewelry and textile materials made of tissues" at the 7th Korea Women Inventors Fair. At the same fair, Dr Şadiye TEMEL was awarded a gold medal for her innovation "Safe and multifunctional intravascular cannula device", while Ms Esra ÖZKAN received a special award for her innovation "Floating vertical wind tribune".

### 11.3 Japan

235. My delegation is delighted to co-sponsor this agenda item with the United States, Norway and other Members. Japan fully recognizes the importance of the role of women in innovation. Japan appreciates this opportunity to share its experience on how to advance women's contributions to society, with a particular focus on innovation and intellectual property. We believe that our experience is useful for other Members.

236. In 2013, the Prime Minister of Japan, Mr Abe, set forth a growth strategy aimed at revitalizing the Japanese economy. This strategy outlined a comprehensive policy package that includes regulatory and institutional reforms, putting a premium on how to further advance contributions by women. The strategy's major goal is to have no less than 30% of leadership positions in all areas of society filled by women by 2020, forging a roadmap for "a society in which women shine", for instance, by providing support to women who "start businesses after raising children".

237. Behind this strategy is the idea that making the best use of women's talents will give Japan a competitive edge in the global market and consequently put Japan on a growth track. In this regard, there are considerable studies demonstrating that having more female board directors or executive officers in a company creates a more positive effect for advancing innovative activities of the company.

238. In achieving this growth strategy, Japan has been making various efforts to promote women's contributions to society. One of them is a project called "Diversity Management Selection 100. Diversity management means conducting corporate management that enables innovations to be created and generates value by utilizing various human resources such as women and seniors to the maximum extent possible. In this project, Japan recognizes enterprises that proactively make efforts to carry out diversity management, and makes these efforts available to the public as best practices.

239. In addition, Japan provides subsidies for entrepreneurships and they are, of course, available to women. To name just a few, the "Support Fund for Female, Young and Senior Entrepreneurs" provides loans to women, seniors and young people who started new businesses not less than five years ago; and the "New Business Support Fund" provides financial support to individuals who plan to start new businesses to revitalize local economies and expand their business overseas.

240. Finally, in connection with the aforementioned "Diversity Management Selection 100" project, I would like to touch upon two cases demonstrating the importance of the role of women in innovation.

241. A Japanese printing company, Toppan Forms, was constantly in the limelight ever since it was selected in 2013 as one of the Diversity Management Selection 100. In 2007, three women from the research and development department were assigned to a new product development team formed to create new packaging for strawberries. This company conventionally printed packaging on paper. However, the new team put their heads together, thought out of the box, and developed a successful product. The new packaging for strawberries was not printed on paper but on transparent film, more interestingly, with traceability information on the strawberries such as the area of production and grower.

242. With regard to this case, this delegation would like to bring two things to your attention. Firstly, the development team examined possible packaging from the consumer's perspective and reflected on how consumers could buy fruits without worry. After conducting repeated consumer surveys and interviews with farmers, they began to understand that transparent packaging and traceability were key factors. Secondly, they acquired intellectual property rights for their product. They registered the name of the strawberry wrapping film as a trademark and filed a patent application for their printing technology.

243. Another example is S.T. Corporation, a Japanese manufacturer of household goods such as air fresheners. Before 2000, despite the fact that the majority of the consumers in its market were women, there were no women involved with product development and design in the

company. In 2001, as a means to increase diversity, the company's President appointed a female designer to design air fresheners. She developed an asymmetric design by making use of curves – a design never seen before in an air freshener. In addition to its impact, the design also created a sense of softness because of the curves, which differentiated the product from others placed in air freshener sections in stores. It was widely welcomed by consumers, even though it was a latecomer. It became a megabrand, thanks to the design.

244. Currently, in the company, female employees are widely involved in various tasks, developing, designing, and marketing of all types of products. The company registered the shape of the air freshener as an industrial design right, which we believe contributes to continuous innovation.

245. In summary, Japan attaches great importance to women's active contribution to innovation and is undertaking a number of initiatives to further advance such contributions to society and innovation. Japan continues to develop new initiatives in the hope that they can contribute to further promoting innovation and economic growth. We would welcome other Members' insightful comments on this issue.

#### **11.4 United States of America**

246. I would like to thank the European Union, Japan, Montenegro, Norway and Turkey for co-sponsoring this agenda item today. I will briefly introduce this item and will then turn to my fellow US delegates Rachel Bae and Karin Ferriter, who you all know well.

247. We co-sponsor this item on the eve of Women's History Month in the United States in March and of International Women's Day on 8 March. While these single months and days and even this TRIPS Council meeting champion women, this endeavour should be for all of us for all 12 months and 365 days of every year. With that, I turn to Rachel and Karin to present the US intervention.

248. The role of women in innovation is a thread that runs through all of the previous discussions we have held under the IP and innovation agenda here in the TRIPS Council, including at the recent Innovation Fair, where women innovators were represented.

249. As we have highlighted in the context of our ongoing discussions – including on national innovation policies, university research, innovation incubators, small and medium-sized enterprises, as well as green technology, sports, and low-cost innovation and social entrepreneurship – government policies are critical to creating an enabling environment that fosters innovation.

250. Numerous WTO delegations have highlighted in successive TRIPS Council meetings that innovation needs the appropriate environment to thrive. This is perhaps especially true for women innovators.

251. Like other SMEs, those owned by women need training and counselling as well as access to credit and capital. In the United States, for example, the US Small Business Administration (SBA) helps to meet this need with over 100 educational centres that assist women in starting and growing their businesses. In addition, the US SBA helps with access to credit and capital, and backed nearly 10,000 loans worth about US\$2 billion to women entrepreneurs in 2009 alone.<sup>1</sup> In discussing Innovation Incubators in our past intervention, we could have also mentioned the *Women's Incubator and Training Center* (WITC) in Saudi Arabia, and *Women Innovate Mobile*, a new accelerator in New York for mobile technology start-ups that have a female founder or co-founder.

252. Finally, in discussing Environmentally Sensitive Technologies, we could have mentioned the importance of women in responding to climate change. Numerous resolutions and other documents from the United Nations Framework Convention on Climate Change and the World Health Organization recognize the disproportionate impacts of this environmental challenge on women.

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<sup>1</sup> <https://www.sba.gov/offices/headquarters/wbo/about-us>.

253. In those international organizations, governments have pledged to empower women and improve their lives. We could have also recognized Dr Wandee Khunchornyakong, or perhaps I should just say the solar queen of South-East Asia. She is the Chief Executive Officer of Thailand's largest solar farm developer, the Solar Power Company Group and 2013 Women Entrepreneur of the Year. With 36 solar farm projects, Dr Wandee is a leader in responding to the global climate imperative.

254. Today, I will provide examples of innovative women and describe their contributions to technologies which we may take for granted today, but which have greatly impacted the way we live. I will then turn to Karin to explain why we need to do more and what we can do, including with respect to promoting gender parity and economic empowerment, including by advancing science education, stimulating entrepreneurialism, recognizing achievement and mentoring female innovators.

#### *Examples of Innovative Women*

255. There are many examples of well-known female artists and inventors.

256. For example<sup>2</sup>, the circular saw was invented by Tabitha Babbitt. Tabitha realized that the straight blade of a saw could be more energy efficient if it was circular and created a prototype of the circular saw that was itself a revolutionary step in the milling industry.

257. Another example of a far-reaching invention by an American woman is the Compiler and COBOL Computer Language. Admiral Grace Murray Hopper joined the US military in 1943 and worked on the first large-scale computer in the United States.

258. In the 1950s, Admiral Hopper invented the compiler, which translates English commands into computer code. Her second compiler was used to program the first computers available commercially.

259. Admiral Hopper also oversaw the development of the Common Business-Oriented Language (COBOL), one of the first computer programming languages. Admiral Hopper received the US National Medal of Technology and Innovation for her pioneering accomplishments in the development of computer programming languages that simplified computer technology and opened the door to a significantly larger universe of users.

260. More recently, Stephanie Kwolek won the US National Medal of Technology and Innovation "for her contributions to the discovery, development and liquid crystal processing of high-performance aramid fibres," now known as Kevlar. In 1964, while working at DuPont, Ms Kwolek was researching polymers with rod-like molecules that all lined up in one direction. Kwolek thought the uniform lines would make the resulting material stronger than polymers where the molecules that were jumbled.

261. Her fibre, once spun, is ounce-for-ounce as strong as steel. Kevlar is used to manufacture skis, radial tires and brake pads, suspension bridge cables, helmets, hiking and camping gear, and bulletproof vests.

262. Other American women who have been awarded the National Medal of Technology and Innovation, include:

- Esther Sans Takeuchi "For her seminal development of the silver vanadium oxide battery that powers the majority of the world's lifesaving implantable cardiac defibrillators, and her innovations in other medical battery technologies that improve the health and quality of life of millions of people."

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<sup>2</sup> Many of these examples were taken from "Top Inventions from Women Top 10 Things that Women Invented," by Molly Edmonds <http://science.howstuffworks.com/innovation/inventions/10-things-that-women-invented.htm#> page 10 (5 February 2015). See also [http://en.wikipedia.org/wiki/Women\\_in\\_science](http://en.wikipedia.org/wiki/Women_in_science).

- Helen M. Free "For her seminal contributions to diagnostic chemistry, primarily through dip-and-read urinalysis tests, that first enabled diabetics to monitor their blood glucose levels on their own."

263. And women have also made invaluable contributions to education, to the very foundation for promoting tomorrow's innovators and creators. Those include:

- Cherry A. Murray: "For contributions to the advancement of devices for telecommunications, the use of light for studying matter, and for leadership in the development of the Science, Technology, Engineering, and Math (STEM) workforce in the United States."
- Mary Shaw: "For pioneering leadership in the development of innovative curricula in Computer Science."

264. Of course, on Thursday we will recognize numerous TRIPS Agreement negotiators, whose hard work, commitment and creativity made a critical and fundamental contribution to today's global innovation ecosystem, including:

- Catherine Field from the United States.
- Jayashree Watal from our very own TRIPS Council Secretariat, who was working for the Government of India at the time.
- And Thu-Lang Tran Wasescha, formerly of the TRIPS Council Secretariat who is now again and was then representing Switzerland.

265. I could go on, there is no shortage of examples.

*We Need to Do More*

266. But the purpose of today's intervention is not simply to celebrate the accomplishments of women innovators. It is to acknowledge that more can be done to promote many more such accomplishments. We cannot solve today's problems if half of the global population is marginalized or otherwise incapable of reaching their innovative potential. This is true of many women and girls.

267. This year, we are celebrating the 40th anniversary of the First World Conference on Women in Mexico City, and the 20<sup>th</sup> anniversary of the Beijing Declaration and Platform for Action. In 1975, the First World Conference on Women was convened to unite the international community, as discrimination against women continued to be a persistent problem in much of the world.

268. While international efforts helped to improve women's conditions, the basic structure of inequality between men and women remained in place. Fortunately, the 1995 Beijing conference sparked a renewed global commitment to the empowerment of women. Today, women are better represented in parliaments and boardrooms around the world. More girls are enrolled in primary and secondary school than ever before.

269. Women are also making significant contributions to economies. The Economist reported that the growth in employment of women in developed economies between 1996 and 2006 made paradigm-changing shifts to the global economy.<sup>3</sup> However, despite our progress, women still own only 1% of the world's wealth, are named as the first inventor in only 11% of the world's patents, have only a 10% share of global income, and occupy only 14% of leadership positions in the public and private sectors.

270. I will now turn to Karin to elaborate on ways to overcome the challenges that remain to increasing the role of women in innovation.

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<sup>3</sup> Economist, April 12, 2006, "Women and the World Economy: A Guide to Womenomics"  
<http://www.economist.com/node/6802551>.

*Introduce The Future She Deserves Initiative*

271. This year, the United States has launched a new initiative focussed on protecting and empowering women and girls, called "*The Future She Deserves*". The four pillars of this initiative are:

- To ensure adolescent girls have access to the full range of appropriate health services.
- To enhance opportunities to prevent and respond to gender-based violence against women and girls.
- To economically empower women and girls, including through improved access to trade and entrepreneurship.
- To develop and promote gender-equal leadership opportunities, including gender parity.

272. Elsewhere in Geneva, you will hear the United States mentioning this initiative, but today, I would like to spend some time discussing the third and fourth pillars on gender parity and economic empowerment.

*Gender Parity*

273. As Rachel indicated, gender parity is a challenge facing every nation's innovation potential, given that women are named as the first inventor in only 11% of the world's patents.

274. I will speak in a few minutes about ways to achieve greater gender parity in innovation and ways to unlock the innovation potential of women – including through education, entrepreneurialism, recognition and mentoring. Before I do, I want to describe our efforts to achieve gender parity among examiners at the U.S. Patent and Trademark Office.

275. I am happy to note that the number of female patent examiners has increased substantially at the PTO. In 1992, there were 396 patent examiners (or 20.4%) of our total of 1,937 examiners. Today, USPTO employs more female examiners than the total number of patent examiners at USPTO in 1992. Today, there are 1,993 female examiners out of a total of 7,469 patent examiners at PTO, or a total of 26.7% of female examiners.

276. The pursuit of gender parity has also achieved important results for female trademark examiners at the PTO. In 1992, the USPTO had 103 female trademark attorneys and 94 male. In other words, 52% of all trademark attorneys at the PTO were women. Today, 313 trademark attorneys are women and 199 are men.

277. It is worth noting at USPTO that the Under-Secretary designate and Director of PTO, as well as the Commissioners for Patents and Trademarks, the General Counsel, the Chief Policy Officer and Director of International Affairs are women.

278. Likewise, the United States Copyright Office has also made significant strides with respect to gender parity. For example, the current Register of Copyrights and Director of the US Copyright Office, Maria A. Pallante, and the immediate past Register of Copyrights, Marybeth Peters, as well as Register Barbara Ringer, are women.

279. In addition, half of the current Register Palante's cabinet are women, including Karyn Temple Clagget, who is the Associate Register of Copyrights and Director of Policy and International Affairs, and Jacquiline Charlesworth, who is the General Counsel and Associate Register of Copyrights.

*Economic Empowerment*

280. Turning to the fourth pillar of the *Future She Deserves* initiative, innovation offers tremendous potential for the economic empowerment for women. But, how can that potential be realized? What else can we do as societies to promote innovation by women and girls?

281. One critical area is education, particularly science, technology, engineering, and mathematics (STEM) education. STEM is critical to having and maintaining a skilled workforce. Unfortunately, perhaps because of these same cultural biases, the limited number of role models, and less family-friendly flexibility in STEM fields, girls and women have often been discouraged from STEM educations and careers.

282. Although women fill close to half of all US jobs in the US economy, they hold less than 25 percent of STEM jobs.<sup>4</sup> Furthermore, although about 40 percent of men with STEM college degrees work in STEM jobs, only 26 percent of women do. Correcting these gaps and supporting female STEM students, researchers and workers is not only an essential part of America's economic strategy; it is also important to women themselves.

283. Women in STEM jobs earn 33% more than those in non-STEM occupations and experience a smaller wage gap relative to men. This means that women in STEM can make a bigger impact within their families and their communities, countries and the world.

284. And STEM careers offer women the opportunity to engage in some of the most exciting realms of discovery and technological innovation. Increasing employment of women in these fields is an important step towards realizing greater economic success and equality for women across the board.

285. Finally, another way of increasing the number of girls and women in science and STEM education is through promoting entrepreneurialism, as well as recognition and mentoring.

286. Regarding entrepreneurialism, as for all inventors, support is critical at the early stages of the life cycle of innovation. Such support can include incubators and accelerators for fledgling innovative start-ups and spin offs. One example is the *Women's Entrepreneurial Centres of Resources, Education, Access, and Training for Economic Empowerment (WECREATE)*, an initiative of the US Department of State.<sup>5</sup> The objective of WECREATE is to establish entrepreneurial community centres in safe and centralized locations for women to gain access to the essential resources required for starting or growing their own businesses. The first WECREATE centre to be launched was in Islamabad, Pakistan and now WECREATE Centres are currently under development in Zambia, Kenya, Cambodia, and Vietnam, with other Centres expected to be open in the very near future. Once several WECREATE centres are up and running, we plan to connect female entrepreneurs in different countries so that they can collaborate, partner, build capacity, and help integrate their products into the global supply chain. The power of WECREATE is in connecting women around the world and integrating them into the global economy. Ultimately, it means accelerating growth and enhancing economic prosperity, health, stability, and the security of entire societies. We are confident that this model will spread and we are thrilled that some of our partners are already doing this work.

287. A third key to unlocking the economic potential of women innovators is recognition. The Nobel Prize exemplifies the opportunities and challenges with respect to the recognition of women inventors. In 1903, only two years after the Nobel Foundation was established, the Nobel Prize was awarded to Marie Curie. Since then, thirteen women have won the prize for literature, eleven for physiology and medicine, three for chemistry, and two for physics. Recognized on the global stage as leaders in their field, the Nobel Prize epitomizes the importance of such acknowledgement. At the same time, gender parity remains elusive, with many more men having been recognized in these fields than women.

288. Turning to the private sector, the business community has also developed commendable initiatives with respect to recognition. One company that deserves special acknowledgement is L'Oreal. Seventy per cent of L'Oréal's scientists and innovators are women. We are not aware of another company that can claim such success.

289. And L'Oréal's success in this respect is also extended out to others through the "For Women in Science programme," which is a partnership with UNESCO, and seeks to recognize and reward women scientists around the world at critical stages of their career. More than 2,000 L'Oréal scientists in over 100 countries and on all continents have been recognized since the

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<sup>4</sup> This data is from the DOC website- ESA Issue Brief 04-11.

<sup>5</sup> <http://www.state.gov/r/pa/prs/ps/2015/02/237487.htm>.

global programme began in 1998. So far, 82 women have been distinguished by the L'Oréal-UNESCO Awards, two of whom subsequently received the Nobel Prize.

290. Finally, mentoring is also critical. According to the US National Institutes of Health<sup>6</sup>, "[w]omen are underrepresented in leadership positions in academia and often report feeling alienated and isolated." And "[a]ccess to quality mentoring remains important throughout a woman's scientific career." Women with mentors publish more frequently and are more likely to receive grant funding. Female assistant professors with mentors were 25% more likely to receive grant funding than their female colleagues without mentors.

291. The academic and business communities have taken up this challenge and are working through a variety of initiatives to provide mentoring opportunities to promote economic empowerment, entrepreneurialism and innovation. For example, *TechWomen* is a San Francisco, California-based organization that empowers, connects, and supports the next generation of female leaders in science, technology, engineering, and mathematics from Africa, Central Asia, and the Middle East.

292. Through mentorship and exchange, TechWomen strengthens participants' professional capacity, increases mutual understanding between key networks of professionals, and expands girls' interest in STEM careers by exposing them to female role models. TechWomen is relatively new, having only been launched in 2011, but 156 participants have completed the programme, from 16 countries, involving 71 San Francisco Bay-area companies and 242 Bay-area women in mentoring.

#### *Conclusion*

293. In conclusion, policies to promote women and innovation begin with providing women with the same access to education as boys and with delivering the message that girls can grow up to be leaders, scientists, and technology professionals. We need to acknowledge and work to eliminate gender bias, and promote gender parity. Economic empowerment is also essential, and STEM education, entrepreneurialism, recognition and mentoring can play an invaluable role in achieving that objective.

294. Finally, to have more women in innovation, we need to ensure that our policies promote the same access to finance, capital, equipment and land as men. None of these policies is out of reach, and by working independently as well as together, we can ensure that Girls and Women have the Future She Deserves.

#### **11.5 European Union**

295. Let me start by thanking, in particular, the United States for proposing this interesting subject and also the co-sponsors, Norway, Turkey, Japan and Montenegro.

#### *Innovating Women*

296. For the European Union (EU), the promotion of gender equality and women's rights are not only a core value but smart economics. When women have access to resources and opportunities and participate on an equal footing in economic life, including innovations, it both benefits women themselves, and also contributes to economic growth.

297. The EU invests not only in research but also in gender-sensitive innovation systems to ensure that the benefits from research are available and accessible to both men and women. This means that men and women participate equally in the innovation systems in different capacities as researchers, extension workers, decision makers and beneficiaries.

298. We know that gender diversity is essential for creativity and innovation, but while more and more women are reaching senior levels in science and engineering, the aspiration of reaching gender equality is not yet fulfilled. The EU She Figures 2012 report on women in science shows that although 46% of all PhD graduates were women, there are far less women

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<sup>6</sup> <http://orwh.od.nih.gov/career/pdf/ORWH-Mentor-Factsheet.pdf>.

at the top levels of science and research. Women hold only 12% of top science positions in Europe.

299. UNESCO also promotes gender equality. It has set elevating gender equality to United Nations' agencies as a top strategic priority. UNESCO programmes aim to have women play an active role as agents of change and social transformation. Their activities aim to design and implement gender responsive science and technology policies, promote gender parity in fora and dialogues and most importantly, promote gender balance in decision-making bodies on science, technology and innovation issues and policies.

300. There are still critical barriers and constraints to the recruitment, retention and advancement of women in the European scientific system. This gender segregation has its roots in the subject choices made by girls in secondary schools and in university, but also female graduates often opt out of science after they have completed their PhD.

301. The EU works on finding effective mechanisms to make science and technology more attractive to young women and to encourage workplace environment and institutional practices that value the participation of girls and young women in the field of science and technology jobs.

#### *EU action*

302. In 2012, the European Commission launched "Science: It's a girl thing!", a campaign aimed at awakening the interest of more girls in science, technology and engineering.

303. The EU-funded project "Towards Women in Science and Technology" ignited discussions on the issues surrounding women in science through a series of coordinated activities in seven European science centres. The project is raising awareness about the role and representation of women in science through programmes and activities in science centres and museums. The project targets young people, their teachers and parents as well as the general public.

304. The EU's Institutional Transformation for Effecting Gender Equality in Research project brings together a consortium of organizations committed to carrying out "sustainable transformational change" to improve the career progression of female scientific researchers.

#### *Promoting Gender Equality in Research and Innovation in Horizon 2020*

305. In Horizon 2020 gender is a cross-cutting issue and is mainstreamed in each of the different parts of the Work Programme, ensuring a more integrated approach to research and innovation.

306. Three objectives underpin the strategy on gender equality in Horizon 2020:

- Fostering gender balance in research teams, in order to close the gaps in the participation of women.
- Ensuring gender balance in decision-making, in order to reach the target of 40% of the under-represented sex in panels and groups and of 50% in advisory groups.
- Integrating the gender dimension in research and innovation content, helps improve the scientific quality and societal relevance of the produced knowledge, technology and/or innovation.

307. In many topics across the work programme, it is explicitly requested that applicants take into account women as well as men's needs and behaviours. In addition, grant beneficiaries commit to promoting equal opportunities and a balanced participation of women and men at all levels in research and innovation teams and in management structures.

308. The Science with and for Society' Work Programme funds specific initiatives in support of the gender equality strategy. Support is given to research organizations to remove barriers that generate discrimination against women in scientific careers and decision-making, by supporting

research organizations to implement gender equality plans and providing support to integrate a gender dimension in research content.

309. Funding is also provided for the development of a common framework to evaluate national initiatives promoting gender equality in research policy. A dedicated campaign aims at encouraging girls to study science and female students to further embrace a career in research. Research will be funded to analyse the impact of gender diversity in research teams on research and innovation performance.

310. These activities are targeted at researchers and innovators, research organizations, primary, secondary and higher education establishments, science museums, citizens and their associations or groupings, media, policymakers at national, regional and local levels, etc.

*EU Prize for Women Innovators 2014: Commission rewards winners*

311. In Europe, the existence of Women in Science awards is important because despite some advances in recent years, women in research and entrepreneurship remain a minority. This is a waste of talent that we cannot afford. The EU Prize for Women Innovators fosters gender equality and also raises the profile of successful women innovators.

312. The situation of women in science varies from one country to another. Giving female scientists more visibility promotes best practice at the European level.

313. Winners of the 2014 EU Prize for Women Innovators included Laura van 't Veer. This competition celebrates women who have combined their scientific excellence with a head for business to set up innovative enterprises.

314. Laura van 't Veer is co-founder and Chief Research Officer at Agendia. Van t' Veer is a world renowned molecular biologist and inventor of MammaPrint, a diagnostic test that foretells the risk of recurrence for breast cancer patients. The use of MammaPrint by patients diagnosed today leads to a reduction of overtreatment by chemotherapy of up to 30%.

315. 2011 EU Prize for Women Innovators Winner was Fabienne Hermitte, who co-founded IPSOGEN in 1999. Her work made her company a pioneer in personalized healthcare diagnostics, which allow more individualized treatments for cancer patients

316. Since 2003, her company develops and commercializes diagnostic products based on fully validated biomarkers that enable oncologists to manage leukaemia and breast cancer. IPSOGEN is a world leader in blood cancer molecular diagnostics. It has developed 15 biomarkers; the most widely used and innovative amongst them are those for breast cancer and leukaemia diagnosis. IPSOGEN sold its products to over 70 countries in Europe, North America, the Middle-East and Asia-Pacific. These advanced diagnostics provide significant benefits to patients by improving standards of care and by optimizing overall treatment costs.

317. 2011 EU Prize for Women Innovators Prize Winner Ilaria Rosso co-founded the company Electro Power Systems in 2005. Her company developed the first self-recharging hydrogen fuel cell system for backup power – a clean, renewable alternative to lead-acid batteries and diesel generators. Her company's innovation helps cut down on fuel logistics, diesel refuelling or battery replacement costs.

318. These green technology products propose an alternative to traditional backups and provide significant cost reductions and a more robust infrastructure. The target markets are telecommunication operators, secure communications network for police, smart grids, etc. Electro Power Systems has more than 600 installations in the EU as well as in Asia, Africa and the Americas and is growing fast. The product offers a reliable backup infrastructure, significant savings and clean, renewable power anywhere in the world.

*Women as frugal innovators*

319. At a previous occasion this Council already discussed the importance of frugal innovation. Women are important frugal innovators.

320. Women play a vital role, for instance, in agriculture, seed production, animal husbandry, natural resource management and energy management. By taking care of basic necessities, such as food, water, fuel, health care and social security, women provide subsistence to their families and communities. Therefore women have large practical know-how and knowledge on how work, for instance, in these areas could be done more efficiently. However, they often face barriers to recognize and advance their innovations.

321. The EU takes action concerning women in frugal innovation. For example, the Partnership for Improved Nutrition in Nepal action aims to improve maternal, infant and child nutrition by working with mothers on developing recipes from locally available foods to prepare improved complementary food. It works with mothers to distribute Biogas and Improved Cook Stoves technologies and demonstrate their use for preparation of improved essential nutrition.

*Innovation for women*

322. The EU supports several projects that lead to innovation for women.

323. One example is the Community-based scheduled screening and treatment of malaria in pregnancy for improved maternal and infant health: a cluster-randomized trial (COSMIC). COSMIC aims to develop a low-cost intervention, focusing on improving the control of malaria, building on the community case management of malaria in pregnancy, and involving community health workers.

324. The work is undertaken in close collaboration with research institutions in malaria endemic countries (Benin, Burkina Faso and Gambia) and with the National Malaria Control Programmes and the World Health Organization. The budget for countries such as Burkina Faso is €694.719,00 and for Benin €566.998,00.

325. The project aims to educate community health workers and consumers to improve the use of rapid diagnostic tests, which will increase the acceptability of test results. It is assumed that the follow-up of pregnant women by the community health workers providing a preventive treatment to these women will improve both the attendance at antenatal clinics, and hence the coverage of the preventive treatment. This will also allow the early detection and treatment of malaria occurring outside the post-treatment prophylactic period. These activities should improve the protection against malaria among pregnant women and their offspring, and will have an immediate impact in reducing the malaria burden in these resource-poor countries, reducing malaria morbidity and mortality in these areas.

326. Another example is CommCare. Funded by the UK Department for International Development's Global Development Innovation Ventures, it is an open source, cloud-based, mobile platform that allows health workers to quickly create and customize health applications and download them onto their phones for free, for example, applications that deliver maternal health education to new mothers, tailored to literacy level and local dialect. The programme's contribution to the global deployment and scale-up of CommCare, allows the technology to be refined for use in ten countries. This has mobilized more than \$1.5 million of follow-on investment. In addition, the Gates Foundation commissioned CommCare for their \$100million effort in Bihar.

327. There are several more programmes, which I will mention only briefly:

- STOPPAM Strategies TO Prevent Pregnancy-Associated Malaria in Benin (€539.866,00) and Tanzania (€692.212,00);
- Quality of maternal and prenatal care: bridging the know-how gap in Burkina Faso (€502.636,00) and Tanzania (€474.260,00);
- OPTIMUNISE - Optimizing the impact and cost-effectiveness of child health intervention programmes of vaccines and micronutrients in low-income countries in Burkina Faso (€778.400,00) and Guinea-Bissau (€784.390,00).

## 11.6 Montenegro

328. Montenegro joins other Members in co-sponsoring today's agenda item on women and innovation. We would like to congratulate the delegations of the United States, Norway, the European Union, Turkey and Japan for their comprehensive and stimulating presentations.

329. My delegation's decision to co-sponsor this initiative is part of Montenegro's overall efforts within the UN system in Geneva to continuously support and highlight the importance of economic empowerment for women, particularly in 2015 as we celebrate many important anniversaries related to women's issues.

330. It is also in line with Montenegro's domestic efforts to implement the policies that create opportunities for innovative women to re-train, re-skill and take advantage of current and emerging opportunities. My Government has recently introduced a series of projects entitled "Women and entrepreneurship" aimed to empower women to reach their innovative potentials, to stimulate wider inclusiveness, access to finance, international trade and equity. It is worth mentioning that the Ministry of Science of Montenegro has launched cooperation with CERN to promote young scientist and teachers in scientific education particularly female teachers. In addition, Montenegro is part of several regional initiatives including Euro-Mediterranean project for progress, for higher education and research for women and network opportunities as a platform for information exchange and shared success.

331. We appreciate that today's presentation and number of interventions have recognized the key role of education for women and girls. Also, the importance of effective national policy goals, such as the transfer of knowledge between the science and business community and effective support for small business as important sources of innovation to further advance women entrepreneurs.

332. To achieve these goals and to do more, collaboration and partnership is essential. Montenegro stands ready to join efforts within the WTO and the TRIPS Council in sharing good practice and working together to promote and advance opportunities for women.

## 11.7 Mexico

333. I would like to thank the sponsors for having brought this matter to our attention.

334. Mexico has developed a number of programmes to promote women's participation in our national economy through our national development plan for 2013-2018. One of our cross-cutting programmes is gender mainstreaming and we hope in this way to change our approach to problems and their solution. The idea is to recognize differences between men and women, identify inequalities and find ways of doing away with them. This is a change of approach that must start in the federal public sector. This can be done through doing away with gender stereotyping, eliminating inequalities between men and women and ensuring that there are gender-awareness programmes.

335. Since 2007, the Mexican Intellectual Property Office established an institute for the culture of equality through our Institute for Women's Affairs. The main objective of this programme is to ensure that we have a benchmark for all of the federal civil offices and services to encourage action plans with a view to developing gender mainstreaming programmes with a focus on genuine gender equality.

336. As a result of studies carried out by our survey of organizational atmosphere and culture, we have seen what has to be done, in order to ensure that we change our approach. First of all, gender parity should be strengthened throughout the cultural organization of the Mexican Intellectual Property Office, in order to build capacity. Once the national development plan imposed these programmes on our civil service with a view to developing gender mainstreaming, there was a decision to ensure that we deal with gender and equality and encourage the participation of women in all national activities. The Mexican Intellectual Property Institute is seeking to encourage the participation of women and young people in our national economy by promoting innovation and creating advisory services , as well as seeking to enable

women to carry out their projects and create enterprises, so that they are part of the active sector of the country and economy. I will give you just some examples.

337. Our national Entrepreneurs Institute, for instance, has a programme called Women Moving Mexico. This is a network of entrepreneurship, which ensures that there are contact points for the networks throughout Mexico allowing for capacity building in the area of entrepreneurship, as well as providing technical assistance guidance and programmes for women entrepreneurs throughout the country. And we also have a portal to provide some assistance to women, in order that they can see where there have been successful entrepreneurs who have enjoyed support from the Women Moving Mexico programme.

338. Another programme, Promati, supports the productivity of women entrepreneurs. The purpose of this programme is to encourage women's productivity for women entrepreneurs eighteen or over, who are working in the main agricultural areas of the country. We also have the trust fund of the micro-funding programme for rural women that specializes in micro-financing for low-income rural women who lack access to conventional banking. The programme has a series of strategic approaches, in order to ensure that it can have a positive effect on families' incomes as well as their entrepreneurship. The National Social Economy Institute develops public sector instruments for the social sector of the economy, in order to strengthen and to consolidate this sector as one of the pillars of national development through participation, training, research, dissemination and support involving a productive project in this social sector. One of the main objectives of the National Social Economy Institute is to include disadvantaged groups in the population, with particular attention being paid to women's projects.

339. Finally, another example is Pro-Mexico. This body has different programmes that encourage invention as well as innovation and investment such as programmes for technological innovation, as well as for innovation stimulation. Pro Mexico works with the National Council on Science and Technology. The purpose of this programme is to provide national incentives to national companies, to encourage them to invest in activities and projects relating to research, technological development and innovation. This is done through complementary stimulation programmes to ensure that the support provides for maximum possible support to competitiveness in the national economy.

340. In short, Mexico has a number of programmes that are directly focussed on women and have an indirect effect on intellectual property and innovation.

### 11.8 Chile

341. We should like to thank the delegations, in particular the proponents, for sharing their experiences, to which we have given due consideration. Chile attaches the utmost importance to gender issues, in particular the role of women in modern society, and has taken significant steps towards enhancing and strengthening the full integration of women in all aspects of society, including, needless to say, innovation.

342. Chile has recently passed the law establishing the Ministry of Women, the main objectives of which are, *inter alia*, to coordinate State and private bodies with a view to developing gender programmes, studies and research, to foster laws, regulations and administrative measures that guarantee women the full exercise of their rights and capacities, and to promote the changes required to put a stop to the stereotypes, prejudices and practices that discriminate against women.

343. We are convinced that this new institutional approach will enable us to continue to protect and promote the role of women and, in the context of this forum, to engage in experience sharing, generate new ideas and establish future guidelines on good practice."

### 11.9 Switzerland

344. My delegation would also like to thank the United States and the co-sponsors for suggesting this agenda item. We have heard a lot of insightful presentations so far and we

should like to thank them for all for the information that has been presented on national programmes and initiatives to promote women in innovation and intellectual property.

345. Human capital is universally acknowledged as being central to innovation and IP systems play a crucial part in tapping into that innovation. However, unseen obstacles can prejudice against certain sections of society. Women, in particular can be unintentionally excluded owing to historical or social factors.

346. It is the view of my delegation that this item fits into the broader goal of the WTO, to raise living standards and ensure that everyone has access to the tools to contribute to economic development, and be adequately recognized and rewarded for this contribution.

347. There is room within the TRIPS Council to exchange national experiences and we have already learnt from the contributions of other Members on this topic.

348. The participation of women in innovative activities varies across the world. Clearly, this is not a North/South issue. On the contrary, it is noteworthy that developing countries often do better than the so-called developed countries. The Global Entrepreneurship Monitor has for example found that in Sub-Saharan Africa, rates of female early-stage entrepreneurship are equal, if not higher, than in Switzerland.

349. A problem we face in my country is to translate the early female participation rate into equity at later stages. For example, currently, only 18% of sole founders of start-up companies in Switzerland are women.

*How to address the deficit?*

350. In order to address and possibly remedy this gap, Switzerland has been actively engaged in finding ways to encourage women to utilize the instruments available, although more still needs to be done.

*Women in innovation*

351. There has been a concerted effort to encourage women to pursue careers in areas where they are statistically under-represented, in particular academia and the science and engineering sectors. These measures have ranged from encouraging girls from an early age to take part in technical subjects, to a programme to increase the percentage of female professors at Swiss universities, especially the two federal technical universities.

*Women in intellectual property*

352. The intended effect of these efforts is to encourage women into technical professions elsewhere, not only in technical industries, but also in the administrative and regulatory institutions that aid the commercialization of ideas, including in the Patent Division of the Swiss Intellectual Property Office.

353. Intellectual property rights are an important mechanism to assist innovators in bringing their ideas to fruition. Currently, women make up only a fraction of patent holders worldwide and professions linked to intellectual property are still dominated by men. This gender imbalance can stifle women innovators who feel alienated from the system that should be there to protect them and their ideas.

354. However, there is also progress. Women's engagement in intellectual property is growing. Groups like "Women in IP Switzerland" provide a platform for professional women within intellectual property to exchange experiences and offer each other support. Such networks are indicative of positive steps being taken to give women a voice in this vital sector.

355. In conclusion I would like to reiterate my delegations support for this agenda item. It is important that in the TRIPS Council we draw attention to such societal issues and discuss them in striving to ensure that intellectual property rights can be for the benefit of the whole of society. This is an area where we can all learn from each other and share experiences. My

delegation is keen to hear how other countries have looked at and tackled these issues and we are eager to learn of the successes or failures of the schemes that they have implemented.

#### **11.10 Canada**

356. Canada recognizes the fundamental importance of innovation for economic development and growth. We note that the 2011 report of the OECD on gender parity shows that gender equality can improve innovation and competition in business.

357. In the last 20 years we have made significant headway with respect to women in science and technology. Women, between the ages of 25 and 34, hold 59% of science and technology diplomas in that age group and in engineering their proportion has reached 23%. That does not mean that we can in any way rest on our laurels. We recognize the importance of a growing role of women in science, technology, engineering and mathematics. We are therefore making every effort to encourage women's participation in these areas.

358. Mentoring and sponsors can make a critical difference to women who hope to have careers in these areas. I would note the mentoring programmes such as that of the Canadian Society for Science and Technology. It has an online mentoring programme, which is aimed at women, and is funded by the Women Affairs Ministry. The Programme for Chairs for Women in Science and Engineering was launched in 1996 by the Council for Research into Natural Sciences in Engineering in Canada to encourage the participation of women in these areas. The Research Council into Natural Sciences and Engineering facilitates a programme, Promoscience, which aims at working with young Canadians, including young women and girls, in order to promote their participation in science, engineering, technology and mathematics.

359. And finally, the Government of Canada has an initiative "Women and Technology". The role of this initiative is to ensure that women play a more significant role in the digital economy of Canada, where they are under-represented. In this context the Women's Affairs Ministry is funding six projects over 36 months, in cooperation with the Council for Technology, Information and Communication.

#### **11.11 Chinese Taipei**

360. My delegation would first like to join others in thanking the United States and the other five Members for adding this item to the agenda and for their introduction to this subject. We are very pleased to have the opportunity of sharing our own experiences with fellow Members and of being able to learn from the experience of other Members at the same time.

361. The innovative development policy pursued by my government for a number of years now has been a real catalyst for some of the most significant changes in women's roles, options and opportunities that have taken place in our society. Economic growth has fuelled higher living standards and life expectancy. Government investment in factories across both urban and rural areas and home-based factories have facilitated women's economic participation in manufacturing, which has led, in turn, to the social and ultimately, the economic and political empowerment of women that we see today. Since 2011, my government has been committed to promoting a series of individual action plans in an initiative under the theme of economic innovation for women, and in line with the APEC and San Francisco Declaration it has introduced a policy partnership on women and the economy (PPWE). At the same time, our gender equality department, has been actively gathering together relevant government agencies to develop and enhance women's economic empowerment. I would like to describe to you just briefly some of the policy initiatives implemented and their results. I will do this under the four headings identified as being the key issues highlighted by the San Francisco Declaration.

362. Firstly, access to capital. The Phoenix Micro Start-Up Programme, young entrepreneur loans and government credit guarantees for SMEs, are some of the schemes introduced specifically to help female entrepreneurs obtain business start-up loans more easily. In 2013, for example, more than 97,000 of the successful applications for government credit guarantees for SMEs were made by women, or 25% of all cases. A total of US\$7.86 billion in guarantees and a US\$9.9 billion in overall financing were provided to women.

363. The Civilian Bank Pilot Programme was also established to encourage the participation of rural women in cooperatives and credit unions. In 2013, a total of 54 applications were made for a programme, 89% of them by women. In the process, we are able to help female entrepreneurs meet with investors, so as to capture sufficient resources for their business.

364. Secondly, access to markets: in 2007, the Taiwan Women's Business Network was started and features enterprises established by women and their products. In 2012, a women's marketplace was added to GoFun, a website selling local products. The market place provides a sales channel for female micro-business entrepreneurs, as well as indigenous and rural women. Since 2008, the Council of Agriculture has been helping rural women to develop handicrafts products based on the rural culture and traditional handicraft techniques with agriculture by-products. The government has also been holding training courses in what we call the Tianmama Programme aimed at boosting the employment of rural women from 2011 to 2013. There were 429 such courses attracting 4,000 participants, 90% of whom were women.

365. Thirdly, capability and skills building: entrepreneurship training courses have been established with the specific purpose of equipping business women with the skills needed for each of the stages of a start-up operation. From 2011 to 2013, the number of incubation centres increased from 73 to 86, the number of female entrepreneurs trained increased by 21%. Furthermore, e-learning courses on access to and entrepreneurship for women and training courses for outstanding professional executives were open at the SME Online university. These were provided to help business women develop their competencies in critical entrepreneurships and business operation. From 2012 to 2013, 26,000 women registered as new students at the online university accounting for 52% of the total. Female entrepreneurships, networks and platforms for information exchange have been established to create interpersonal opportunities for business women to help them set up companies successfully. In 2013, the Phoenix Micro-Start-up Programme helped 3,820 women to establish businesses and provided 10,000 job opportunities for women. Bridging the digital divide for women programmes was implemented from 2007 to 2013, providing 24-hour basic computer skills training for women in rural areas. A total of 2,300 courses were held with 21,000 women taking part, 59% of all participants.

366. Fourthly, women's leadership in 2012: the Female Innovative Entrepreneurship Project was established to select and develop outstanding female entrepreneurs as raw models of success. In 2013, the number of competitors in this programme more than doubled.

367. In summary, over recent years women have tended to be regarded as a major driving force for global economic growth. New technologies are influencing all aspects of our society and they play a pivotal role in promoting impact assessment susceptibility worldwide. Increasing attention has focused on the rules and potential and emerging value-added services of information and communication technology as the pathway to bridge the gender economic development divide. As my delegation attaches great importance to this issue as we assume all WTO Members do. We very much look forward to hearing about how the governments of other Members are promoting women's economic empowerment through innovation, and learning about their various policies and programmes.

#### **11.12 Australia**

368. Australia would like to thank the sponsors of this agenda item for bringing it to the TRIPS Council and for the informative contributions that have been made by Members here today.

369. Australia recognizes the crucial "human factor" in innovation – the education and training of talented individuals to deliver innovative outcomes. Australia was delighted to host the 2014 launch of the Global Innovation Index, which paid special attention to the "human factor" in innovation.

370. We well understand that empowering women to be innovation leaders and contributors is not only the right thing to do, it is the smart thing to do. Evidence shows us that improving the labour force participation of women increases GDP significantly. Australia's Women in Global Business Programme seeks to increase female participation in international trade and investment, delivering increased economic benefit and job creation through greater diversity.

371. Australia also recognizes the individual achievements of innovative women – like molecular biologist, Professor Elizabeth Blackburn, our first female Nobel Laureate

372. We also recognise the importance of systemic factors to improving the participation, retention at senior levels, and success of women in science and technology-related fields in Australia

373. Women in innovation networks and fellowships, through Australian research institutions, help to attract and retain many talented women in these areas. Under Australia's aid programme, we are also focussing on partnerships to promote women's economic empowerment; for example, Australia is one of a number of countries supporting the International Trade Centre's Women's Economic Empowerment Programme. This programme assists women to participate in trade.

374. Projects in the Pacific region are providing businesswomen with opportunities to take their innovative and unique products to market.

375. Similarly, in other aid projects, Australia is providing financial support to encourage women to obtain small grants and loans to set up small businesses, be involved in local markets, and become part of local supply chains.

376. Once again, we welcome this very informative exchange and thank Members for their contributions.

#### 11.13 India

377. My delegation would like to thank the delegations of the United States, Norway, European Union, Japan, Turkey and Montenegro for tabling this agenda item on "Intellectual Property and Innovation: Women and Innovation".

378. Let me just recall our intervention when the agenda item on "Intellectual Property and Innovation" was first introduced in the TRIPS Council. Our statement is still relevant when we are discussing women and innovation under the broad theme of "Intellectual Property 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 Intellectual Property Rights (IPRs) "should contribute to the promotion of technological innovation and to the transfer 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 intellectual property system is not solely to protect the commercial interests of the intellectual property holder, but it is one of the many tools available to the society to achieve technological development, social and economic welfare and innovation.

379. According to Petra Moser, "Patents and Innovation: Evidence from Economic History", *Journal of Economic Perspectives*—Volume 27, No. 1—Winter 2013—pp. 23–44:

"Overall, the weight of the existing historical evidence suggests that patent policies, which grant strong intellectual property rights to early generations of inventors, may discourage innovation. On the contrary, policies that encourage the diffusion of ideas and modify patent laws to facilitate entry and encourage competition may be an effective mechanism to encourage innovation."

380. Innovation should not be viewed within the narrow prism of intellectual property monopolies but framed within a holistic, knowledge ecosystem that includes open innovation, open knowledge approaches and the delinkage of R&D costs from product prices. According to the Trilateral Study by the WTO, WHO and WIPO on "Promoting Access to Medical Technologies and Innovation: Intersections between Public Health, Intellectual Property and Trade (2013)" (Page 126):

"Patent law is not a stand-alone innovation system. It is only one element of the innovation process, and one which can be deployed differently in diverse innovation scenarios. Patent law has little bearing on many other factors that lead to the successful development of technologies, e.g. the nature and extent of demand, commercial advantages gained by marketing and ancillary services and support, commercial and technical viability of production processes, and compliance with regulatory requirements, including through effective management of clinical trials data".

381. India declared the decade of 2011-2020 as the Decade of Innovation. The spirit of innovation has to permeate all sectors of the economy from universities, business and government to people at all levels. The future prosperity of India in the new knowledge economy will increasingly depend on its ability to generate new ideas, processes and solutions, and the process of innovation would convert knowledge into social good and economic wealth.

382. The contribution of women to the society and the economy is well known. If given proper opportunity and encouragement, women have the potential to excel in every field. The Government of India's Department of Science and Technology is operating several schemes with the aim to bring gender parity in science. Knowledge Involvement in Research Advancement through Nurturing (KIRAN) is designed to provide an integrated enabling and supportive framework for gender mainstreaming of women in science, technology and innovation. The scheme pertains to gender parity and aims to invest in a talented women scientist and technologist base in a planned manner, with a mind-set of leveraging their potentials and knowledge strength into the developmental processes of the country.

383. KIRAN has many women-centric programmes, including the Woman Scientists Scheme (especially for women taking a "break in their careers" arising out of motherhood and family responsibilities); the Consolidation of University Research for Innovation and Excellence (CURIE) scheme to improve the R&D infrastructure of women universities; and the Technology Development and Utilization programme for Women (TDUPW), which is relevant to technology development and utilization by women. More details about the women centric programmes to bring gender parity in Science, technology and innovation are available at the official website of the the Department of Science and Technology ([www.dst.gov.in](http://www.dst.gov.in)).

384. I would like to conclude by stating that there is no direct correlation between 'Intellectual Property and Innovation' and the countries have to define their path, depending on their level of socio-economic development.

#### **11.14 World Bank**

385. Thank you for this opportunity to make a few brief comments on what is a very important topic for the World Bank. I would like just to focus on two specific points of priority for the World Bank's work.

386. The World Bank Group works to achieve two goals: eliminating extreme poverty globally by 2030, and boosting economic prospects for the poorest 40%, so that there is greater sharing of the gains of growth. These goals can only be achieved with the full economic participation of both men and women. At the same time, we know that innovation is an important engine of development. Robust innovation performance helps build dynamic and resilient economies. Innovation allows firms to specialize, meet international best-practice standards, and upgrade quality. It also allows them to formalize, grow and provide good quality jobs. At the same time approaches combining innovative business models and technology are allowing key services like health, energy and education and finance to reach the poorest in ways that were previously thought too difficult.

387. The Bank is working to address challenges at the nexus of women's economic participation and innovation in a number of ways. I would like to address four aspects of the issue of women and innovation:

- The relationship between entrepreneurship and innovation in women-owned businesses;

- Inclusive innovation models that bring women into the design and delivery of products for low-income households;
- The under-representation of women in innovation-related education; and
- Barriers to women's participation in the economy and trade in particular.

### *Entrepreneurship*

388. Entrepreneurship and innovation go hand in hand. There is growing evidence that within every economy a subset of high growth young companies make a disproportionately large contribution to productivity and job creation. They bring new ideas and approaches to existing sectors driving competition, or create entirely new sectors bringing new products and choice to consumers.

389. Female entrepreneurs must be a critical part of this. However, women tend to face barriers to their entrepreneurial activity beyond those faced by men. These include limited access to finance, less access to education, or laws explicitly discriminating against women. Because of these constraints, women entrepreneurs are more likely to work in the informal economy and in low productivity sectors with limited potential for growth. This deprives them and their families of opportunity, and the economy of the full potential of entrepreneurship.

390. Addressing these constraints can help foster women's entrepreneurship and drive innovation in the economy. The challenges should not be underestimated, but two examples of World Bank projects indicate the kind of approach that can be taken.

391. In the Caribbean, the Bank supported the development of the Caribbean Women Innovators Network. This connects women entrepreneurs and helps them scale their businesses through mentoring, training, and peer-to-peer learning. Experience shows that entrepreneurs learn best from peers and role models they can identify with. This is why women in the region lead the network, which has engaged hundreds of women online and provided hands-on training to women entrepreneurs.

392. In Côte d'Ivoire, the Bank is helping the Government implement reforms to its family law to increase female participation in business. For example, amendments to the Family Code allowed both spouses a role in choosing the family domicile and pursuing their career of choice, taking into account the interests of the family. The code was also reformed to eliminate provisions providing childcare benefits only to men as head of household. In addition, married women no longer need to provide their marriage certificates to obtain passports. These changes have helped to facilitate a greater role of women in business in Côte d'Ivoire.

### *Inclusive innovation*

393. The second dimension of this issue concerns what is commonly known as "inclusive innovation". This refers to the growing attention globally on how to find and scale innovative business models that reach the poorest – what is often called the "Base of the Pyramid" – in order to supply basic services in areas such as health, education, energy, and water. Many of the ultimate users of these services are women – and women are increasingly involved in the design and delivery of these innovative approaches.

394. Let me give two examples of these inclusive innovation approaches that show the relevance of this agenda to women. The first of these is the "Chotu Kool", a low cost, low-energy refrigerator developed by Indian firms and designed in conjunction with low-income women. This innovative system has helped make food safer, by lowering the cost of refrigeration, while also bringing other benefits like refrigerating medicines and vaccines. With women in Indian rural households typically responsible for food storage and preparation, their role in designing and fostering adoption of this innovative product was essential.

395. Another is an example from Mexico. CEMEX, a Mexican building materials company, used enterprising women in target communities to develop a distribution, marketing, and financing

network for housing. This helps women earn additional income while also access improved housing.

396. The Bank and other partners are leading efforts to promote the frameworks needed, so that these sorts of inclusive innovation models can be replicated elsewhere. Although the private sector drives the development and adoption of inclusive innovation models, governments have an essential role to play by creating an enabling environment for inclusive innovation, while also using these providers and their models for services they previously tried to deliver in-house.

*Participation of women in STEM education*

397. The third dimension of this issue that I would like to address is the under-representation of women in science, technology, engineering and mathematics education. These areas are critical to participation in the innovation economy. However, women are under-represented in these fields globally.

398. In Africa, for example, whereas women now constitute 38% of higher education enrolments in the continent, they make up less than 20% of science and technology students. The disparities are even greater at the level of science and technology postgraduate programmes.

399. Of course, such disparities are not limited to one region alone. Women are also under-represented in the education system and innovative industries in the largest developed economies - witness the ongoing debate about the under-representation of women in Silicon Valley. This problem must be tackled to allow women the full potential to participate in innovation.

*Participation of women in trade*

400. Finally, there is growing awareness of the constraints to women's participation in trade. In many low-income countries, the majority of small traders crossing borders are women. Trade itself can be a key driver of innovation – and innovative products and services may give a firm a competitive edge, allowing it to break into export markets and generate additional income. However, a range of limitations can hinder the participation of women in trade.

401. For example, in Africa, up to 70% of small traders crossing borders on a daily basis are women. These traders are subject to specific risks and vulnerabilities because of their gender. A lack of transparency on trade-related rules and regulations – and an absence of mechanisms for reporting abuse – makes these small women traders particularly vulnerable to abuse. And the ability of women to grow their businesses from small trader status into more formal larger businesses is then often inhibited by the constraints I mentioned earlier in relation to entrepreneurship.

402. The links between trade and women must also be kept in mind as countries seek to foster greater innovation.

*World Bank's work*

403. I would like to close with a few points on the World Bank's wider work at the global level on gender. The first is to remind Members that the World Development Report 2012 entitled "Gender Equality and Development," documented that gender equality is a longer-term driver of competitiveness and equity that is even more important in an increasingly globalized world.

404. Another publication – the Women, Business and the Law Report, an off-shoot of the World Bank Group's Doing Business report, focuses on setting out the legal differentiations on the basis of gender in 143 economies around the world, and covers six thematic areas. The 2014 is the latest edition and is the third in this series of reports and has significantly expanded in depth of data covered.

405. We are currently working on a new gender strategy, to be launched later this year in September. This new strategy will focus on how the Bank can address deep-seated issues of gender inequality through its operations and results with a focus on the transformational solutions areas. The strategy will have a renewed focus on the world of work and jobs, asset ownership, as well as how voice and agency can have transformational effects globally.

## **AGENDA ITEM 12: CONCERNS WITH RESPECT TO PROPOSALS FOR PLAIN PACKAGING OF TOBACCO PRODUCTS IN THE UNITED KINGDOM AND IRELAND**

### **12.1 Dominican Republic**

406. The Government of the Dominican Republic understands that the Governments of the United Kingdom ("UK") and Ireland continue to consider plain packaging of tobacco products. On 21 January 2015, the UK Public Health Minister, Ms Jane Ellison, announced the Government's support for plain packaging and its intention to present the plain packaging regulations for Parliamentary vote before the election in May of this year.<sup>7</sup> The Irish Minister for Children and Youth, Mr. James Reilly, welcomed the news "that [its] nearest neighbour is likely to join [Ireland] in the move to bring in plain packaging" and explained that plain packaging is under further consideration in the Irish parliament.<sup>8</sup>

407. As my Government has expressed on various occasions in the past, the Dominican Republic is seriously concerned about proposals to introduce plain packaging of tobacco products.<sup>9</sup> Similar measures have been in place in Australia since 1 December 2012. My Government, together with those of Cuba, Honduras, Indonesia, and Ukraine, is currently challenging Australia's plain packaging measures before the WTO dispute settlement system on the grounds that they are inconsistent with WTO Members' obligations under the TRIPS Agreement and the TBT Agreement.

408. Plain packaging has become a highly controversial issue among the WTO membership. Some WTO Members – like the UK and Ireland – are actively considering plain packaging, while others – including the Dominican Republic – are very concerned about the WTO compatibility of plain packaging, as well as about the risk that plain packaging could be extended to other products deemed harmful to health.

409. In light of this controversy, the Dominican Republic is pleased that the WTO has an independent dispute settlement system in place, with WTO panels mandated and equipped to make an objective assessment of the WTO compatibility of challenged measures. The panel in our complaint against Australia will be able to reach an independent and objective assessment based on an interpretation of the relevant WTO provisions and in light of the evidence presented by all parties and third parties, including evidence related to the operation of the plain packaging measures in the years it has been applied.

410. One point in the debate over plain packaging seems uncontroversial. By stripping all design elements from tobacco packaging and standardizing other packaging features, plain packaging measures undermine the basic features of trademarks and geographical indications ("GIs") as protected under the TRIPS Agreement. In many respects, plain packaging is the antithesis of trademark and GI protection. First, while trademark and GI protection is built on the premise that differentiation between competing products is essential for an orderly and fair competitive environment, and to promote competitive opportunities in international trade, plain

<sup>7</sup> See Department of Health, "Government backs standardised packaging of tobacco" (21 January 2015). Available at: <https://www.gov.uk/government/news/government-backs-standardised-packaging-of-tobacco>

<sup>8</sup> See "Minister Reilly welcomes news that the British Government will bring forward a tobacco plain packaging plan" (22 January 2015). Available at: <http://www.dcy.gov.ie/viewdoc.asp?DocID=3390>

<sup>9</sup> See for instance Communication of Dominican Republic to the TBT Committee of 5-6 November 2014 (G/TBT/W/397); Communication of Dominican Republic to the TBT Committee of 30-31 October 2013 (G/TBT/W/374); Communication of Dominican Republic to the TBT Committee of 17, 19, 20 June 2013 (G/TBT/W/366); Communication of Dominican Republic to the TBT Committee of 27-28 November 2012 (G/TBT/W/355); Minutes of the Meeting of the TBT Committee of 6-7 March 2013 (G/TBT/M/59); Minutes of the Meeting of the TRIPS Council of 10-11 October 2013 (IP/C/M/74/Add.1); Minutes of the Meeting of the TRIPS Council of 11-12 June 2013 (IP/C/M/73/Add.1); Minutes of the Meeting of the TRIPS Council of 5-6 March 2013 (IP/C/M/72); Minutes of the Meeting of the DSB of 17 December 2012 (WT/DSB/M/327).

packaging aims at eradicating differentiation between competing products as far as possible. Second, trademarks and GIs can only perform their function of differentiating between competing products if they are actively used in the market place. Without use, these trademarks and GIs are meaningless. While plain packaging measures ostensibly "allow" tobacco trademarks and GIs to remain on the register, this is a hollow right because the trademarks and GIs cannot be used and cannot, therefore, fulfill their basic function. Third, every aspect of trademark and GI protection under the TRIPS Agreement – ranging from acquisition, to enforcement, regulation and (possibly) revocation of any rights – is based on an individual assessment of the features of each trademark and GI. Again, plain packaging deviates fundamentally from this core principle as it simply assumes that all design features of all tobacco trademarks and GIs are problematic and should therefore be banned. The draft plain packaging regulations in the UK suggest such an individual assessment approach for some tobacco products, like cigars, that would not be subject to plain packaging. The Dominican Republic fails to understand why a similar approach is not being applied to all tobacco products as an alternative to plain packaging.

411. In fact, plain packaging undermines the very essence of trademark and IP protection, while generating no countervailing benefit in terms of contributing to legitimate health objectives. To be absolutely clear, the importance of these health objectives is not disputed and is, indeed, pursued in my country by my Government. However, the real-world empirical data emerging from Australia confirm that – contrary to the optimistic predictions by plain packaging proponents – plain packaging has failed to reduce smoking rates among the population in general and among youth in particular.

412. Instead, as confirmed by the same real-world empirical data, plain packaging has undermined the vital differentiating role played by trademarks and GIs in promoting competitive opportunities in the marketplace. Market diversity is replaced by commoditization and price becomes the only meaningful factor that can be used to compete. We are seeing the detrimental impact of this in Australia, as consumers have increasingly shifted to cheaper low-end licit and illicit tobacco products. This is particularly harmful to the competitive opportunities of our premium tobacco producers, which can no longer signal the unique quality and reputation they have carefully built over decades of investment.

413. Finally, WTO Members are mandated to regulate in the least restrictive manner possible, and to refrain from adopting measures that are unduly restrictive regarding intellectual property rights and trade. Plain packaging is unduly restrictive as there are several alternative means that would effectively reduce smoking prevalence, without radical interfering with intellectual property rights. My Government urges the UK and Ireland to actively consider alternative measures that provide certain health benefits – unlike plain packaging – without violating WTO rules. In particular, we suggest raising the minimum legal purchase age to 21 and increasing taxes on tobacco products. Further, rather than adopting a blanket ban on all design features of all trademarks on all cigarette products, the UK and Ireland should also consider a pre-vetting mechanism that would require the individual features of retail packaging to be approved before they are placed on the market. Such a measure would achieve the same objectives as plain packaging – eliminating pack features, if any, that induce young people to smoke – but in a manner that respects the individual character of trademark and GI protection.

414. For all these reasons, my Government respectfully urges the UK and Ireland– at the very least –to delay consideration of proposals for plain packaging until the WTO has ruled on our complaint against Australia.

## 12.2 European Union

415. The EU would like to make the following statement regarding draft legislation on standardised packaging for tobacco products proposed by the Republic of Ireland and the United Kingdom: Tobacco products are not ordinary commodities and in view of the harmful effects they have on human health, health protection should be given high importance, in particular, to reduce smoking prevalence among young people. The EU considers, in line with recommendations of the World Health Organization that a high level of health protection should be taken as a base for legislative proposals in this area.

416. Article 8.1 of TRIPS, states that: Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health (...), provided that such measures are consistent with the provisions of this Agreement. Article XX(b) of the GATT 1994, although not directly applicable to TRIPS obligations, similarly emphasizes the importance of public health by justifying measures "necessary to protect human ... health". The Doha Declaration on the TRIPS Agreement and Public Health stresses that "the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health". Finally, Article 20 TRIPS states that: "The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements..."

417. In order to protect public health, WTO Members may, for example, introduce provisions providing for the standardisation of the packaging of tobacco products, if those provisions are justified on grounds of public health, are proportionate and do not lead to arbitrary discrimination or disguised restrictions of trade, including with regard to the trade-related aspects of intellectual property rights. Any such measures would be compatible with WTO obligations.

*Republic of Ireland*

418. On 17 June 2014, the Irish Public Health (Standardised Packaging of Tobacco) Bill 2014 was notified to the TBT Committee under the reference G/TBT/N/IRL/1.

419. The Irish Government states that the Bill aims at further reducing the smoking prevalence in Ireland by reducing the attractiveness of tobacco products especially among young people and that the measures are a response to the packaging design strategies developed by tobacco companies in recent years which are aimed at young people, including young women.

420. The notified draft forms the latest strand of a comprehensive range of tobacco control legislation already in place in Ireland aimed at decreasing tobacco consumption. Amongst other measures under existing Irish law, there is comprehensive smoke-free legislation in place, a ban on tobacco advertising and sponsorship and a ban on the display of tobacco products in shops. In addition, all tobacco products placed on the market must display combined text and graphic health warnings. Certain types of sale promotions are prohibited. The smoking of tobacco products in vehicles where children are present will also be prohibited by a law to be commenced in 2015.

421. In addition to the draft Bill, Ireland made available through the TBT notification an explanatory memorandum that details the rationale of the measure and its expected health impacts, a regulatory impact analysis and several scientific studies on the impact of plain packaging on smoking prevalence.

422. In parallel with the WTO notification, Ireland has also notified the measure to the European Commission in accordance with internal EU requirements for notification of draft national technical regulations. Ireland has received detailed opinions from some EU Member States on the draft measure within the framework of the internal notification procedure. These were analysed and considered by the Irish authorities.

423. Ireland's draft Bill resumed the legislative process on 17 February 2015.

*United Kingdom*

424. On 3 September 2014, a draft UK Regulation on Standardised Packaging of Tobacco Products 2014 was notified to the TBT Committee.

425. The UK draft Regulation on Standardised Packaging of Tobacco Products aims at restricting the promotion of tobacco products to further reduce the smoking prevalence in UK by (i) discouraging uptake of tobacco use by young people; (ii) encouraging and supporting tobacco users who want to quit and (iii) reshaping social norms and attitudes around tobacco use to promote health and wellbeing.

426. It would form the latest strand of a comprehensive range of tobacco control legislation already in place in the UK aimed at decreasing tobacco consumption. Under existing legislation, there is already a ban on advertising tobacco products to the general public, a ban of tobacco sponsorship to sports and cultural events and companies are forbidden to give out free samples of tobacco. Picture warnings on tobacco products are required in the UK. The sale of tobacco products from vending machines is prohibited and as from 2015 tobacco displays in all shops will be prohibited.

427. In addition to the draft regulation, the UK made available through the TBT notification an explanatory memorandum that details the rationale of the measure and its expected health impacts, an impact assessment and several scientific studies on the impact of plain packaging on smoking prevalence.

428. In parallel with the WTO notification, the UK has also notified the measure to the European Commission in accordance with internal EU requirements for notification of draft national technical regulations. The UK has received detailed opinions from some EU Member States on the draft measure within the framework of the internal notification procedure. These are being analysed and considered by the UK authorities.

429. On 21 January 2015 UK Public Health Minister Jane Ellison has confirmed that the UK Government backs the public health case for introducing standardised packaging of tobacco products.

430. The UK Government's intention is to lay regulations for standardised packaging before the end of March; the regulations would come into force at the same time as the European Tobacco Products Directive in May 2016 and will apply to the whole of the UK.

### **12.3 Nicaragua**

431. Nicaragua would like to express its support for the Dominican Republic statement with respect to plain packaging for tobacco. This is a matter of great concern to my country, given that such a measure could have a negative effect on our economy with respect to tobacco products. Countries that export tobacco and tobacco products like Nicaragua do have concerns in this respect. Nicaragua has raised its concerns wherever relevant within the WTO. The Nicaraguan productive sector generates more than 30,000 jobs directly or indirectly in this sector and some 180,000 people are involved in general terms, so that is why we would oppose any trade restrictive measures not based on sound science and on international treaty obligations such as those under the auspices of the WTO.

432. We cannot support such measures – this type of legislation is currently before the Dispute Settlement Body and it is the feeling of those who have lodged a complaint that this measure goes against three of the WTO's agreements. This is a matter which is reflected by the fact that more than 40 Members are third parties to this dispute, which is the highest number to any WTO dispute. As we have already said, we fully endorse public health protective measures with respect to tobacco and we do have a legal framework to that end. However, we cannot favour any regulation that would restrict trade more than necessary. In this respect, my delegation would once again urge the UK and Ireland to refrain from adopting plain packaging measures until there has been a result from the panel that was set up at the request of Cuba, Honduras, Dominican Republic, Ukraine and others.

### **12.4 Honduras**

433. Honduras shares and supports the concerns expressed by the delegation of the Dominican Republic with respect to the proposals for plain packaging of tobacco products in the United Kingdom and Ireland.

### **12.5 Cuba**

434. Cuba shares the concerns expressed by the Dominican Republic and thanks it for having this item placed on the Council agenda.

435. It is important for Cuba, as one of the complainants in the ongoing proceedings concerning the plain packaging measure, to reiterate its concern over the negative impact of the Australian regulations and similar legislation that might be adopted by other Members. Cuba reiterates its commitment to public health and to measures adopted for its protection.

436. However, in this instance these are *sui generis* measures that could create a dangerous precedent and be extended to other products. The plain packaging measure involves dilution of the distinctive features of tobacco product brands. It makes it difficult for consumers to identify these products, so that brands no longer serve their purpose.

437. We are in favour of Members refraining from taking measures of this nature until the end of the dispute settlement proceedings currently under way in the DSB.

#### **12.6 Indonesia**

438. Indonesia also fully recognises the legitimate right of WTO Members to protect their people's health. However we would like to repeat our serious concerns that measures recently adopted by some Members may seriously impact our economy. Indonesia believes that plain packaging is inconsistent with Article 20 and other provisions of the TRIPS Agreement and also other important WTO legal text such as the Agreement on TBT. Indonesia also notices that plain packaging measures implemented in Australia are currently the subject of dispute brought by five WTO Members including Indonesia. Indonesia requests that other Members defer a final decision on the implementation of plain packaging until the consistency of plain packaging with various WTO obligations has been determined in the current dispute.

#### **12.7 Nigeria**

439. Nigeria would like to reiterate its commitment to protect public health as demonstrated by the Doha Ministerial Declaration which allows Members the right to take measures to protect public health. However, we share the concerns that have been raised by Members on the measures that have been taken by some Members regarding the issue of plain packaging. As previously stated by our delegation, we are of the view that the measures are inconsistent with the WTO rules and have limited the major function of the trademark which is to distinguish products. In this context, we would like to ask the Governments of the UK and Ireland to allow the dispute on plain packaging, presently before the DSB, ample time to conclude the examination of the matter that will guide Members on their actual obligations under the WTO rules.

#### **12.8 Zimbabwe**

440. Zimbabwe shares the concerns raised by the Dominican Republic and those who have implored the United Kingdom and Ireland to wait for the termination of the current dispute in the Dispute Settlement Body.

#### **12.9 Australia**

441. Australia's tobacco plain packaging measure is a legitimate public health measure which is consistent with Australia's obligations under the WTO Agreement.

442. As other Members are aware, a panel has now been composed to hear the disputes regarding Australia's plain packaging measures brought by Ukraine, Honduras, Indonesia, the Dominican Republic, and Cuba, pursuant to a harmonised timetable. As the matter is currently subject to dispute proceedings, it would not be appropriate to comment further on Australia's measures. But would like to share a few general comments.

443. Australia reiterates its strong support for the decision by Ireland, the UK and other WTO Members to legislate for the mandatory plain packaging of tobacco products.

444. In particular, we welcome the UK's recent announcement that it will be introducing regulations for standardised packaging which, if passed, will come into force in May 2016. The decision follows assessment of the evidence of the positive public health impacts of standardised

packaging, including the findings of an independent review. Similarly, we acknowledge the presentation of implementing legislation to the Irish Parliament in June last year.

445. The important steps made by these Members and others in tobacco control demonstrate that efforts to delay the adoption of tobacco plain packaging measures in these countries have not been successful. Australia looks forward to continuing our support of fellow WTO Members like the UK and Ireland as they proceed with the implementation of their own tobacco plain packaging measures.

446. Contrary to the claims of the Dominican Republic and other Members here today tobacco plain packaging is not about the destruction of intellectual property rights. The measure prevents the use of tobacco product packaging to advertise and promote a unique product that causes significant damage to public health. Indeed the tobacco industry itself has called tobacco packaging its "mobile billboard".

447. As we have consistently stated, Australia is of the firm view that Members have the right to implement measures necessary to protect public health, while complying with relevant international treaty obligations, including the TRIPS Agreement. Tobacco plain packaging is a legitimate measure, designed to achieve a fundamental objective – the protection of human health.

448. It is inappropriate for complainants in the WTO disputes currently underway against Australia to invoke those proceedings in an attempt to delay or discourage another Member from developing or implementing their own legitimate tobacco control measures.

449. The tobacco plain packaging measure is endorsed by leading public health experts as well as the World Health Organization and is supported by extensive peer reviewed research, reports and studies.

### 12.10 Uruguay

450. The delegation of Uruguay wishes to restate - as it has been doing ever since this issue was first addressed by the Council in June 2011 - its position in favour of the legitimacy of the measures relating to the plain packaging of tobacco products under the WTO rules and the TRIPS Agreement in particular.

451. Uruguay is of the opinion that protection of public health clearly falls under the sovereign authority of States and it accordingly believes that every country is entitled to legislate in the public interest. This has been recognized by the Membership as a whole in this and other WTO fora.

452. In particular, we wish to emphasize that Article 20 of the TRIPS Agreement provides that the use of a trademark should not be "unjustifiably" encumbered by special requirements. We consider that the implementation by States of measures designed to combat in their territories a pandemic such as tobacco consumption, which has devastating health, social and economic consequences, cannot be considered "unjustified" and therefore contrary to the Agreement.

453. We would recall that paragraph 4 of the Doha Ministerial Declaration on the TRIPS Agreement and Public Health states that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health.

454. We also wish to recall that these measures merely implement the commitments undertaken by the 180 Parties to the World Health Organization Framework Convention on Tobacco Control, which include Ireland and the United Kingdom. Particular mention should be made of the obligations under Article 11 of the Convention, which requires Parties to adopt and implement effective measures in respect of the packaging and labelling of tobacco products.

455. In this respect and in view of the foregoing, Uruguay supports the decisions taken by the Governments of Ireland and the United Kingdom.

### 12.11 Canada

456. Canada follows with interest the ongoing developments in the United Kingdom, in Ireland and other countries with regards to the plain packaging of tobacco products, and how such measures interact with both international trade and public health.

457. In Canada's view, it is important to recall that the *Doha Declaration on the TRIPS Agreement and Public Health* states that "the TRIPS Agreement does not and should not prevent members from taking measures to protect public health".

458. Canada has been a pioneer in package labelling requirements for tobacco products, and we consider these sorts of requirements a core component of the right to regulate in the interests of the Canadian public.

459. Canada recognizes how challenging it is to introduce tobacco control measures that have never been implemented before as we were in a similar situation a decade ago when we introduced pictorial health warnings on tobacco packages.

460. Canada is also following, and participating in with great interest as a third party, to the ongoing dispute settlement proceedings with respect to Australia's Plain Packaging measures that began last year.

### 12.12 Norway

461. As previously stressed, both in this Council and in other fora, public health and tobacco control are topics of particular interest to Norway.

462. We would like to support the United Kingdom and Ireland in their efforts to introduce plain packaging of tobacco products. We appreciate the bold action that their governments are taking, paving the way for others, despite the various disputes initiated against Australia concerning these measures.

463. The Norwegian Government will itself initiate a consultation in March 2015 on whether standardised packaging of tobacco products should be introduced in Norway. It is Norway's opinion that it is the right of each WTO Member to adopt measures in order to protect public health, as long as the measures chosen are consistent with WTO agreements.

464. It is clear that tobacco control policies and preventive measures – such as the standardised packaging – have the legitimate objective of protecting public health by reducing the use of tobacco products. Norway is a party to the WHO Framework Convention on Tobacco Control (the FCTC) and takes its obligations under this Convention very seriously. The obligations include, inter alia, introduction of measures to prevent initiation, to promote and support cessation, and to decrease the consumption of tobacco products.

465. Packaging and labelling of tobacco products is the subject of Article 11 of the FCTC, as just mentioned by Uruguay. The implementing guidelines to this provision – as well as of Article 13 regarding advertising – explicitly advise the Parties to the Convention to introduce plain packaging as a measure to achieve the objective of protecting public health.

466. It is Norway's firm view that the Framework Convention on Tobacco Control and the relevant WTO agreements are mutually supportive, and that it is possible to implement measures intended to regulate the packaging of tobacco products in line with both sets of binding obligations.

467. Accordingly, Norway wants to signal support to the United Kingdom and Ireland regarding their right to introduce measures concerning standardised packaging – consistent with their WTO obligations – to fulfil their obligations under the FCTC in order to protect public health. Finally, in our view, ongoing DSB cases should not have any bearing on Members adopting measures in favour of public health.

### 12.13 New Zealand

468. New Zealand would like to, once again, record its support for the United Kingdom and Ireland's decisions to introduce legislation requiring plain (or standardised) packaging for tobacco and tobacco products.

469. The TRIPS Agreement recognises the fundamental right of Members to implement measures necessary to protect public health and provides the necessary flexibilities for Members to do so. All of our Ministers agreed in the Doha Declaration on the TRIPS Agreement and Public Health that "the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health" and affirmed that "the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health".

470. New Zealand believes that it is possible for Members to implement a tobacco plain packaging regime that is consistent with both their commitments under the WHO *Framework Convention on Tobacco Control* and all of their WTO obligations.

471. There is an extensive and growing body of international research which establishes that tobacco plain packaging, as part of a comprehensive tobacco control programme, will contribute to the objective of improving public health. To date, New Zealand has not seen any credible evidence that proves otherwise.

### 12.14 WHO Secretariat

472. As WHO has stated previously in this forum, the use of all types of tobacco products poses substantial risks to human health and the health, social and economic costs associated with tobacco use are greatest in developing countries. We would like that the previous statement during the TRIPS Council of October 2014 be entered into the record of this meeting. Because of the consequences of tobacco use, tobacco control is of increasing importance to the international community. This is reflected in instruments such as the WHO Framework Convention on Tobacco Control and its Guidelines, the 2011 Political Declaration of the High Level Meeting of the General Assembly of the United Nations on the Prevention and Control of Non-Communicable Diseases and the WHO Global Action Plan on Prevention and Control of Non-Communicable Diseases (2013-2020).

473. Today, WHO will focus its comments on the role of plain (or standardized) packaging as a tobacco control measure and the evidence base underlying plain packaging.

#### *The role of plain packaging*

474. Plain packaging of tobacco products is one of a number of complementary tobacco control measures that work together to protect human health. Although a single tobacco control measure may be an effective public health intervention alone, tobacco control relies on implementation of a suite of comprehensive multi-sectoral measures that work together by targeting different drivers of tobacco consumption and population groups as part of a complementary regulatory scheme.

475. In this context, plain packaging complements widely implemented measures such as restrictions on advertising and promotion, bans on misleading packaging and health warnings on packaging. Plain packaging complements these measures by reducing the ability of the pack to promote tobacco consumption, by eliminating pack designs that create misleading impressions about the relative harmfulness of certain tobacco products and by further highlighting health warnings.

#### *The evidence base*

476. Empirical evidence from well qualified, respected and credible sources suggests that plain packaging will make restrictions on advertising and promotion, prohibitions on misleading packaging and health warnings more effective. This evidence includes experimental studies,

surveys and focus group studies that have tested the impact of different forms of plain packaging in different places and yielded consistent results.

477. Although the primary regulatory objectives of plain packaging are to render tobacco packaging less attractive, minimize misleading packaging and increase the effectiveness of health warnings, it is rational and reasonable to expect that the prevalence of tobacco use will also decline as a consequence of this measure.

478. WHO is of the view that the impact of plain packaging on the prevalence of tobacco use cannot be assessed in a comprehensive manner shortly after the measure is implemented. Australia is the first country to implement plain packaging. Although it is too early to fully judge the impacts of plain packaging in Australia, the official statistics to date from Australia are consistent with the broader evidence base and the conclusion that plain packaging will reduce the prevalence of tobacco use.

479. The WHO FCTC provides further support for these conclusions regarding the evidence base. Article 11 obliges Parties to implement effective packaging and labelling measures. Article 13 obliges Parties to undertake a comprehensive ban (or restrictions) on tobacco advertising, promotion and sponsorship. Guidelines to Articles 11 and 13 recommend that Parties implement tobacco plain packaging. These Guidelines are intended to assist Parties in implementing their obligations under the relevant provisions and, in the case of the Article 11 Guidelines, to propose measures that Parties can use to increase the effectiveness of their packaging and labelling measures. In drafting the Guidelines, Parties relied on available scientific evidence and the experience of the Parties themselves. Draft versions of the Guidelines were open for consultation with all Parties prior to their submission to the Conference of the Parties, which subsequently adopted the Guidelines by consensus.

**On request, reproduction of statement made by WHO Secretariat at the meeting of the Council for TRIPS on 28-29 October 2014 (see IP/C/M/77/Add.1 paras 637-655).**

#### *Tobacco Epidemic*

As WHO has previously stated in this forum, tobacco use is one of the greatest threats to public health the world has ever faced, and the single most preventable cause of death in the world today. Globally, tobacco consumption kills nearly six million people a year through both direct use and the deadly effects of second-hand smoke - more than 70% of whom reside in low- and middle-income countries.

Tobacco also represents the leading modifiable risk factor in the fight against the growing epidemic of non-communicable diseases. NCDs, primarily cancers, diabetes, cardiovascular and chronic lung diseases, currently account for 63% of all deaths worldwide. These diseases kill an astounding 36 million people each year, with nearly 80% of deaths occurring in low- and middle-income countries.

As necessary tobacco control measures continue to be implemented in developed countries, the tobacco industry, through aggressive marketing and interference practices, shifted some time ago its focus to new markets in the developing world. As a result, tobacco-attributable mortality is rapidly increasing in developing countries, and, by 2030, more than 80% of the world's tobacco deaths will occur in low- and middle-income countries. Given that smoking causes 30% of all cancers, including greater than 70% of all lung cancers, 40% of chronic respiratory diseases, and nearly 10% of all cardiovascular diseases, it is a critical moment in the global effort to curb the tobacco epidemic for the introduction of necessary public health interventions under the WHO Framework Convention for Tobacco Control (WHO FCTC), like the measure under consideration here.

#### *Economic Costs of Tobacco*

The economic costs of tobacco use are as equally devastating as the public health costs. Though the tobacco industry routinely cites the economic contribution of tobacco, the reality is that tobacco use puts an enormous financial burden on

countries, in addition to the fact that tobacco and poverty are inextricably linked at the individual level. Nationally, the costs of tobacco use encompass increased health-care costs, lost productivity due to illness, premature death, and widespread environmental damage. Thus, as tobacco consumption rates and tobacco-related illnesses increase in developing countries, so do tobacco-related health care costs. Additionally, conservative estimates suggest that tobacco's more than US\$500 billion drain on the world economy exceeds total annual health expenditures in low- and middle-income countries.

The economic burden of NCDs, with tobacco representing the largest risk factor, is also staggering. Recent macroeconomic simulations suggest that, over the next two decades, cardiovascular disease, chronic respiratory disease, cancer, and diabetes, will cause a cumulative output loss of more than US\$30 trillion, representing 48% of global GDP in 2010. This in turn will push millions of people across the planet below the poverty line. Because NCDs will result in long-term macroeconomic impacts on labour supply, capital accumulation and GDP worldwide, with the consequences most severe in developing countries, strong public health interventions, such as the standardized packaging measure under deliberation here, are relevant in addressing both health and economic concerns.

*United Nations High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases*

At this point I would like to draw the attention of the distinguished delegates here to the fact that the impact of tobacco and NCDs on both public health and country economies was highlighted at the *United Nations High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases*, held in September 2011 in New York. There, the UN General Assembly, comprised of Heads of State, adopted a Political Declaration which recognized the fundamental conflict of interest between the tobacco industry and public health, and wherein Member States unanimously committed to advancing the implementation of multisectoral, cost-effective, population-wide interventions in order to reduce the impact of NCD risk factors.

WHO is of the view that the implementation of standardized tobacco product packaging represents a legitimate and effective tobacco control measure, and is fully in line with the spirit and intent of the outcome of the UN High-level Meeting, and is in accordance with international legal obligations under the WHO FCTC.

I kindly refer to my colleague to elaborate on this point about the WHO FCTC.

*Relevant WHO FCTC provisions*

We are grateful for this opportunity to provide information to the TRIPS Council on the WTO Framework Convention on Tobacco Control or FCTC.

As observed at previous meetings of this body, the WHO FCTC was negotiated under the auspices of the WHO in response to the globalization of the tobacco epidemic, and the treaty has been in force since 2005. Like other international legal instruments, States that are party to the FCTC undertake certain obligations pursuant to it. The number of States that are Party to the Convention has risen to 179 - in fact, only 12 of the current 160 WTO Members are not Party to the FCTC.

The FCTC contains a number of provisions that are relevant to the issue of standardized packaging of tobacco products.

- Article 3 of the FCTC sets out the collective objectives of the Parties in negotiating the Convention, including "to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke ...".

- As noted during previous sessions of this body, the FCTC sets out in Article 5 the general obligations of Parties, including, inter alia, the obligation to "develop, implement, periodically update and review comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with" the FCTC. It is through the implementation of such a comprehensive multisectoral approach that the tobacco control measures contained in the FCTC are most effective.
- Article 11 of the Convention requires Parties to adopt and implement effective measures in respect of the packaging and labelling of tobacco products, including health warnings and other appropriate messages. Article 11 has consistently remained one of the articles of the Convention attracting the highest implementation rates among Parties, with stronger measures being gradually implemented.

According to the most recent Party reports on implementation, 101 of 130 Parties reported that they have banned descriptors on packaging and labelling that were misleading, deceptive or likely to create an erroneous impression of the product, and 114 Parties reported that they have adopted policies requiring tobacco product packaging to carry health warnings describing the harmful effects of tobacco smoke. In addition, 111 Parties have introduced measures to ensure that health warnings are large, clear, visible and legible.

Another specific provision of the FCTC that has been previously noted in this Council is Article 13, which requires Parties to undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship. That comprehensive ban must be read in light of the broad definition of "tobacco advertising and promotion" which, according to Article 1(c), "means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly." The Guidelines for the implementation of Article 13 include "packaging and product design features" on the indicative list of forms of advertising, promotion and sponsorship.

Again, the most recent Party reports indicate that 91 Parties have introduced a comprehensive ban on tobacco advertising, promotion and sponsorship. Further, 90 Parties reported that they prohibit tobacco product packaging from carrying advertising or promotion, including design features that make such products attractive.

The respective Guidelines for the implementation of Articles 11 and 13 were both adopted by the consensus of the Parties, and each recommends that Parties should consider adopting standardized or plain packaging measures.

Further, Article 2 addresses the relationship between this Convention and other agreements and legal instruments. It states that "In order to better protect human health, Parties are encouraged to implement measures beyond those required by this Convention and its protocols, and nothing in these instruments shall prevent a Party from imposing stricter requirements that are consistent with their provisions and are in accordance with international law."

#### *Relevant WHO FCTC COP decisions*

The governing body of the Convention, the Conference of the Parties or COP, has also adopted a number of decisions to reflect their priorities in this important area.

At its 4th session in November 2010 the COP adopted the Punta del Este Declaration (Decision FCTC/COP4(5)) regarding public health policy, international trade and the activities of the tobacco industry. The Punta del Este Declaration reiterates the firm commitment of Parties to the FCTC "to prioritize the implementation of health measures designed to control tobacco consumption" and "their concern regarding actions taken by the tobacco industry that seek to subvert and undermine government policies on tobacco control". In relation to the Parties' rights to adopt measures to

protect public health, the Punta del Este Declaration makes specific reference to Articles 7 and 8 of the TRIPS Agreement, as well as to paragraphs 4 and 5(a) of the Doha Declaration on the TRIPS Agreement and Public Health, adopted by the 4th session of the WTO Ministerial Conference in November 2001.

Most recently, at its 6th session earlier this month, the COP adopted the Moscow Declaration (Decision FCTC/COP6(26)) which calls on Parties to "strengthen collaboration on tobacco control" and "to accelerate the full implementation of the WHO FCTC at national levels" in view of the need to reduce the global burden of non-communicable diseases. At the same session, the COP adopted a decision (FCTC/COP6(14)) on highlighting the importance of international cooperation in the "Protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry".

## **AGENDA ITEM 14: OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS**

### **14.1 India**

480. India supports granting of permanent observer status to three intergovernmental organisations - South Centre, the CBD Secretariat and the International Vaccine Institute.

481. South Centre is an intergovernmental organisation with 51 developing countries as members and already has observer status in WIPO, WHO, CBD and many other UN bodies.

482. The Convention on Biological Diversity (CBD) fulfils all the required parameters for observership of the WTO. We were informed at yesterday's informal briefing session on TRIPS-CBD that the WTO Secretariat has observer status at the CBD and regularly participates in the CBD meetings. So as a matter of reciprocity, the CBD Secretariat shall be granted observer status.

483. We would also like to support the request from the International Vaccine Institute (IVI) for observer status in the Council for TRIPS. The International Vaccine Institute, which was created initially as an initiative of the United Nations Development Programme (UNDP), is the world's only international organization devoted exclusively to developing and introducing new and improved vaccines to protect the world's poorest people, especially children in developing countries. Established in 1997, IVI operates as an independent international organization under a treaty signed by 35 countries and the World Health Organization. The Institute conducts research in more than 20 countries of Asia, Africa and Latin America on vaccines against enteric and diarrheal infections, Japanese encephalitis, and dengue fever, and develops new and improved vaccines at its headquarters in Seoul, Republic of Korea.

484. India again urges the Council to positively and expeditiously consider the request of South Centre, the CBD Secretariat and the International Vaccine Institute for observer status and until then ad hoc observer status on a meeting-by-meeting basis should be granted to them.

### **14.2 Nepal**

485. Nepal supports the views expressed by Members that observer status should be given to some of the international intergovernmental organizations who have been closely working on IP-related issues since long. In this regard, we strongly support the CBD Secretariat, the International Vaccine Institute and South Centre to be given observer status of this esteemed Council. Granting observer status to these three international organizations, will not only help promote cooperation between WTO and these international organizations, but also helps members to be familiar with major activities and events being undertaken by these organizations through regular exchange of views and experience. Hence we support granting observer status to these organizations who are directly associated with the work of the TRIPS Council and dealing with IP matters since long.

### 14.3 Bangladesh

486. Bangladesh supports the observer status for South Centre and the CBD Secretariat because both are working profusely for the benefit of developing countries and LDCs. Their observer status here in the WTO will immensely benefit developing countries and LDCs. So we support the observer status, even on a temporary basis, for South Centre and the CBD Secretariat.

### 14.4 Brazil

487. Brazil also favours the acceptance of the request by these three organizations for observer status in our sessions.

### 14.5 Egypt

488. Egypt would also like to associate itself with India, Brazil and Bangladesh to give observer status to these three intergovernmental organizations.

### 14.6 European Union

489. We would like to recall that the guidelines on observer status for international intergovernmental organizations in the WTO, annexed to the Rules of Procedure for sessions of the Ministerial Conference and meetings of the General Council, apply also to the Council for TRIPS. These guidelines state that the purpose of the observer status for international intergovernmental organizations in the WTO is to enable these organizations to follow the discussions therein on matters of direct interest to them. As the guidelines state: "requests for observer status shall be considered from organizations that have competence and a direct interest in trade policy matters related to the Body. Requests for observer status shall be considered on a case-by-case basis taking into account such factors as the nature of work of the organization concerned".

490. The Council for TRIPS affords Members the opportunity of consulting on matters related to the trade-related aspects of intellectual property rights. There should, therefore, be a relation to trade-related aspects of IP for any organization requesting this observer status. We can go along with a proposal to invite the Convention on Biological Diversity Secretariat on an ad-hoc basis whenever the relationship between the Convention on Biological Diversity and the TRIPS Agreement is on the agenda of the TRIPS Council, given the relevance of the debate for some of the provisions of the Convention on Biological Diversity and the Nagoya Protocol. We support, as has been agreed at the meeting of 28-29 October 2014, to grant ad-hoc observer status on a meeting-to-meeting basis to the African Regional Intellectual Property Organization, the African Intellectual Property Organization, the Cooperation Council for the Arab States of the Gulf, and the European Free Trade Association.

491. We are assessing requests by other organizations that have updated their information in response to the request by this Council in June 2011. We stand to be convinced as to the competence and direct interest of certain other organizations requesting observer status, in matters related to the trade-related aspects of intellectual property rights.

### 14.7 Cuba

492. Cuba would like to briefly express our support to grant observer status to these organizations and I would underscore the work carried out by the South Centre. This is extremely useful, it is not only supporting developing countries, but their technical studies carried out are of an extremely high quality and could be very useful for us in our work.

### 14.8 China

493. TRIPS/CBD is an important issue at the TRIPS Council. It is regretful that the CBD is still not an observer. China continues to support that the CBD Secretariat should be granted observer status, at least on an ad hoc basis. It's also important to grant observer status to the South Centre, at least on an ad hoc basis.

#### 14.9 Ecuador

494. Ecuador would simply like to join the countries who have asked for observer status for the CBD Secretariat and South Centre.

#### 14.10 United States of America

495. We continue to support observership of ARIPO, OAPI, the GCC and EFTA. However, we are not in a position to support the CBD Secretariat, South Center or the International Vaccine Institute.

496. The US cannot join the Members seeking to include the CBD Secretariat as an observer, either on a permanent or ad hoc basis.

### AGENDA ITEM 15: OTHER BUSINESS

#### **Agenda Item 15.3: Request for an Extension of the Transitional Period under Article 66.1 of the TRIPS Agreement for LDC Members with respect to Pharmaceutical Products and for Waivers from the Obligations of Articles 70.8 and 70.9 of the TRIPS Agreement**

##### 15.1 Bangladesh on behalf of the LDC Group

497. I speak on behalf of the LDC group. I would like to raise one issue of extreme importance to our group under this agenda item.

498. You may recall that our Ministers in Doha recognized the gravity of the public health problems afflicting many developing and least-developed countries, especially those resulting from HIV/AIDS, tuberculosis, malaria and other epidemics. They also agreed that the TRIPS Agreement did not and should not prevent Members from undertaking measures to protect public health. While reiterating their commitment to the TRIPS Agreement, they affirmed that the Agreement could and should be interpreted and implemented in a manner supportive of WTO Members' right to protect public health and, in particular, to promote access to medicines for all. Accordingly, WTO members adopted the decisions IP/C/25 and WT/L/478 for exempting LDCs from TRIPS obligations in respect of pharmaceutical products. These decisions are due to expire on 1 January 2016. Though we have a general TRIPS waiver up to 2021, considering the gravity of the situation of lack of access to medicines and proper health care, LDCs require time to reasonably overcome their public health problems.

499. LDCs represent the weakest and most vulnerable group of the community of nations. With deficiency and hardship touching all aspects of life, the populations have been suffering from, and are highly susceptible to different forms of diseases. As a result, there are many other associated risks and impediments regarding access to medicines and health services.

500. Access to affordable pharmaceutical products (e.g. medicines, vaccines, diagnostic kits) is a prerequisite, to deal with the numerous public health challenges facing LDCs. LDCs are home to some of the world's most vulnerable people and they bear considerable health burdens. In 2011, some 9.7 million of the 34 million people living with HIV worldwide, lived in LDCs. Of the people living with HIV in LDCs, 4.6 million were eligible for antiretroviral (ARV) treatment in accordance with the 2010 World Health Organization HIV treatment guidelines, however only 2.5 million were receiving it. LDCs also bear increasing health burdens from non-communicable disease. For example, cancer incidence is expected to rise to 82 percent in 2030 in low-income countries compared to 58 percent in upper-middle and 40 percent in high-income countries. You may recognize that not only we lack sound and viable technological base, but we are also perpetual victims of epidemics such as the Ebola outbreak that has caused disaster in our some member countries.

501. According to UNAIDS, I quote, "There is concern that without extension of the transition period, access to antiretroviral therapy and other key medicines in LDCs will face real challenges". Explaining the implications of the failure to renew the transition period beyond 2016, UNAIDS states that if the transition period is not extended beyond 2016 the situation

regarding availability and pricing of HIV-related medicines will be more complex than the situation in 2001 when the Doha Declaration was adopted. The UNAIDS concludes "there is a real danger that if the LDCs do not get a further extension, the progress that has been made to improve access to HIV-related medicines in these countries will be reversed".

502. It is in this context, we have recently submitted a duly motivated request for extension of the transition period and waiver from certain obligation under TRIPS. Our request can be found in WTO document IP/C/W/605 dated 23 February 2015.

503. We would like to constructively engage with all WTO Members to discuss this issue with a view to reaching a consensus on our request.

### **15.2 Nepal**

504. We support the statement made by Bangladesh this afternoon under this agenda item. As highlighted by Bangladesh, the extension given to LDCs to apply patent for pharmaceutical products is going to expire in December this year. We would like to seek non-LDC members' kind support in getting another extension for LDCs for a reasonable period ideally until they graduate. Due to poor economic condition coupled with increasing social and health complexities, LDCs are not in a situation to provide patent for any pharmaceutical products. Extension is indispensable to ensure them to have access to medicines at an affordable price.

505. As LDCs are increasingly posed to different kind of epidemics and communicable as well as non-communicable diseases, and most of the LDCs lack capacity to produce sufficient amount of medicines, imposing application of patent for pharmaceutical products in LDCs will be disastrous for the poor and vulnerable communities living in such countries. Considering the sensitivity of public health, our Ministers in Doha during the 4<sup>th</sup> Ministerial Conference, issued a separate declaration on TRIPS and Public Health. Its paragraph 7 instructed the TRIPS Council to take necessary action to exempt LDCs from applying patent for pharmaceutical products until 1 January 2016. Accordingly, the TRIPS Council took a decision to that extent.

506. We are aware of the fact that the general extension under Article 66.1 for LDCs to comply with the TRIPS Agreement except Article 3, 4 and 5 has been extended up to 1 July 2021 for LDCs. Being a sensitive sector, we need a separate and exclusive extension for pharmaceutical products like in 2002. As the situation of LDCs has remained the same as 15 years ago, and they have not been able to acquire the necessary capacity to produce the medicines in sufficient quantities for their poor people, providing an extension to LDCs to implement sections 5 and 7 of part II of the TRIPS Agreement as regards pharmaceutical products seems to be quite logical and convincing. Hence we strongly urge Members to positively consider our duly motivated request.

507. Similarly, as the waiver given to LDCs under paragraph 9 of Article 70 of the TRIPS Agreement relating to exclusive marketing rights is going to terminate by the end of this year, we call upon Members to consider providing another waiver from the obligation of paragraphs 9 and 8 of this Article to enable LDCs to benefit meaningfully from the extension decision for pharmaceutical products.

### **15.3 Brazil**

508. We thank the delegation of Bangladesh for sharing the LDCs request for an extension of the transition period under Article 66.1 of the TRIPS Agreement. We understand that substantive comments on what's being requested can be made in the next session. However, without prejudice to these specific comments, Brazil would like to restate its longstanding position about the need for a balance between the interests of users and producers of intellectual property, so that, at the end of the day, our societies can reap the benefits from the system. If this is true for all areas dealt with in the TRIPS Agreement, it is even more pertinent when it relates to matters of public health. If the LDCs have concluded that the extension of the transition period is the best way to help overcoming the health challenges that they currently face, it is a proposal that we have to discuss in a spirit of understanding and flexibility, and we take this chance to assure the proponents that they can count on that from Brazil.

#### 15.4 European Union

509. I am not able today to comment in any detail on the communication that was submitted, but we will certainly look at it attentively. I would like to clarify one issue: from the outset of discussions in this area, the EU has recognized the importance of flexibility and policy space for least-developed countries' needs. It has supported extending the general transition period until 1 July 2021, as agreed by the WTO Members in June 2013. This is where I would like to be very clear – the EU considers this transition period for least-developed countries' general obligation to protect intellectual property under TRIPS as also applying to least-developed countries' flexibilities not to provide patent protection for pharmaceuticals. I am mentioning this because some discussions were based on re-interpretations of some press releases which are three years old. It was hinted that the EU had a different understanding. These re-interpretations are certainly imaginative, but seem like a very weak legal argument that try to put interpretations in other peoples' mouths, based on re-readings of out-of-context press releases.

#### 15.5 India

510. My delegation would like to thank the delegation of Bangladesh for submitting on behalf of the least developed country members a duly motivated request for an extension of the transitional period under article 66.1 of the TRIPS Agreement for LDCs with respect to pharmaceutical products and for waivers from the obligation of Articles 70.8 and 70.9 of the TRIPS Agreement.

511. The chair has informed Members yesterday that substantive discussions of the proposal will take place in the next session of the TRIPS Council. We will examine the proposal contained in document IP/C/W/605 in consultation with our capital and will formally give our comments at the next meeting of the TRIPS Council in June. I would like to conclude by stating that India supports all initiatives that promote access to medicines at affordable costs to the people living in the poorest countries of the world.

#### 15.6 China

512. Considering the special needs and requirements of LDC Members, China in general supports the demands of LDCs for further extension of the transition period under Article 66.1 of the TRIPS Agreement and for waivers from certain obligations with respect to pharmaceutical products.

#### 15.7 Chinese Taipei

513. On behalf of Chinese Taipei, we would like to support the proposal submitted by Bangladesh on behalf of the LDC Group in document IP/C/W/605.

### **Agenda Item 15.4: Contribution of Intellectual Property to Facilitate the Transfer of Environmentally Sound Technology**

#### 15.8 Ecuador

514. Ecuador has requested the floor on this item to inform Members on the steps it is taking with regard to the contribution of intellectual property to facilitate the transfer of environmentally sound technologies, as discussed in document IP/C/W/585 of 27 February 2013. It is an issue that has been on the agenda of this Council for some meetings now. With regard to the interactive exchange that took place in previous meetings we believe that it is important to organize a workshop whereby the countries that had supported the proposal are initially invited in order to provide further information and consider the Ecuador proposal. The workshop is supposed to take place next May, and to provide free space for an exchange of views from sectoral experts on Ecuador's proposal. That proposal could be revised, or incorporate new elements in addition to those contained already. Ecuador will continue to maintain Members informed of activities, taking place in that regard at national level and in international organizations.

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