



Council for Trade-Related Aspects of Intellectual Property Rights

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 1 MARCH 2016

Chairperson: Ambassador Al-Otaibi (Kingdom of Saudi Arabia)

Addendum

The present document contains the statements made during the Council for TRIPS meetings held on 1 March 2016.

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.

AGENDA ITEM 1: NOTIFICATIONS UNDER PROVISIONS OF THE AGREEMENT**1.1 Chinese Taipei**

1. This delegation is pleased to inform the TRIPS Council that our government has recently amended a number of our acts and regulations pertaining to intellectual property. Several Articles of the "Patent Attorney Act", for example, have been amended, in areas including the types and the scope of commissioned practices, in-service training, and management and disciplinary action relating to patent agents.

2. We have also amended Article 11 of the "Regulations for the Deposit of Biological Material for Patent Application", in anticipation of the further development of partnerships with other countries on this subject, which will involve mutual recognition.

3. "The Operational Directions Governing the Mutual Cooperation between the Taiwan Intellectual Property Office and the Japan Patent Office in the Field of Deposit of Biological Materials for the Purposes of Patent Procedure" have been re-formulated to strengthen our bilateral cooperative ties in the field of IP, and to ease the burden on applicants having to repeat the process of making a deposit. Our government will, of course, also continue to fulfil its obligation to comply with Article 63.2 of the TRIPS Agreement to increase the transparency of our intellectual property system.

1.2 Japan

4. This delegation is pleased to inform the Council that Japan recently amended its "Unfair Competition Prevention Act". This revision has been notified to this Council in accordance with Article 63.2. The reference number of the document is IP/N/1/JPN/O/9. The amendment was made in order to address recent incidents involving significant damage caused by outflows of essential technologies and confidential information, and to enhance ways to combat against trade-secret infringements, based on the perspectives of criminal and civil charges. We would like to touch upon a few points of the amendment.

5. Firstly, the "Unfair Competition Prevention Act" was revised in order to enhance ways to combat against trade-secret infringements. Several measures were introduced to achieve this, including raising fines. This amendment also aims to impose heavier penalties for trade-secrets infringements that occur outside Japan.

6. Secondly, the Act was revised to expand the scope of punishments imposed for infringing trade secrets. For instance, the revised Act added acts of acquiring trade secrets overseas. Specifically, this was revised so as to include acts of acquiring trade secrets under management of Japanese companies, which are stored in servers overseas.

7. The Government of Japan will continuously fulfill its obligation to ensure the accessibility and the transparency of the Japanese intellectual property system.

1.3 Hong Kong, China

8. Hong Kong, China is pleased to inform the Council that we have recently updated the list of qualifying countries, territories or areas for meeting the international obligations under the Paris Convention and/or the TRIPS Agreement of affording the same level of intellectual property protection under the respective legislations concerning patents, registered design, trademarks and layout-design (topography).

1.4 South Africa

9. I am delighted to inform this Council that South Africa has deposited its Instrument of Acceptance of the Protocol Amending the TRIPS Agreement with the WTO.

1.5 WTO Secretariat

10. Since 2009, in response to the request from the Chair of the General Council, the Council has considered how to improve the timeliness and completeness of notifications and other information flows. The Secretariat has progressively updated the Council on the work being done in this direction. All this work takes place entirely within the guidelines of notifications already set within the TRIPS Agreement itself and the guidelines and procedures agreed by this Council.

11. The focus has thus been on practical ways of improving how we work with this information and ensuring that it is more user-friendly and more transparent, principally so that it is easier for Members to use when updating their notifications and when consulting this information.

12. As illustrated during previous updates by the Secretariat, the current gateway for TRIPS notifications and reports is the WTO Documents Online Database, which presents difficulties in locating any particular document, determining its content, and then consulting and using the document. This is particularly the case for earlier documents, which were of necessity randomly split into multiple files due to size limitations at the time. Earlier technological limitations also meant that many documents were in an unusable image form, unsuitable for consulting and obtaining information.

13. Since the last update provided to the TRIPS Council of October 2015, much progress has been made on two main fronts: The first concerns transforming "legacy documents" into workable data. This exercise has involved identifying data points in each notification and sorting them into around 14,000 data records and spreadsheets.

14. Taking the Article 63.2 IP law and regulation notifications as an example, this transformation process required identifying, for instance, the date of entry into force as indicated on the notification document, and inserting that date into a cell. As a result, a user will be able to quickly identify the date of entry into force for each notified law.

15. This spreadsheet is an interim tool for preparing the data. What Members will see and use when this transformation is complete will be a user-friendly online database which delegates can use to search for and extract pieces of data, to be designed in consultation with interested delegates. The option will remain, as for today, to access and download the document on WTO Documents On Line.

16. The second front on which much progress has been made is the online submission gateway.¹ We have reported on the development of an online gateway as a strictly optional tool for Members to use when updating their notifications (existing methods of notification will still be available).

17. From October 2015 to present, the online submission gateway has undergone intensive testing in order to ensure the programme is, at this very initial stage, stable enough for internal use. We are now using the online submission gateway internally to process notifications – mainly Article 63.2 IP law and regulation notifications, but also contact points.

18. The system has been designed to capture valuable pieces of data. For example, with regard to the Article 63.2 IP law and regulation notifications, the online form allows the user to indicate if the law being notified is an amendment, and also indicate any previous notifications of that same law. This feature was designed with the present state of affairs in mind: nearly 30% of laws that are being notified are now amendments to consolidations of earlier notifications, and this proportion is expected to increase sharply.

19. Although a lot of focus has been placed on notifications of IP laws and regulations under Article 63.2, the online submission gateway will allow the user to submit other TRIPS information as well – in particular other TRIPS Council notifications and input to review processes.

20. The aim is to make the online submission gateway as user-friendly and intuitive as possible in order to simplify your task, and we are working intensively within the Secretariat to this end. That

¹ Illustrated in room document RD/IP/8.

said, as it is simply an optional refinement of the service available to you, working within the existing framework, and other methods of providing notifications would remain available.

21. In the near future we will be inviting delegates and Members to test the system, to provide feedback, and to give us direction before the system is finalised and put into operation online.

22. In addition, the Secretariat proposes to hold an additional informal meeting tomorrow where we will explore this project in further detail, as the basis for continued consultations with interested delegations in coming months.

AGENDA ITEM 2: REVIEWS OF NATIONAL IMPLEMENTING LEGISLATION

2.1 Tajikistan

23. Thank you to all Members for your questions raised. We are grateful that Members have paid attention to the Tajikistan IP system which is an important issue for Tajikistan. We also thank the WTO Secretariat for its support and help during this review process.

2.2 Fiji

24. I take the floor to report that Fiji has provided its response to the TRIPS Council for the outstanding questions required to complete the review of Fiji's legislation and the Fijian Government is most grateful for all the assistance and support provided by the WTO Secretariat, especially the TRIPS Division and the Trade Policy Review Body in this regard. This is in an effort to conclude the long outstanding review of Fiji's legislation implementing the TRIPS Agreement.

25. Whilst we acknowledge that the extraordinary long delay in providing a response to the TRIPS Council cannot be justified so simply, Fiji has undergone various political changes over the last decade. Despite the political changes and given the increasing influence intellectual property has had to Fiji's international trade relations and with Fiji being a Member of TRIPS, trademarks and patents have become a source of economic and technological development for Fiji's economy. I am pleased to announce that this gave rise to the establishment of the Fiji Intellectual Property Office (FIPO) in 2011 under the Office of the Attorney-General, charged with implementation of Fijian IP laws.

26. Between 2009 and 2013, Fiji was focused on domestic reform to set a firm democratic footing for Fiji's future development. This included the elaboration of a Roadmap for Democracy and Sustainable Socio-Economic Development, which in turn, set out a process for widespread consultations for the formulation of a new constitution. This constitution, which is the first constitution in Fiji to eliminate the legal enforcement of ethnic voting, and contains unprecedented provisions for social and economic rights in addition to political and civil rights, came into force on 7 September 2013. During the period where the new Constitution was being formulated, and prior to it entering into force, only priority legislation reform required during that transition period was undertaken.

27. As such, it was only subsequent to the Constitution entering into force, and subsequent to Fiji's first successful democratic elections held under the provision of this Constitution in September 2014, that Fiji has been able to put in place a comprehensive legislative reform agenda. This legislative reform agenda includes the reform to Fijian IP laws that have been foreshadowed as necessary in the responses provided to the TRIPS Council. This legislative reform agenda has recently been elaborated upon at the WTO during Fiji's 3rd Trade Policy Review last week, on 23 and 25 February 2016. Moreover, it is important to note that since the establishment of Fiji's Permanent Mission in Geneva, Fiji is able to actively participate and promote Fiji's national interest at international organisations, including the WTO.

28. The various laws that fall within the ambit of FIPO are the Trademarks Act (CAP240), Patents Act (Cap 239) and the Copyright Act 1999. While limited amendments to these IP laws have been passed since the TRIPS Council briefing in 2001, Fiji recognises that much still needs to be done. The Fijian Government is currently working with WIPO to review its intellectual property laws to ensure, inter alia, that they are in conformity with the TRIPS Agreement.

29. Some of the challenges that Fiji has faced in the intellectual property front is the various institutional realignments that have taken place over the years, lack of awareness and capacity constraints. Notwithstanding these challenges, there have been various cases concerning copyright infringement that have passed through our judicial system, and the judicial and law enforcement units are also developing their understanding of the various offences under Fiji's IP laws.

30. In the responses circulated by Fiji, we have answered 83 questions in total, with 59 of these being additional question asked by Members subsequent to Fiji's original responses. Without delving into the details of the responses provided, it is clear to us that the process of responding to the outstanding questions from Members, difficult as it was, has been very useful as a transparency exercise. Moreover, it has been helpful to our authorities by highlighting the areas of concern where our legislation reform may need particular focus. In conducting Fiji's legislative reform in this area, Fiji will no doubt seek further cooperation and expertise from the international community where needs are identified.

31. Fiji thanks the Members for their patience in the conclusion of Fiji's IP legislation review, and trusts that Members are satisfied with the responses that Fiji has been able to provide. Provided that we have done so, and that there are no further questions for Fiji, we hope that we can conclude today the Council's review of Fiji's legislation implementing the TRIPS Agreement.

32. Allow me to add a few words, not directly related to the review of Fiji's IP legislation, but on an issue of importance. This relates to the protocol amending the TRIPS Agreement that will improve access to affordable medicine. Fiji is fully seized of the benefits of accepting the Protocol amending the TRIPS Agreement, and is positively inclined to undertake the necessary domestic procedures through Cabinet and Parliament in order to deposit the instrument of acceptance of the Protocol amending the TRIPS Agreement.

33. Finally, Fiji wishes to place on record thanks to the Secretariat which has assisted Fiji in providing the necessary responses to the outstanding questions from Members, and in supporting our efforts to successfully conclude this Review.

2.3 Switzerland

34. Switzerland wishes Fiji and its people the very best and good recovery from the devastation that the terrible cyclone Winston has caused on this archipelago. As concerns Fiji's review of legislation, Switzerland would like to inform that we do not intend to submit further follow up questions at this stage and would be in bilateral contact with Fiji if need be for any further information, including the new legislation that has now been notified. We would like to congratulate Fiji on their constitutional and institutional reforms that the Council has been informed about. We would like to congratulate them also on the establishment of the IP office and the numerous revisions in their IP legislation.

2.4 United States of America

35. As with Tajikistan, the United States thanks the Government of Fiji for its replies to our questions and also welcomes Fiji's detailed comments on its TRIPS legislative review process as well as the efforts it has undertaken over recent months and years with respect to that system. The US is currently reviewing the answers provided to our questions, and we therefore support the recommendation to close Fiji's review and may raise any further questions bilaterally.

2.5 European Union

36. The European Union would also like to thank Fiji for having provided the replies to our questions and for engaging in this process. Like my colleagues from Switzerland and the US, we appreciate the enormous efforts that you have already achieved, also for the transparency with which Fiji acknowledges that more needs to be done, there are a few important aspects that need to be implemented to bring Fiji in line with the TRIPS Agreement. We strongly encourage Fiji to pursue the process with WIPO, which should bring necessary support, and the EU stands ready to support as well, but we do not intend to put any other additional questions in this form. If necessary we could do so bilaterally, and therefore we support the proposal to close the review with regard to Fiji.

2.6 Fiji

37. Fiji thanks the Members for their support in the conclusion of Fiji's review and Fiji also thanks you, Mr Chairman, for your leadership and guidance in this regard.

2.7 Kazakhstan

38. On behalf of the delegation of Kazakhstan, I would like to thank the Secretariat for their excellent advice on how to proceed with the notifications under the TRIPS Agreement. Immediately after the accession of Kazakhstan, at the end of last year, we were in contact with the Secretariat, and met with the Secretary of the Council for TRIPS who gave us all the necessary guidelines. Since then, we have submitted a notification on the contact point under Article 69 of the TRIPS Agreement. Now we would like to inform the Council for TRIPS that we are currently working on the notification of laws and regulations under Article 63.2 of the TRIPS Agreement with a list of the main laws and other legal acts on IPR. We are finalising the update of the English translation of the text of the main laws, including on copyright and related rights, patent law of the Republic of Kazakhstan and the law of the Republic of Kazakhstan on trademarks, service marks and appellations of origin. As soon as the texts are approved by the parties involved, we will submit the notification to the WTO.

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 (CBD)

AGENDA ITEM 5: PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE

5.1 Brazil

39. Brazil understands intellectual property as an important element for the economic, social and cultural development of countries. It is also our view that the implementation of the TRIPS Agreement and the Convention on Biological Diversity should be supportive and concur to their respective objectives. For these reasons, we see as a priority the amendment of the TRIPS Agreement for the introduction of a mandatory requirement for the disclosure of origin of genetic resources and traditional knowledge in patent applications, as expressed in our proposal TN/C/W/59.

40. A multilateral and mandatory disclosure would be the most effective way to address the misappropriation of genetic resources and traditional knowledge. This requirement would allow the identification of the country supplying the biological resource by requiring patent applicants to disclose the country of origin and provide evidence of compliance with prior informed consent and benefit sharing. It would also enhance transparency and contribute to high-quality patent examinations by providing additional information to IP Offices.

41. At the national level, Brazil updated its biodiversity law on access to genetic resources and benefit sharing in 2015, after 14 years of experience with the previous law. The legislation clarifies responsibilities of each stakeholder and creates an electronic system to facilitate the process of obtaining authorization for the access to genetic resources.

5.2 Bolivia, Plurinational State of

42. As many Members are aware, the delegation of Bolivia has taken a stand for some years now against the patentability of life forms or parts thereof, as is inferred from Article 27.3(b) of the TRIPS Agreement. In communications IP/C/W/545 of February 2010 and IP/C/W/554 of March 2011, Bolivia expressed concern with respect to the need to amend or clarify Article 27.3(b) in order to prohibit the patenting of all life forms, and to the need to protect farmers' rights, genetic resources, traditional knowledge and traditional practices in developing countries.

43. As everyone knows, prior to the adoption of Article 27.3(b) life forms and components of life forms (such as cells, genes, biochemical substances and proteins) were generally not considered to be patentable. The adoption of Article 27.3(b) established that Members were to provide

patents on micro-organisms, microbiological processes and non-biological processes. Article 27.3(b) also gave Members the possibility to grant patents on plants and animals as well as essentially biological processes. Thus the adoption of this provision promoted a new phase of extension of capitalism into nature never seen before, that is, allowing the privatization of life itself.

44. Article 27.3(b) triggered a process which led to the proliferation of policies and laws that permit life forms and parts thereof to be considered patentable subject matter. Article 27.3(b) also promoted the expansion of the scope of invention with the resulting effect of patents being granted to discoveries of the functions and characteristics of a living organism or parts thereof. The communications submitted by Bolivia in 2010 and 2011 provide a wealth of details in that respect which it would be interesting to bring up to date.

45. To conclude, the Bolivian delegation believes that it would be useful to review the Article in question - which provides for such a review four years after the date of entry into force of the WTO Agreement - with a view to eliminating the patentability of all life forms or parts thereof, because it raises serious ethical and moral questions of concern to the indigenous peoples of Bolivia and to other cultures that regard life as sacred.

46. We also welcome the invitation extended to the CBD Secretariat to bring us up to date on the latest developments in its sphere of responsibility.

5.3 Bangladesh

47. After the introduction of the TRIPS Agreement long ago, a lot of developments in the fields of science and commerce have taken place and we need to review the TRIPS Agreement against the backdrop of this new and changing scenario. The delegation of Bangladesh does not support the patenting of lifeforms comprising plants and animal-based or natural forms and natural resources according to our domestic law on moral and ethical grounds. So we call for the review of Article 27.3(b) in order to protect developing countries and LDCs from the negative effects of this provision on the key sectors that affect our livelihoods such as agriculture, health, food and climate change. This ensure help, *inter alia*, ensuring food security and preserve the integrity of rural and local communities. Patenting of life forms at a multilateral level should be prohibited also for ethical reasons.

48. On the relationship between the TRIPS Agreement and CBD, we hold that all States have the right and duty to protect their traditional knowledge and genetic resources. There is therefore need to amend the TRIPS Agreement with a view to require patent applications relating to biological materials to provide information on the source and country of origin of the biological resources and associated traditional knowledge used in the invention. Both the TRIPS Agreement and the CBD and the subsequent Nagoya Protocol broadly uphold the use of innovation for the development of people and we consider these two agreements as complementary to each other and to harmonize them for their mutual benefits. In addition the applicants must show evidence of prior informed consent from and beneficiary agreements with the authorities and/or persons under the relevant national regime. This disclosure requirement which is also consistent with the transparency principle established in the multilateral trading system will help to reduce the number of erroneous patents, misappropriations and bio-piracy.

49. We believe that traditional knowledge and folklore should receive proper legal recognition and its protection will contribute significantly to the achievement of development goals and the preservation of heritage, culture and tradition

5.4 Australia

50. Australia would like to comment that following the renewal of the IGC's mandate as agreed by WIPO Members last October, WIPO is best placed to consider the complex intellectual property issues related to genetic resources and traditional knowledge. We note that the IGC Chair is Australian and that the IGC Chair and the Australian delegation wish to see WIPO Members conclude this important substantive work on which considerable process has already been made. Australia continues to encourage Members to engage in negotiations with commitment to achieving a meaningful and balanced outcome.

51. On the issue of patenting of lifeforms, Australia regards the current flexibilities under the TRIPS Article 27.3(b) as sufficient to allow Members to take decisions on the patentability of lifeforms in accordance with national policies and we regard it as appropriate to retain these flexibilities. Australia considers that prohibiting patents that related to lifeforms would have a profound adverse impact on innovation, limit scientific advancement and result in significant commercial impact.

5.5 Egypt

52. We believe that the TRIPS Agreement should be amended in order to provide that Members shall require an applicant for a patent relating to biological resources or associated traditional knowledge to disclose the source and the country of origin of the biological resources and the associated traditional knowledge used in the invention. Furthermore the applicant shall also provide evidence of prior consent and evidence of free and equitable benefit sharing under the relevant national regime. Therefore we urge all Member countries to constructively engage in these kind of negotiations taking into consideration that this issue is one of the high priority matters for developing countries.

5.6 Ecuador

53. Ecuador reiterates the position expressed at previous meetings on these three topics, namely that it considers that an analysis and discussion should be undertaken to revise Article 27.3(b) so as to enable the Council to reflect on the patentability of all life forms or parts thereof. On this point we support the statement by the delegation of Bolivia, since it should not be possible to endanger or negatively affect life forms of peoples and cultures. This type of patent should therefore be prohibited, since life or parts thereof must not be considered a tradeable good subject to inventions and patents.

54. Ecuador also firmly believes in the relationship between the TRIPS Agreement and the CBD and reaffirms the need for multilateral legal instruments to improve the use of genetic resources, traditional knowledge and traditional cultural expressions, and to give them effective and adequate protection.

55. Ecuador reiterates its support for India's proposal that the CBD Secretariat inform this Council of the negotiations conducted in the framework of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization.

56. Some meetings ago, Ecuador raised the possibility that the WTO Secretariat prepare an update of the factual notes, since the last compilation of the ideas discussed was produced in 2006, and considers that an update of the documents will bring greater clarity to the discussions.

5.7 Cuba

57. Cuba is in favour of reactivating the work to review the relationship between the TRIPS Agreement and the CBD, and the protection of traditional knowledge and folklore. These are negotiating issues that are still awaiting outcomes and are of particular importance to the developing and least developed countries.

58. We wish to draw attention to proposals IP/C/W/474 and WT/GC/W/590 of 2006 and 2008, respectively, which would be a good basis on which to work. We recommend working more closely with other agencies such as UNCTAD, WIPO and the FAO; this would, moreover, be in keeping with the WIPO Development Agenda.

59. Advancing the negotiations on these topics could make an unprecedented WTO contribution to the objectives of the post-2015 Development Agenda. We wish to recall that any WIPO outcome will be complementary and without prejudice to any result that may be achieved in the WTO framework.

60. Lastly, Cuba thanks Bolivia for presenting its proposal, the subject of which is of considerable importance to our country.

5.8 India

61. India supports the statements made by Brazil and Egypt. We have been extensively discussing these agenda items for many years. During the course of the 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.

62. India has been a major victim of bio-piracy. Pursuant to the ratification of the CBD, India developed a comprehensive legislation on biodiversity, enacted Biological Diversity Act in 2002 and notified Biological Diversity Rules in 2004. In 2003 the National Biodiversity Authority (NBA) was set up. All matters relating to requests for access by foreign individuals, institutions or companies, and all matters relating to transfer of results of research to any foreigner are dealt with by the National Biodiversity Authority.

63. The Government of India has also developed a Traditional Knowledge Digital Library (TKDL) database to prevent misappropriation of traditional knowledge at international patent offices so that cases of bio-piracy can be prevented. India has signed TKDL Access Agreements with nine International Patent Offices. While India has pioneered the 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.

64. 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 the developing countries. 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 109 Members. The latest submission on this issue TN/C/W/59 in April 2011, which is a draft decision to enhance mutual supportiveness between the TRIPS Agreement and the CBD has been proposed by a vast majority of WTO Membership, including India. This proposal seeks amendment of the TRIPS Agreement by inclusion of a new Article 29bis for disclosure of origin of genetic resources and/or associated traditional knowledge. 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.

65. The Nagoya Protocol to the Convention on Biological Diversity entered into force on 12 October 2014. So far 72 Countries, including India and the European Union have ratified the Protocol. According to the CBD website, the Access and Benefit sharing Clearing-House (ABS-CH), which is a platform for exchanging information on access and benefit sharing established by Article 14 of the Protocol, is a key tool for facilitating the implementation of the Nagoya Protocol, by enhancing legal certainty and transparency on procedures for access, and for monitoring the utilization of genetic resources along the value chain, including through the internationally recognized certificate of compliance.

66. India was associated with the first internationally recognized certificate of compliance (IRCC) issued under the Nagoya protocol on Access and Benefit Sharing. According to the press release available on the CBD website, in Oct 2015, the first IRCC was issued following a permit made available to the Access and Benefit-sharing (ABS) Clearing-house by India. The certificate constituted through the ABS Clearing-House serves as evidence of the decision by India to grant access to ethno-medicinal knowledge of the Siddi community from Gujarat to a researcher affiliated with the University of Kent in the United Kingdom. The researcher can now demonstrate that s/he has respected the ABS requirements of India when using this knowledge.

67. In view of the entry into force of the Nagoya Protocol and operationalisation of the Access and Benefit-sharing Clearing-house, 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. We also support Ecuador's proposal for updating the three factual briefs by the Secretariat.

68. I conclude by stating that the TRIPS-CBD issue is one of the outstanding implementation issues for which positive outcomes are one of the most important deliverables of the Doha Round for the developing countries. Exhaustive discussions alone in the last fifteen years on the TRIPS-CBD issue are not enough. Members need to engage constructively, which is sadly missing on part of some developed Members. The document TN/C/W/59 can be a good basis for future work and my delegation is ready for discussions to move that process forward.

5.9 Canada

69. Canada continues to firmly believe that the TRIPS Agreement and the CBD are mutually supportive, and that there is therefore no need to amend the TRIPS Agreement in this regard. Canada welcomes the ongoing work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. Canada continues to believe that WIPO, and particularly the IGC, is the best and most appropriate forum for discussion of these complex issues. We have been, and are pleased that we can again continue to be, an active and committed participant to this important work. Canada takes note of the concrete discussions and valuable exchange of national experiences held during the Twenty-Ninth Session of the IGC (15-19 February 2016), with a view to accurately pinpointing the issues at hand, and identifying appropriate, balanced and mutually beneficial approaches.

70. We also wish to reiterate our view whereby matters relating to Article 27.3(b) are an implementation issue as outlined in the Doha Ministerial Declaration, as is also the case for the relationship between the TRIPS Agreement and the CBD and the protection of traditional knowledge and traditional cultural expressions, and we continue to support an approach that provides for national flexibility on this matter.

71. With respect to the request for a briefing from the CBD Secretariat, Canada would not oppose such a briefing provided that there is sufficient support from Members and that it is merely factual.

5.10 Indonesia

72. Indonesia would like to support the statements made by Brazil, Egypt and India. The relationship between the TRIPS Agreement and the Convention on Biological Diversity and protection of traditional knowledge and folklore under this agenda item is highly important. All Members should take real actions to ensure the adherence, coherence and consistency of the TRIPS Agreement and the CBD. The two international instruments need to be implemented in a manner which is mutually supportive and does not run counter to the respective objectives. Indonesia is of the view that we should focus on the objective, definitions and the principles of the CBD and the Nagoya Protocol that form the fundamental principles for the protection of genetic resources and associated traditional knowledge, particularly the provisions of prior informed consent for access and fair and equitable benefit sharing. However, Article 27.3(b) of the TRIPS Agreement does not oblige Members to take necessary measures for fair and equitable sharing of benefits as required by the CBD and Nagoya Protocol. Such existing relationship between the TRIPS Agreement and the CBD allows for misappropriation and misuse of genetic resources. It would defeat the purpose of CBD and the Nagoya Protocol.

73. As a developing country, the protection of genetic resources, traditional knowledge and folklore is a crucial issue for Indonesia. Therefore, with regard to Article 29 of the TRIPS Agreement my delegation reiterates the urgency of enhancing the discipline of mandatory disclosure requirements. Indonesia considers that a legal obligation to establish a mandatory disclosure requirement in patent applications will contribute to preventing misappropriation and misuse of genetic resources and to enhance transparency about the utilisation of genetic resources and/or associated traditional knowledge as recognised in the CBD and Nagoya Protocol. To this end, we would like to appeal to all Members to reflect on this important issue under this agenda item.

74. It is our view that the mandatory disclosure requirement can provide a greater legal certainty for the IP system itself, as it will render a balance of rights and obligations between the provider and users of genetic resources as well as local communities who are the holders or beneficiaries of the associated traditional knowledge. In this form the IP system will be consistent with its core objectives, which are to contribute to the material advantage of producer and users of technological knowledge in a manner conducive to socio and economic welfare and to a balance of rights and obligations. These goals can only be achieved by amending the TRIPS Agreement to include provisions on a mandatory disclosure requirement.

75. My delegation also sees the importance of taking into account the Sustainable Development Goals, and the discussion in the Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore (GRTKF) in WIPO. The SDGs urge to promote fair and equitable benefit sharing arising from the utilisation of genetic resources and to promote appropriate access to such resources as one of its surrogates in order to achieve one of the goals of the future agenda of global development that replaces the Millennium Development Goals. Meanwhile the Intergovernmental Committee on GRTKF in WIPO is pursuing the establishment of a *sui generis* regime in the protection of GRTKF. In line with this, Indonesia believes that it is timely for the Council to give simultaneous and adequate attention to address the issue towards a common goal to ensure that GRTKF are protected in an appropriate manner.

5.11 Venezuela, Bolivarian Republic of

76. My delegation would like to reiterate our country's position that we do not support the patentability of animal life forms. We support the arguments that have been put forward by Brazil, Ecuador, Bolivia and India, both in our domestic and foreign affairs this is clear and we would support the request of Bolivia to have the possibility of a CBD Secretariat presentation.

5.12 South Africa

77. A large group of developing country Members proposed an amendment of the TRIPS Agreement to introduce a mandatory disclosure requirement in patent applications and have sought clear guidance on this matter as part of the modalities decision. The basis of this amendment is contained in TN/C/W/59 which requires access and benefit sharing, prior informed consent and disclosure of the source of material when a patent is applied for through an amendment to the TRIPS Agreement. Any work undertaken at WIPO by the IGC does not detract from the mandate within this Council to discuss this matter.

78. The relationship between TRIPS and CBD remains a core aspect of the Doha Mandate and specifically as an outstanding implementation issue. It is therefore the plea of this delegation that the relationship between TRIPS and the CBD be further crystallized. We join other delegations in calling on the TRIPS Council to invite the CBD Secretariat to update this Council on the development in respect of the Nagoya Protocol and other relevant developments; we finally also call on the completion of the three factual briefs by the WTO Secretariat.

5.13 Peru

79. Peru would like to endorse what has been said by India, Egypt, Brazil, Indonesia and South Africa, and in light of the Ministerial Declaration of Nairobi from paragraph 7: "We reaffirm the centrality of development in the WTO's work and commit to continuing to make positive efforts designed to ensure that developing country Members, and especially the least-developed country Members, secure a share in the growth of world trade commensurate with the needs of their economic development." I am quoting this paragraph in light of trying to combat biopiracy and the need to ensure that we have a clause to that extent in the TRIPS Agreement.

80. In Peru, there is a national committee to combat biopiracy that was established in 2004 and it reports to the Council of Ministers. Its objective is to roll out actions to try to identify and prevent acts of biopiracy. This is to ensure that Peru has a system of protection and identification of events of biopiracy to try to prevent any biopiracy acts that would hamper or harm the biological diversity of Peru. We identified 23 events of biopiracy that were a threat to our indigenous population or to our indigenous biological diversity. These were detected in various rural areas, and it is quite clear

that all domestic efforts are not sufficient; we need to see a binding international agreement to ensure that benefits are shared.

81. The problems that we face require a multilateral response or solution and this should be negotiated in WIPO. After the Ministerial Conference in Nairobi, and particularly regarding paragraph 7 that I referred to at the beginning, and paragraph 31 that also refers to the firm commitment of Members to make progress on the Doha Development Round, perhaps it is time to consider that we ought to tackle the biopiracy issue. By way of conclusion I would like to support the request to have factual presentations and to also invite the CBD Secretariat.

5.14 Colombia

82. 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 United Nations Convention on Biological Diversity 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 LDCs.

83. The Doha Declaration states that work in the Council should also look at the relationship between the TRIPS Agreement and the Convention on Biological Diversity, while fully taking into account the development dimension.

84. And yet, 15 years later we have seen no progress. We now have an opportunity to breathe new life into the negotiations after MC10. We 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.

5.15 China

85. It is well recognized that TRIPS-CBD has been an important outstanding issue at the TRIPS Council. In order to ensure that the TRIPS Agreement, the CBD and the Nagoya Protocol operate in a mutually supportive manner, the majority of Members support amending the TRIPS Agreement to introduce a mandatory disclosure requirement of the origin of genetic resources and/or traditional knowledge into patent applications. Such disclosure proposals can be found in documents TN/C/W/52 and TN/C/W/59. These documents could improve the transparency and help prevent misappropriation and erroneous patents granted due to the lack of information by patent examiners. At the same time, China does not think it would be burdensome for the patent applicant to provide the information concerning prior informed consent and access and benefit sharing, especially considering the legitimate objective pursued by the system. The contractual arrangements or database solution proposed by some Members would not be sufficient for the protection of genetic resources.

86. China welcomes the ongoing discussions and developments in the negotiations at the WIPO Intergovernmental Committee (IGC); however, this should not prevent Members from seeking solutions here in the WTO. In accordance with the mandate given by Ministers, which had instructed the Council to examine, inter alia, the relationship between the TRIPS Agreement and the CBD, Members shall work effectively in order to resolve the matter.

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

88. China would also like to request that the three factual notes (IP/C/W/368/Rev.1, IP/C/W/369/Rev.1, IP/C/W/370/Rev.1) be updated, which will provide Members with helpful information as well as enable a constructive debate.

5.16 Japan

89. The delegation of Japan would like to reiterate our position that it is necessary to seek appropriate ways to deal with the misappropriation of genetic resources, bearing in mind that any measures taken should never adversely affect the existing intellectual property system or innovation utilizing genetic resources and associated traditional knowledge.

90. At the previous Council meetings, this delegation outlined the substantial, negative impact that the disclosure requirement would have on innovation. Namely, it would cause industries to stop conducting R&D activities on biological materials overseas. This is the very consequence of the disclosure requirement that we have been concerned about. Therefore, we believe that the disclosure requirement is not an adequate means for dealing with such misappropriation and should not be included in the intellectual property system.

91. Concerning these issues, we believe that the WIPO IGC is the most appropriate forum for holding technical discussions on IP aspects. It has restarted this under a renewed mandate from this February. Japan is actively contributing to the discussion. We believe that discussions in the WIPO IGC should be prioritized, since WIPO is the organization that specializes in IP.

5.17 Korea, Republic of

92. Our delegation has the same position on these agenda items which have been reiterated many times at the previous meetings of this Council.

93. We would like to share the position expressed by the Australian, Canadian and Japanese delegations that the WIPO is the appropriate organization to deal with these issues. However, our delegation continues to be open-minded to any new proposal and suggestion on these issues.

5.18 United States of America

94. Regarding the issue of genetic resources, traditional knowledge and folklore, we continue to believe, as others have expressed, that WIPO serves as the best forum to address these issues. The resumption of the WIPO IGC meetings occurred the week of 15 February 2016, with a new mandate looking at addressing unresolved issues and working towards reaching an understanding of core issues using an evidence-based approach and examples of national experiences. The United States will continue to engage in technical discussion at WIPO's IGC and awaits more information from the demandeurs supporting their position on this issue. With respect to the various requests made today, the United States is not in a position to support those requests, but remains open to discussion including bilaterally with delegations in between and at the margin of TRIPS Council meetings, including to better understand the precise nature and need for such proposals.

5.19 Switzerland

95. The relationship between TRIPS and CBD, together with GI extension, is one of the two outstanding implementation issues. In tandem with the GI register, they formed the three TRIPS issues, supported by a large majority of the WTO membership for which they have also offered modalities language in TN/C/W/52. Part 3 of the Nairobi Ministerial Declaration focuses on future work. Members committed to advance work also on the TRIPS issues. The discussion under Agenda Item 4 is one element of this work to be undertaken in 2016, and my delegation expresses its continued support and engagement for the Council's discussion.

96. My delegation also supports the proposal for a briefing on the Nagoya Protocol by the CBD Secretariat and that the WTO Secretariat updates its three briefing notes as proposed by other delegations.

97. As concerns calls to review Article 27.3(b) of the TRIPS Agreement with a view to excluding the patenting of life forms, my delegation has expressed many times in the Council that we believe that the TRIPS Agreement provides the necessary flexibility to Members and that we also believe that the field of biotechnology holds many promises for improvement and progress of society. Also, calls for declaration of source, and access and benefit sharing, in my delegations' views, only

make sense if the patentability of inventions based on genetic resources and TK as such is acknowledged.

AGENDA ITEM 6: NON-VIOLATION AND SITUATION COMPLAINTS

6.1 United States of America

98. For the reasons we have detailed in our previous interventions under this agenda item, we continue to believe that the drafters of the TRIPS Agreement envisioned that non-violation and situation complaints should be available. We also believe that while valid questions have arisen, they are fully and adequately answered by the text of the TRIPS Agreement itself, further clarified through GATT and WTO adjudications, as we have numerated in our communication to the TRIPS Council to which you referred document (IP/C/W/599) as well as in our many recent interventions on this issue.

99. We also take this opportunity to confirm that while the moratorium on Non-violation Nullification or Impairment (NVNI) disputes under the TRIPS Agreement was extended in December for an additional two years, the United States continues to maintain its long-held and firm position that NVNI disputes should be applicable to the TRIPS Agreement, that they are fully consistent with the TRIPS Agreement, and that the application of such disputes in this context was the intent of the drafters of the TRIPS Agreement. There has been an extensive exchange of views on this important issue. Indeed, document IP/C/W/385 from 2002 which was reintroduced recently represents one earlier chapter of this narrative from one set of narrators. We have endeavoured in our document, IP/C/W/599, to respond comprehensively to each concern raised in previous submissions and interventions, including IP/C/W/385. We have heard from some delegations that the TRIPS Agreement is not a market access agreement, thereby rendering NVNI inapplicable as a result. While we have demonstrated copiously to the contrary, we again note that such a dialectic or binary view is beside the point. As has been discussed previously, NVNI claims have been brought outside of the GATT context and assessed on the merits by WTO judicative bodies.

100. We have also heard that NVNI will lead to uncertainty, because there are no rules of the road for the application under the TRIPS Agreement. For our side, however, the uncertainty is with respect to precisely the nature of this concern and the foundation on which this concern rests. Here too, we have presented a thorough analysis of the relevant GATT and WTO adjudicative rulings that provide clear standards for the application of NVNI claims, both under the GATT and beyond, including under the TRIPS Agreement. At the same time, it is true that the Dispute Settlement Understanding enumerates clearly defined parameters that enshrine security and predictability for all WTO Member States, including with respect to NVNI claims under the TRIPS Agreement. We also have listened intently to the concerns delegations have expressed regarding perceived possible implications with respect to flexibilities under the WTO Agreements. Here we have provided extensive and responsive replies in terms of the numerous safeguards in the TRIPS Agreement, the DSU and the Dispute Settlement Body, recommendations and rulings in individual disputes. Furthermore, as the Swiss delegation has explained, a non-violation complaint cannot be brought against another Member for utilising 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 makes use of a flexibility provided in the TRIPS Agreement is, just as any other right under the TRIPS Agreement, foreseeable by other Members. Beyond these safeguards we have yet to find a single instance where NVNI claims have borne out the concerns raised by some delegations, with respect to exceptions under WTO Agreements. Neither the numerous free trade agreements which include NVNI claims, nor GATT, or WTO jurisprudence provide any examples of any curtailment of exceptions provided under the WTO Agreements.

101. As we have enquired in past meetings, why would NVNI claims limit the use of the exceptions in the TRIPS Agreement when NVNI claims have not been suggested to limit the use of the exceptions under Article XX of the GATT 1994. We have not yet heard that answer. This is perhaps because NVNI claims have been available for 63 years, as have GATT Article XX exceptions, and during that period we are not aware of any instance in which an NVNI claim has imperilled or otherwise limited the ability of a GATT or WTO Member to adopt or enforce measures covered by GATT Article XX.

102. To conclude, we believe that the long history of compatibility of GATT NVNI claims with GATT exceptions for measures related to issues including public morals, human health and the conservation of exhaustible natural resources should go far to allay concerns regarding the application of NVNI claims in the context of the TRIPS Agreement.

6.2 India

103. India's position on the issue of non-violation complaints under the TRIPS Agreement remains unchanged. In the run up to the Ministerial Conference in Nairobi, it would be worth noting that there was a great confluence of interest on making such complaints inapplicable to TRIPS. There was a draft Ministerial Decision in this regard.

104. Serious concerns remain on the debilitating impact non-violation complaints in TRIPS can have on the regulatory policy space of Members, on TRIPS flexibilities as well as increasing the complexity in interpreting the TRIPS provisions. It can not only have a chilling effect on Member's exercise of their IP regimes but also severely restrain the ability of Members to achieve other public policy objectives.

105. More than a decade ago, India faced a dispute involving the TRIPS Agreement (popularly called the Mail Box dispute) wherein the concept of legitimate expectations was raised by the complainant to interpret the provisions of the TRIPS Agreement. The Panel erroneously held that "legitimate expectations" applied in the context of the TRIPS by stating:

"Finally, we recall that one of the precepts developed under GATT 1947 is that rules and disciplines governing the multilateral trading system serve to protect legitimate expectations of members as to the competitive relationship between their products and those of the other Members.... Predictability in the intellectual property regime is indeed essential for the nationals of WTO Members when they make trade and investment decisions in the course of their businesses."

106. Though the AB reversed this reasoning of the Panel on the ground that non-violation complaints were not applicable, it is critical to note that the concept of "legitimate expectations" would be one of the primary tools to challenge Members IP regimes that are otherwise consistent with the TRIPS Agreement if NVCs apply. A cursory glance at recent international investment arbitrations against States by some pharmaceutical companies utilising the "legitimate expectations" principle to challenge not only IP regimes but also judicial decisions is a troubling development. Allowing the non-violation complaints under the TRIPS Agreement will essentially replicate this development in the WTO dispute settlement forum.

107. The applicability of non-violation complaints negatively impacts the ability and willingness of countries around the world to use the acknowledged flexibilities of the TRIPS Agreement, for the purpose of, inter alia, public health and access to medicines.

108. We do not stand convinced by the reasons provided by a couple of Members of the place of such complaints in the TRIPS context. While whether the TRIPS Agreement is a market access agreement may or may not be relevant for their applicability, it is clear that the drafters did not unequivocally apply NVCs to TRIPS. If that were so, we would not be having this discussion today. We are willing to engage with those who have contrary views to convince them of the merits of the concerns of the overwhelming number of Members.

109. We note that there is a moratorium on the applicability of such complaints until the next Ministerial Conference and congratulate all Members on their efforts in achieving this outcome. In continuation of these efforts, we look forward to work with like-minded Members in making non-violation complaints inapplicable to TRIPS. We also wish to reiterate that until there is a consensus on the scope and modalities of the applicability of NVCs to TRIPS, NVCs will not apply to the TRIPS Agreement.

6.3 Canada

110. Canada welcomes the opportunity to address the important issue of the applicability of the NVNI remedy to the TRIPS Agreement.

111. Our position on this issue is well known, and has remained unchanged over the years. In this regard, we wish to refer Members to our previous interventions wherein we raised concerns about the applicability of the NVNI remedy to the TRIPS Agreement as well as our previous papers submitted to the Council on this issue, in particular, IP/C/W/127. Canada stresses its commitment to the TRIPS Agreement and to our work in this Council.

6.4 Cuba

112. Cuba maintains its position on this matter. We would recall that the application of such complaints in the field of IP may give rise to serious difficulties, generate major imbalances between the interests of rights holders and public policy considerations, limit the exercise of TRIPS flexibilities, and entail practical problems.

113. We wish to draw attention to the full relevance and validity of document IP/C/W/385 of October 2002 and, in particular, to highlight the work done by a large number of countries to update this paper, a revised version of which (IP/C/W/385/Rev.1) was submitted in July 2015. We emphasize that the great majority of WTO Members take the position that these complaints are not applicable in the IP sphere, and this was firmly established by the co-sponsorship of document IP/C/W/385/Rev.1 by Argentina, the Plurinational State of Bolivia, Brazil, China, Colombia, Cuba, Ecuador, Egypt, India, Indonesia, Kenya, Malaysia, Pakistan, Peru, the Russian Federation, Sri Lanka, the Bolivarian Republic of Venezuela, Bangladesh on behalf of the LDC Group, and Lesotho on behalf of the African Group.

6.5 Bolivia, Plurinational State of

114. Bolivia's position on this remains what it was prior to the Nairobi Ministerial Conference. Bolivia is a proponent of IP/C/W/385/Rev. 1 of 25 May 2015. We do not think that NVNIs should apply to intellectual property for the reasons exhibited in the aforementioned communication and in line with what India said earlier today.

6.6 Indonesia

115. We would like to support the statement made by India. Indonesia would like to express its full support towards the Nairobi Ministerial Conference Decision that put a moratorium on the implementation of Non-violation and Situation Complaints (NVSC) to any statement of disputes under the TRIPS Agreement until 2017. As we all know NVSC would strongly contradict the basic principles of transparency and predictability which have so far been the highly upheld principles of this house. It would also create legal uncertainty that would undermine the practicability and security that the systems seeks to provide to all WTO Members. Indonesia's stand remains the same on this issue. As a co-sponsor of document IP/C/W/385/Rev.1, our view about the debate on this issue is fully reflected in this document because we are convinced that the application of NVSC raises very fundamental and unnecessary concerns.

6.7 Peru

116. We welcome the Decision adopted in Nairobi along the lines of which Members will not present non-violation complaints under TRIPS until the next Ministerial Conference in 2017. In that regard, I would like to reiterate my delegation's position. This type of complaint cannot be applied to the TRIPS Agreement – I do not want to delve too deeply into what has already been said today, particularly regarding IP/C/W/385/Rev.1, which was the basis of the proposed Decision in IP/C/W/607 which garnered the support of the African Group and a number of other countries. My delegation believes that these proposals which include the positions of the majority of the Members of this house suggest that we need further analysis from the only two delegations which are opposed to them.

6.8 Chinese Taipei

117. My delegation would like to add the following comments on the subject of complaints on non-violation. We believe that the issue has been debated in the TRIPS Council for a number of years. There are concerns among Members regarding the applicability of dispute resolution to cases of non-violation complaints under the TRIPS Agreement. That is why we welcome this opportunity to hold a detailed discussion on the issue with Members, particularly as regards the scope and modalities applicable in the context of the TRIPS Agreement.

6.9 Japan

118. This delegation would like to give recognition to the continuous efforts by the Chair and our colleagues in facilitating discussion on this issue. We recognize that a number of Members have participated in discussions on this topic.

119. Japan's view on this issue has not changed. Both clarity and predictability should be ensured when applying non-violation and situation complaints 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 of the scope and modality of non-violation and situation complaints in the area of the TRIPS Agreement.

120. This delegation has been and is willing to engage in discussions at this Council in a constructive and dedicated manner.

6.10 Egypt

121. Our position is widely known. Like the majority of the Members, we do not feel that the system of non-violation complaints as per Article XXIII.1(b) and (c) of GATT is applicable to the TRIPS Agreement.

6.11 Ecuador

122. Following the Nairobi Ministerial Conference and the adoption of the Decision on this topic, we see that the situation is being repeated as on previous occasions. Ecuador reiterates its position that complaints of this kind cannot be applied to the TRIPS Agreement, and maintains its opinion that the TRIPS Agreement does not seek to protect market access, as there is no exchange of tariff concessions, which is explained in document IP/C/W/385/Rev.1 of which Ecuador is a co-sponsor, but that it is a *sui generis* agreement which establishes minimum standards relating to the acquisition, exploitation, scope and exercise of intellectual property rights.

123. Following the Nairobi Ministerial and the adoption of the Decision on this matter, the situation arose once again, as on previous occasions. We simply would like to reiterate our country's position according to which this type of complaints cannot be applied to the TRIPS Agreement. Ecuador maintains its position according to which the TRIPS Agreement should not be in play with non-violation complaints. This is a *sui generis* measure which establishes minimal provisions on this matter. We will continue to discuss this issue and we remain open to further engagement.

6.12 Argentina

124. Argentina's position on this issue is well known and has not changed. We believe that non-violation and situation complaints do not apply to the TRIPS Agreement. This position is based on the reasons stated in IP/C/W/385/Rev.1, which Argentina co-sponsors with a large number of Members.

6.13 China

125. China would like to join others to welcome the Decision at the 10th Ministerial Conference regarding further extending the moratorium to the next Ministerial meeting in 2017. As non-violation and situation complaints is a regular item at each meeting of the TRIPS Council, China

would like to engage in the discussion of this issue in accordance with the mandate and the instruction by Ministers.

126. China's position on this issue is well known. The application of non-violation complaints under the TRIPS Agreement could upset the delicate balance of rights and obligations in the TRIPS Agreement, and could also limit the use of the flexibilities outlined in the Agreement to secure objectives relating to public health and other issues of public interest. We would like to engage in discussion according to the mandate given by Ministers.

6.14 Malaysia

127. Malaysia's position on this issue remains unchanged. We continue to believe that NVNI complaints should not be applicable to the TRIPS Agreement and we look forward to a swift and concrete solution to this issue.

6.15 Colombia

128. Colombia is of the opinion that a transparent, predictable and equitable mechanism for settling trade-related disputes concerning intellectual property is of crucial importance. However, we believe that the TRIPS Agreement, unlike other WTO Agreements, is designed to establish minimum standards of IPR protection.

129. Furthermore, non-violation and situation complaints are unnecessary to protect any balance of rights and obligations inherent in the TRIPS Agreement, as these are reflected in the Agreement's principal obligations and flexibilities, and the Agreement explicitly states that WTO Members are not obliged to implement more extensive protection. In this respect, Colombia reiterates its position, which is shared by the majority of Members, that this type of complaint is not applicable within the ambit of the TRIPS Agreement.

6.16 Thailand

130. We all know that this a long-standing issue, so Thailand welcomes the Decision at MC10, directing the Council for TRIPS to continue its examination of the scope and modalities for complaints of the type provided for under subparagraph 1(b) and 1(c) of Article XXIII of GATT 1994, and to make a recommendation to the next Ministerial Conference in 2017. We note that Members during this period will not initiate such complaints under the TRIPS Agreement. Thailand always stands ready to participate in further discussion on this subject matter in a constructive fashion in order to find an agreeable permanent solution.

6.17 Bangladesh

131. We thank the Ministers and the Members for the extension of the moratorium in Nairobi. Non-violation complaints are usually possible for goods and services under market opening commitments. So we believe that there is hardly any ground to apply this provision under the TRIPS Agreement as this not specifically a market access agreement. Application of this provision under a *sui generis* system will only increase uncertainty, so we support a complete moratorium on this provision.

6.18 Russian Federation

132. The Russian Federation welcomes the consensus reached in the TRIPS Council and agreed in Nairobi in relation to non-violation and situation complaints. The Russian Federation is a co-sponsor of document IP/C/W/385/Rev.1 and remains committed that non-violation complaints shall not apply to the dispute settlement under the TRIPS Agreement. At the same time we are convinced that Members should use the agreed period in order to intensify their work searching for an agreeable solution. The two year prolongation of the Moratorium is not a good permanent answer to the long-standing issue. As a member of a large coalition of like-minded countries, the Russian Federation is ready to participate actively in the negotiation process.

6.19 Korea, Republic of

133. Our delegation would also like to welcome the Nairobi Decision related to this agenda item. I just take the floor to register that our position on non-violation and situation complaints has not changed as there have not been new developments as the Chair mentioned and to echo the concerns over NVSC expressed by previous speakers.

6.20 Brazil

134. My delegation is a co-sponsor, alongside many countries, of document IP/C/W/385/Rev1. With respect to issues the document IP/C/W/599 previously mentioned in this discussion, it tries to clarify concerns raised by document IP/C/W/385. I will make reference to four of these elements.

135. A first element is that in the view of the supporters of IP/C/W/599, the TRIPS Agreement is not different from a market access agreement; unlike the GATT and the GATS, the TRIPS Agreement does not involve an exchange of concessions, and it remains unclear how non-violation complaints would apply to minimum regulatory standards that protect private property rights. While intellectual property rights may in some cases facilitate international trade and investment, the TRIPS Agreement's obligations cannot be characterized as market access concessions in the same way as obligations can be characterized under the GATT or the GATS. The results of WTO market access negotiations are recorded in the respective GATT and GATS schedules, but not in the TRIPS Agreement. Indeed, in some cases intellectual property rights may undermine market access; Article 8, for example, explicitly notes that domestic measures may be needed "to prevent ... the resort to practices which unreasonably restrain trade". That the remedy has been applied under the GATT and the GATS does not render it appropriate for the TRIPS Agreement.

136. A second element is that the United States does not believe that the availability of non-violation measures will raise systemic concerns; as part of a single undertaking, WTO obligations apply cumulatively and so a measure consistent with one WTO agreement (e.g. the GATT) can still be found to nullify and impair benefits under another (e.g. TRIPS). Similarly, the response that Article 3.2 of the DSU will prevent the dispute settlement body from adding to or diminishing the rights and obligations under existing WTO agreements begs the question and fails to recognize that applying non-violation complaints to the TRIPS Agreement amounts to establishing a new cause of action under the TRIPS Agreement. In the absence of clear arguments to the contrary, the concern that non-violation complaints may give rise to incoherence among WTO agreements remains.

137. A third element is that the US understands that the availability of non-violation complaints will protect Members from intentional evasions of obligations under the TRIPS Agreement while preserving the ability of any Member to implement social, economic development, health, environmental and cultural policies. Because, in their view, there are a number of ways to implement social and cultural policy goals, a Member may take this element of non-violation complaints into consideration when crafting measures to protect these goals. Non-violation complaints would require one WTO Member to compensate another for measures that adversely affect foreign holders of intellectual property rights and that were not foreseen during the Uruguay Round. Such an approach would arguably cover a range of domestic measures, may undermine the Agreement's flexibilities, including in the area of public health, and could affect the enjoyment of WTO Members' sovereign right to develop new laws to protect the public interest.

138. We also note that, unlike the GATT and the GATS, the TRIPS Agreement fails to protect measures designed to achieve important national policy goals, such as protecting health and the environment, through a general exception. These measures are likely to be placed at a further disadvantage if open to challenge through non-violation complaints.

139. A fourth element of the IP/C/W/599 document is that the good faith application of the Agreement's provisions will not in all circumstances fully protect Members in the same way that the availability of non-violation complaints will. Brazil understands non-violation complaints are not the best way to protect benefits arising from the Agreement. We have yet to hear arguments why the provisions of the TRIPS Agreement are not sufficiently flexible to address the concerns raised by Members who support such a remedy. We believe that, rather than relying on the legally

imprecise notion of non-violation, a focus on the text of the Agreement, supported by other principles of international law, is a preferable approach.

140. According to Article 3.2 of the DSU, one of the purposes of the dispute settlement system is to clarify the provisions of the agreements covered by the DSU "in accordance with the customary rules of interpretation of public international law". According to Articles 26 and 31 of the Vienna Convention, all treaties must be interpreted and performed in good faith.

6.21 Venezuela, Bolivarian Republic of

141. The position of the Bolivarian Republic of Venezuela has not changed. These types of complaints should not be applicable to the TRIPS Agreement. We echo the concerns aired by other colleagues who have previously taken the floor. We have expressed this in joint document IP/C/W/385/Rev.1.

6.22 Hong Kong, China

142. Hong Kong, China is pleased to join others in welcoming the Decision endorsed at MC10 with regard to the extension of the moratorium for non-violation and situation complaints under the TRIPS Agreement. We stand ready to work with other Members towards a permanent solution.

6.23 Switzerland

143. As you have indicated, and other colleagues before, this is a long-standing issue. Switzerland has had the opportunity repeatedly to present its position in detail, and I refer delegates to the minutes of past Council for TRIPS meetings. Suffice it to recall that we read Article 64 as providing unambiguously that non-violation complaints will be applicable under the TRIPS Agreement once the moratorium ends. We consider that the application of non-violation complaints responds to the principle of legitimate expectations and predictability. These are key goals of the WTO regulatory framework, of which the TRIPS Agreement forms an imminent and important part. As has also been mentioned, the Ministerial Declaration and the Decision taken by consensus in Nairobi opens up another window of time for the TRIPS Council to examine the scope and modalities for non-violation and situation complaints under the TRIPS Agreement. It has been, and still is, the view of Switzerland that the Dispute Settlement Mechanism provides for sufficient guidance to apply such complaints under the TRIPS Agreement should such a case ever be brought before a panel. Accordingly, we do not consider it necessary to propose such modalities, but are of course willing and ready to engage in a discussion in this additional window of opportunity if other Members believe and think it is necessary to have additional and special modalities for these non-violation complaints to be applied under the TRIPS Agreement.

6.24 United States of America

144. The United States wanted to address three points that were raised in interventions today. First, with respect to one delegation's concern and reference to the legitimate expectation standard, we note that this explanation perhaps omitted key elements of the analysis. Panels have identified, as is well known to Members, three required elements for NVNI complaints which are: application of a measure by a WTO Member; a benefit accruing under the relevant agreement; and a nullification or impairment of the benefit as the result of the application of the measure. This standard has been interpreted, as Members well know, by panels and by the Appellate Body so that in order for expectations of a benefit to be legitimate, the challenge measure must not have been reasonably anticipated at the time the concession was negotiated. If the measures were anticipated, a Member could not have had a legitimate expectation of the improved market access to the extent of the impairment caused by these measures. So this seems to address the concern raised by that Member.

145. Second, I am very interested in the point raised by another delegation that the TRIPS Agreement is not a market access agreement because IP measures may serve as a barrier to trade. Aside from the very clear provisions of the TRIPS Agreement which that Member identified, is this not precisely the same thing as the GATT provides, where rules are established to promote trade and to address market access barriers such as high tariffs on pharmaceuticals and medical

devices to promote domestic manufacturing. Is not trade and barriers to trade the very issue that this body, including the TRIPS Agreement is meant to address?

146. Third, with respect to the issue of modalities, as a pre-condition for ending the NVNI moratorium, we disagree, and we have long disagreed, of course. We also welcome the recollection of a third delegation with respect to its submission IP/C/W/127 of its support for our position at least on this issue, which says "according to the terms of this Article, recourse to non-violation complaints concerning intellectual property rights will become available on 1 January 2000 unless there is consensus among all WTO Members to the contrary."

147. Finally, we join other delegations in welcoming the Decision of Ministers in Nairobi not to adopt a permanent moratorium on this issue, which directs us to continue our detailed examination of this issue in the Council.

AGENDA ITEM 7: REVIEW OF THE IMPLEMENTATION OF THE TRIPS AGREEMENT UNDER ARTICLE 71.1

148. No statements were made under this Agenda item.

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

8.1 Dominican Republic

149. The Dominican Republic supports the proposal contained in document TN/C/W/52 of 19 July 2008 that, with regard to the issue of participation, in accordance with paragraph 4 of Article 23 of the TRIPS Agreement, "the system is multilateral, that is applicable to all WTO Members (mandatory). Participating Members are Members above a certain share in world trade".

150. A commitment to consult a database when making decisions regarding registration and protection of trademarks and geographical indications in accordance with domestic law must therefore be required.

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

9.1 Switzerland

151. Switzerland would like to thank the Secretariat for organising the workshop on the implementation of Article 66.2 TRIPS in October 2015 which took place a day after the last Council meeting. The workshop helps us improve our yearly reporting and better address the concerns of LDCs and meet the needs of all stakeholders involved.

152. We support the efforts to make the reporting more efficient and are continuously looking into possible amendments for the benefit of the addressees. The changes we have made in the 2015 report also aimed to best possible reflect the format that the LDC Members proposed in document IP/C/W/561 of October 2011. We look forward to continuing our cooperation and dialogue with the LDCs and the WTO Secretariat on the reporting and implementation of Article 66.2 TRIPS.

AGENDA ITEM 10: TECHNICAL COOPERATION AND CAPACITY-BUILDING

153. No statements were made under this Agenda item.

AGENDA ITEM 11: INTELLECTUAL PROPERTY AND INNOVATION: EDUCATION AND DIFFUSION**11.1 Switzerland**

154. Many years ago when I started working at the Swiss Federal Institute of Intellectual Property, which is the Swiss Intellectual Property (IP) Office, I recall that I met with many puzzled looks when telling friends and relatives about my workplace. Some of my interlocutors seemed embarrassed, changing the topic and preferring to talk about the weather instead. Others, again, were more inquisitive, trying to find out what this IP Institute really was and what I was actually doing there.

155. To understand the punch line here, one needs to know that in German, "intellectual property" translates as "geistiges Eigentum". "Geistiges" in German has a double meaning. It can mean "intellectual", but it can also be used with the connotation of "spiritual". So there I was working for the "Institute of Spiritual Property". I remember an uncle of mine asking, "So you are working with the real estate division of the Catholic Church now?" You can imagine at that moment I was in dire need of spiritual, if not divine support.

156. Intellectual property is hardly a topic for small talk nor is it a subject of conversation for people at the bus stop when going to work (such as talking about the latest football match or a recent political scandal ...). My uncle can be forgiven for his lack of knowledge about IP at that time, since he was a man of wisdom and had a wealth of knowledge in other fields. However, a general lack of awareness and understanding of IP in the public at large, or worse, a disregard for its role in the innovative and creative industries, might well be harmful for an economy in the long term.

157. This is especially true if potential innovators and talented creators are ignorant about IP and how to make these rights work for their benefit. At the very least, the country and its economy run the risk of failing to exploit the existing potential for innovation and creativity.

158. In the view of Switzerland, there is a public interest in the knowledge about IPRs, their functioning and also the need for balance between the interests of right holders and users, i.e. the social contract embodied in IP. Only if the IP system is widely understood and accepted, will it be able to support the optimal promotion of innovation and creation and thus contribute to economic growth and development. Accordingly, governments have a role to play in IP education and diffusion.

159. My delegation is pleased to co-sponsor this topic under the agenda item: Intellectual property and innovation, jointly with Australia, the European Union, and the United States, with the support of the co-sponsors, Hong Kong, China; Japan; Peru; the Russian Federation; Singapore; and Chinese Taipei.

160. In Switzerland, we believe that information relating to IP, along with its teaching and understanding, should not be confined to universities and engineering schools. Such knowledge should be made accessible to the broader population as well, and inspire already the young. In its communication, IP/C/W/612, Switzerland provides examples – without being exhaustive, of course, of how it addresses the task of IP education and diffusion. We are eager to learn from other WTO Member delegations' experience in this field. My colleague will now present a short summary of what is contained in this communication.

161. Referring to its written submission, Switzerland wishes to keep its intervention brief. With a few examples, we will share some of our experience of how to make knowledge of IPRs part of our education and how diffusion of IP awareness can contribute to inspire inventiveness and creativity. Switzerland considers an adequate IP system to be an important part of a regulatory framework, which supports innovative processes and facilitates economic growth.

162. In a world facing formidable changes, the capacity to innovate plays a fundamental role. In order to remain competitive in today's globalized world, any country, and in particular countries with very limited national resources, need to invest in brainpower.

163. This is the case for Switzerland. Particular attention has therefore been given to nurturing a culture of innovation in the Swiss economy and its educational system and achieving a sound IP protection system, which allows innovators to obtain a return on their labour and financial investment. However, if innovators are not aware of their rights, they are less incentivized to innovate, thus preventing a country from fully exploiting its capacity to innovate. Accordingly, IP education and diffusion are key for a functioning IP system.

164. In Switzerland, IP education is tailored to age groups. For instance, pupils between 6 and 16 are more likely to have contact with copyright and trademark issues. Therefore, it appears to be more sensible to incorporate this kind of knowledge into primary and secondary levels of education and awareness raising campaigns.

165. At Swiss primary schools, the Swiss Government has set up a nationwide programme to promote media competence among pupils. The programme deals with the proper handling of digital data, with guidelines to promote the fair handling of copyright by youngsters.

166. A second example is the Young Enterprise Swiss Programme (YES), which supports practice-oriented business training programmes for secondary school level students. The aim of this programme is to interlink the economy with schools and to foster innovation and entrepreneurship in Switzerland, starting from a young age.

167. College and university students as aspiring young entrepreneurs and innovators and are more likely to be interested in the use and application of more comprehensive IP strategies. Looking at higher level education, IP-based courses are offered at all Swiss universities, either at Bachelor or Master level.

168. Another example of educating young business persons is Start-Up Campus, a training programme of the Commission on Innovation and Technology, a Swiss government body. Start-Up Campus is aimed at professionals emerging from the Swiss dual education system. Part of the training programme is the module "IP Protection", which provides IP knowledge and helps companies to prepare an appropriate IP strategy. This is of particular importance for start-ups, since early mistakes about the management or non-management of IP may pose an existential threat to otherwise auspicious young enterprises at a later stage of their development.

169. The promotion of STEM fields in the educational system has an important link to innovation and by the same token to IP education and diffusion. STEM stands for Science, Technology, Engineering and Mathematics, whereas, in Switzerland and the German-speaking countries of Germany and Austria, the term MINT is used instead of STEM. MINT stands for mathematics, Computer Science, Natural Science and Technology. A large proportion of innovators have an academic or professional background in STEM. Therefore Switzerland places a particular focus on initiatives that foster a sufficient supply of young academics emerging from STEM fields.

170. It goes without saying that every WTO Member sets its priorities according to its particular situation and development goals. Switzerland is convinced, however, that every WTO Member can benefit from implementing an appropriate and workable IP system. An essential part of any national innovation strategy should be to establish a knowledge base of how to protect innovations and creations, notably by means of IPRs.

171. Switzerland hopes that the examples presented provide Members with useful insights into some of the projects and programmes put in place in Switzerland to teach and diffuse IP and innovation know-how at different levels of education.

172. We look forward to learning from others in the TRIPS Council how they have addressed this task at their national level.

11.2 Japan

173. My delegation is pleased to have co-sponsored this TRIPS Council's agenda item on IP and innovation. In creating the foundations for innovation and new technological developments, Japan fully recognizes the importance of educating young people and providing them with information on

IP. Japan wishes to take this opportunity to share its experience on how we have been providing education and information on IP.²

174. One initiative my delegation believes worth sharing with other Members is the "Children's Visit Day" organized by the Japan Patent Office. Every year, the Japan Patent Office invites elementary and junior high school students to visit its establishment, in order to provide them with an opportunity to learn about IP. The theme of the event in 2015 was "Summer holiday homework mission! Let's learn about inventions, designs and brands that are Japanese assets!!". The two-day event attracted 1,172 visitors to the Japan Patent Office, including 709 children.

175. During the event, the Japan Patent Office held a science show, enabling children to experience first-hand inventions and scientific technologies. There were also several exhibitions. For example, an exhibition called "Let's learn about the relationship between toys and trademarks" enabled children to familiarize themselves with toys and their respective trademarks, while playing with these toys. In addition, a exhibition called "Which one is real?" displayed both genuine and counterfeit toys.

176. The Japan Patent Office and the National Centre for Industrial Property Information and Training (INPIT) support vocational schools and technical colleges, working to develop the intellectual creativity of students. They offer students hands-on experience in developing and manufacturing products, enabling them to shape their ideas into IP and actually fill out patent application forms. These activities are designed to enhance students' creativity in planning and proposing new ideas. Specifically, they are designed to develop students' ability to (1) implement their plans and proposals based on social rules; and (2) make effective use of the ideas and ingenious devices in real life situations. This initiative was launched in 2000.

177. Finally, my delegation would like to mention the awards received for inventions created by students. The Japan Patent Office holds Patent and Design Contests to recognize outstanding inventions and designs created by students from high schools, technical colleges, and universities throughout the country. These contests are designed to raise the awareness in school students of the importance of IP and to promote their understanding of the IP system. For particularly outstanding inventions and designs, the Japan Patent Office provides an opportunity for students to actually obtain intellectual property rights, that is, school students who created award-winning inventions and designs receive support from the organizers concerning the patent-application process, from filing applications to obtaining rights for patents and designs. Until now, over 120 patents and 150 designs have been registered as a result of these patent contests.

178. Another activity designed to improve children's creativity is the Concours of School Children's Inventions organized since 1941 by the Japan Institute of Invention and Innovation (JIII). The results of the competition are displayed in an exhibition and the creators of outstanding works are presented with the WIPO Award as shown in this slide.

179. In summary, Japan attaches great importance to educating and providing information on IP, as a means for developing new technologies. Japan continues to develop new initiatives in the hope that they will contribute to further promoting innovation and economic growth. We would welcome other Members' insightful comments on this issue.

11.3 Peru

180. It is also an honour for Peru to present this agenda item on intellectual property and innovation Peru endorses the proposal by Australia; Hong Kong, China; Japan; the Russian Federation, Switzerland; and the United States. I am going to refer to two specific experiences from Peru on the issue that are, to a certain extent, connected to the activities that we see here in Geneva.

181. The first is the national competition on journalism and promoting IP. This is an initiative that is being organized partly by the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI). It stems from the Presidency of the Council's Ministers aimed at organizing competition in order to promote IP as a tool for economic

² Referring to room document RD/IP/9.

development and for professionals within the field of journalism, so that they can become more specialized and become leaders. The competition has been organized in conjunction with the American Chamber of Commerce of Peru and it encompasses four categories: reports that are published on printed material; radio reports; television reports and not-for-profit radio reports. The aim is to seek to develop the community. The journalists that are interested in taking part must first of all attend two or three training courses on the issue of IP that are given by professionals from INDECOPI in Lima and other regions. The journalists that are part of this category are given the opportunity to travel to Geneva to WIPO, all costs paid, to take part in an internship on the issue of competition. They also visit UNCTAD, WTO and the Peruvian Mission in Geneva. Such an experience allows for the diffusion of knowledge about IP amongst young people, because 60% of the Peruvian population is under the age of 42. Thus it is wonderful for journalists to be able to come to Geneva, and even for those who do not go there, they are in contact with those who have been, and so this is an opportunity for knowledge to be disseminated.

182. The second is the national invention competition. From my experience, to date the level of participation has been low in Latin America in this field. In Peru, there is a national competition to stimulate and promote creativity aimed at developing products, technologies and inventions that can be protected through the patent system. There have been 14 rounds of this competition and we have received 2,000 applications for inventions from nearly all the regions of Peru. More than 1,000 prototypes have been exhibited. The winners of this competition are exempted from payment for the process of patent application before INDECOPI. The idea is to have some representatives from the academic world, and some from the private sector and INDECOPI promotes and makes it profitable for these individuals to come to Geneva and take part in the internship in Geneva. To a certain extent this experience connects the State with the academic world and helps to develop initiatives alongside private sector stakeholders and to see the potential of how innovation and IP can be promoted in Peru.

183. So I just wanted to share these examples with you because I believe that they are state efforts to try to promote and disseminate knowledge about IP. As I said, the journalists that took part in the national journalism competition received training on various aspects of IP, and they, in turn, have become contact points for knowledge in that area in Peru. The competition provides an incentive and is an economic opportunity once again represented by innovation.

11.4 European Union

184. I am pleased to intervene once again on this important item relating to intellectual property. I would like to reiterate how much the EU values this discussion in the TRIPS Council and how we have had very constructive sessions in the past and we look forward to this session as well. I would like to thank colleagues who made the previous interventions and those who will follow and who have co-sponsored this agenda item.

185. Let me briefly introduce the EU perspective on both education and diffusion of IP. Innovation education is crucial for development. Private investors and multinational enterprises will only invest if the economic climate is reliable, and if there is an educated skilled labour force able to operate the new technologies.

186. Adoption of a new technology might require a different economic environment than continued use of an existing technology. New technologies may require a more highly skilled labour force. If the labour force is lacking the right skills or education to learn them, the economy may be unable to adopt a new technology.

187. Thus investment in education and professional training is a necessary step for both developed and developing countries to benefit from technological change.

188. Intellectual property education embodies the skills and competences that young people can be expected to acquire in the classroom that enable them to become familiar with intellectual property, understand its potential to generate income and economic growth and lead them to respect IPRs, whether their own or those of others.

Education study by the Office for Harmonization in the Internal Market

189. A study by the Office for Harmonization in the Internal Market, our trademark office in Alicante, on IP education in school curricula in EU member States provides some useful suggestions. The objective of the research "Intellectual Property and Education in Europe" was to analyse how IPRs, notably trademarks, designs, patents and copyright, and IP-related issues such as ownership, authorship, originality, licensing, confidentiality, trade secrets and branding are being taught in primary and both general and vocational secondary schools in the 28 EU member States.

190. The study's main information sources were the official educational curricula, guidelines and recommendations, analysed and cross-checked by national researchers and completed by contributions from the Ministries of Education based on questionnaires.

191. The results of the study show that in the EU and non-EU countries and regions analysed at the primary and secondary education levels, no specific stand-alone IP subject or comprehensive IP education programme exists in the current official curricula. Nevertheless, IP and IP-related themes are integrated into one or several subjects as a cross-curricular subject for all education levels. In both the EU and non-EU countries and regions analysed, copyright constitutes the most commonly referenced IPR within the official school curricula.

Good practices integrate IP education worth encouraging

192. The study suggests that the best approach to IP education is to ensure that IP skills and competences are, in the terms used by the study, "transverse competences", i.e. competences that can be used across different subjects in a curriculum.

193. Beside its analysis of the curricula, the report reveals many examples of good practice in IP education carried out in schools. These can be: Intellectual property education within the curricula; and extra-curricular IP education, invariably in private-public collaborations between stakeholders and ministries of education or culture.

Intellectual property education within the curricula

194. The study showed that good practices within the existing school curricula in the countries covered are almost always carried out by or in cooperation with public authorities, including ministries of education and other ministries, schools and public libraries. The majority of good practices identified within the curricula concentrate on IP aspects such as copyright, but some are also related to the topics of innovation, inventions and entrepreneurship. Other exemplary projects within the school curricula exist in ICT, data management and online behaviour.

Extra-curricular best practices

195. Many extra-curricular good practices are carried out by private stakeholders, who come mainly from the creative industries, and work with artists, writers and creative professionals, and their associated professional organizations and networks.

196. The 'Think Kit', for instance, by the UK IP Office, is a very full set of free resources with projects for pupils aged between 14 and 16, though suitable for other ages with some further 'support', covering design, technology, science, music, art, to name a few. The support materials for teachers include summaries of copyright, design rights, and patents case studies.

197. Another UK initiative, "Creating Movie Magic", led by Into Film, supports the teaching of IP in design and technology for pupils aged between 11 and 14. It empowers teachers, film club leaders and youth group workers to explain the importance of copyright to young people, encourage respect for the film-making process, open up a debate about the value of IP, and involve them in activities which encourage their own creative talents. The IP Tutor free e-learning tool helps students and lecturers to understand IPRs, i.e. trademarks, patents, copyright and designs, and uses case studies to show why IP is important.

198. IP Tutor provides four tailored learning pathways, each adapted to suit the needs of different areas of study: creative; science, technology, engineering, maths (STEM); law, business and accounting; and humanities, including creative writing. http://crackingideas.com/third_party/IP+Tutor Downloads from the UK IP Office website are available at: http://crackingideas.com/third_party/Think%20Kit and <http://www.intofilm.org/creating-movie-magic>

199. The resource library of the Spanish Ministry of Education, Culture and Sport offers secondary school teachers the "Learning from the past to create the future: artistic creations and copyright" material to complement literature and art programmes, especially when students are asked to create original works in these areas.

200. This material was created by WIPO and translated into Spanish by the Ministry as a concrete action within the government's integrated plan for reducing and eliminating activities that infringe IP.

201. In Germany also, several projects and initiatives are linked to patents. The European Patent Office patent teaching kit can be used in economics lessons and the Teacher Portal "Economics and School" provides knowledge about innovation and patents. Another school website provides information about genetic engineering and patents.

202. There are also several offers for children regarding patents. The Children's Patent Office, run by the Patent Information Centre of Darmstadt, is an image database of child inventions that serve as a museum and archive. The Kid's Network website offers a large collection of inventions "From Pippi to Blue Jeans" with countless examples of inventions that children encounter in their daily lives. The public TV programme "Nine and a half" also often features young inventors.

Diffusion

203. A project's impact comes through the dissemination and exploitation of its results. It is essential to strategically consider and negotiate these central issues at an early stage. How shall results be made accessible to a broader public? What is the commercialization potential of a project's results? Which exploitation channels seem the most appropriate, and hence what are the most suitable forms of IP protection?

204. One new feature of the very extensive financing programme called "Horizon 2020", a multi-annual programme in this area of research, concerns the granting of access rights to a project's results, not only to the European Union, but also in specific cases to member States. Access rights for the European Union's institutions and bodies will be granted on a royalty-free basis, limited however to non-commercial and non-competitive use, since their purpose relates merely to the development, implementation and monitoring of EU policies and programmes.

205. At the end of a project, questions concerning further dissemination and exploitation of results become even more pivotal. That is the time to reap the benefits of the results by using them in further research or in commercial activities. It is also then the time to showcase and present results and the different communication and exploitation measures. Proper dissemination of the results of a project will allow researchers to profit from marketing and commercialization of the intellectual assets acquired during the project.

206. In order to create visibility for achievements and to ensure knowledge spill over and access to a broader public, researchers use a broad variety of different dissemination channels. These include: scientific and non-scientific publications; conferences; networking events and business fairs; project websites; communication material (such as posters, leaflets); social media; and open access.

207. In addition, the patent system is the most prolific and up-to date source of information on applied technology. Patents contain detailed technical information which often cannot be found anywhere else: up to 80% of current technical knowledge can only be found in patent documents. Moreover, this information is rapidly available, as most patent applications are published 18 months after the first filing, irrespective of their country of origin.

208. Patents help find solutions to technical problems. Even if a patent is still in force, the information it contains can be freely consulted, and used for experimental purposes (under certain conditions). Given that the majority of all patents – around 85% – are no longer in force, a vast number of inventions are available for free. One can use patents to gather business intelligence. Patent information not only reveals the state of the art in a certain technology areas, but also enables monitoring the innovation strategies of competitors and other players at a very early stage.

209. In this area of dissemination, we could go on at length. There is an enormous amount to say on the sometimes less well known or less well identified aspects or the benefits of a patent, which is how it contributes to sharing information and to dissemination by making it available to the widest possible range of stakeholders.

11.5 United States of America

Introduction

210. The United States very much welcomes this opportunity to take up the relationship of education and diffusion with IPRs and innovation here in the TRIPS Council today. This is an issue of pivotal importance with direct and deep linkages to the mandate of this body. We would also like to thank Australia, the European Union, Hong Kong, China, Japan, Peru, Russia, Singapore, Switzerland and Chinese Taipei for co-sponsoring this agenda item today.

211. Education is an innovation and creativity accelerator, and its relationship to IP and innovation becomes manifest in many ways. In both theory and practice, education is a broad concept that includes public and private providers, at all levels from primary to post-graduate, whether inside or outside the classroom, and beyond, including education in the workplace, such as on-the-job training and employee capacity building.

212. At the outset, it is also important to stress that the vast benefits of education for innovation and creativity are not limited to supply-side considerations. Education is vital to the generation of ideas, as well as for the diffusion of innovation and creativity.

213. In other words, education is also critical to innovation on the demand side, for the consumers who benefit, and the downstream innovators, who adapt existing technologies to new ends. Education that is focussed on the skills underlying innovation and creativity is paramount not only for producing the big idea, but also for its absorption. Education must therefore be considered as integral to each phase of the innovation lifecycle, including at the inception as well as the uptake phase. Including IP in education curricula is an essential part of any innovation strategy to ensure that our innovators of today and tomorrow understand not only how to protect their hard work, but to use IP to grow resources for future R&D, attract investment, structure collaboration and partnerships, and create jobs, among other critical objectives.

214. Intellectual property can play a pivotal role in unlocking the potential of our greatest resource – our citizens, including as workers, as consumers, as educators, as employers, as well as scientists, engineers, actors and authors, among many other innovators and creators. With education as its conduit, IP can play an empowering role for our populations in realizing the potential and enjoying the benefits of innovation.

215. In addition to incentivizing economic growth and technological advancement, IP offers significant promise with respect to human development. As the *Preamble* of the TRIPS Agreement confirms, national systems for the protection of IPRs include underlying public policy objectives, such as with respect to development and technology. Education and diffusion policies, including IP, play a fundamental role in advancing such objectives.

Education

216. In our intervention, we will address four topics. First, we will address the inextricable interconnectedness of education and innovation. Second, we will turn to US policies and initiatives in education that promote innovation. Third, our intervention will address IP education. And finally, we will conclude our intervention on the topic of diffusion. As a threshold matter, supporting

widespread high-quality education in science, technology, engineering and mathematics or STEM is essential in an increasingly knowledge-intensive economy. Such support includes increasing the number of STEM teachers, attracting students to STEM and graduating students with a strong STEM education.

217. There is a huge volume of literature and government policies that confirm the criticality of such support. The OECD, for example, has researched this issue extensively, and has concluded succinctly that "education policies play a central role in innovation". For the OECD, "increasing students' access to STEM remains a primary component of policy measures to strengthen education for innovation".³ And this is vital at all levels. From primary and secondary education to university and graduate and post-graduate education, STEM plays a critical role at all stages of our respective national educational trajectories. For example, the US Department of Commerce has enumerated 66 possible university-level STEM degrees.⁴

218. STEM education is not only a key part of the innovation ecosystem, it can also provide profound incentives for attracting our best and brightest into STEM jobs. In short, STEM careers are growing and often provide relatively higher salaries than many other professions. And while the exact list of STEM careers can be debated, such careers can be grouped into several baskets, including: computer and mathematics; engineering and surveying; physical and life sciences; and STEM managerial occupations, such as in computer and information systems, engineering, and natural sciences.⁵

219. According to a brief from the US Department of Commerce entitled "STEM: Good Jobs Now and for the Future", STEM occupations grew over the past ten years three times faster than non-STEM jobs. Looking ahead, STEM Jobs will grow at 17% from 2008 to 2018, while other areas of employment are growing by 9.8%. In many STEM fields, average salaries are often higher – by as much as 26% – than non-STEM fields.⁶

220. The US Department of Labour also projects that from 2010 to 2020, STEM jobs will increase, including by 22% for computer system analysts, by 32% for system software developers, by 36% for medical scientists, and by 62% for biomedical engineers.⁷

221. Before turning to US initiatives, it is important to note that education policies for innovation are not limited to STEM and include interdisciplinary learning, such as interactive approaches that are hands-on and promote entrepreneurship, creativity, lateral thinking and problem solving.⁸

222. In the United States, education policy is central to innovation policy. In the President's 2015 "Strategy for American Innovation", STEM education features prominently among the strategic initiatives for innovation.⁹ For example, the Strategy calls for "investing in the building blocks of innovation" and cites "boosting access to high-quality STEM education" as a top priority. The Strategy also calls for "engaging more students in STEM learning and entrepreneurship". Critically, among the initiatives identified under the objective of "catalysing breakthroughs for national priorities", the Strategy also advances the goal of "delivering a revolution in education technology".¹⁰

³ See OECD, *Science, Technology and Industry Outlook*, 2014, page 236. See also Toner, Phillip, "Workforce Skills and Innovation, An Overview of Major Themes in the Literature", OECD Education Working Papers, No. 55, page 3 ("Second, achieving high academic standards within a country for the largest proportion of school students ... creates a workforce with greater potential to engage productively with innovation".).

⁴ *STEM: Good Jobs Now and For the Future*, US Department of Commerce, Economic and Statistics Administration, July 2011, page 9; http://www.esa.doc.gov/sites/default/files/stemfinaljuly14_1.pdf

⁵ *STEM: Good Jobs Now and For the Future*, US Department of Commerce, Economic and Statistics Administration, July 2011, page 2; http://www.esa.doc.gov/sites/default/files/stemfinaljuly14_1.pdf

⁶ *STEM: Good Jobs Now and For the Future*, US Department of Commerce, Economic and Statistics Administration, July 2011, page 1, http://www.esa.doc.gov/sites/default/files/stemfinaljuly14_1.pdf

⁷ See <http://www.ed.gov/stem>.

⁸ See OECD; *Science, Technology and Industry Outlook*; 2014; page 2.

⁹ *A Strategy for American Innovation*, National Economic Council and Office of Science and Technology Policy, October 2015; at https://www.whitehouse.gov/sites/default/files/strategy_for_american_innovation_october_2015.pdf.

¹⁰ *A Strategy for American Innovation*, National Economic Council and Office of Science and Technology Policy, October 2015, pages 3, 5 and 8.

223. In detailing these priorities, the President's Strategy lays out a series of core objectives, including to make progress on ambitious national goals, such as to prepare 100,000 excellent STEM teachers and one million more STEM college graduates over a decade, and to broaden participation and success in STEM fields for women and underrepresented minorities.¹¹

STEM Initiatives, including public-private partnerships

224. There are numerous Federal and other initiatives in the United States that are advancing the Strategy's objectives regarding STEM education, and we will name only a small fraction today. At the Federal level, for example, the Department of Education's "Race to the Top" programme offers incentives to spur innovation in state STEM education policies.¹² Likewise, the President launched the *Educate to Innovate* campaign in 2009 to mobilize a broad coalition of citizens, educators, companies, foundations, and non-profit organizations to improve STEM education.¹³

225. STEM teachers across the country also are receiving resources, support, training, and development from the Department of Education through programmes like "Investing in Innovation (i3)", the "Teacher Incentive Fund", the "Math and Science Partnerships programme", "Teachers for a Competitive Tomorrow", and the "Teacher Quality Partnerships initiative".¹⁴

226. The National Science Foundation's "Graduate STEM Fellows in K-12 Education" programme exemplifies such Federal efforts.¹⁵ This programme provides funding for graduate students in NSF-supported STEM disciplines to bring their leading research practice and findings into primary, secondary and tertiary learning settings.

227. Beyond the Federal Government, a multitude of collaborative initiatives have emerged in the United States around the national STEM priority. "Change the Equation", which consists of a coalition of CEOs, has committed to expanding high-quality STEM programmes for more than one million students.¹⁶

228. Individual companies have also risen to the task, having invested extensively in a multitude of initiatives, such as Texas Instruments and its "College Readiness Programme", which works with pre-collegiate students to enhance science and math proficiency and to expand access to traditionally under-represented students.¹⁷

229. In another initiative, the Carnegie Science Centre partnered with Chevron and other companies and foundations to create the Chevron Centre for STEM Education and Career Development to assist both students and teachers pursue:

- inquiry-based science and math education;
- integrated, multidisciplinary learning;
- project-based group learning; and
- career awareness, to expose students to an array of STEM-related jobs through interaction with STEM professionals.¹⁸

Intellectual property education

230. Turning specifically to IP, IP education is a vital aspect of a national innovation education strategy. Intellectual property is critical to translating ideas into outcomes, and while our scientists may create start-ups, our engineers may be our entrepreneurs, without a strong understanding of IP, the potential of innovation may never be realized.

¹¹ *A Strategy for American Innovation*, National Economic Council and Office of Science and Technology Policy, October 2015, page 27.

¹² See <https://www.whitehouse.gov/issues/education/k-12/race-to-the-top>.

¹³ See <https://www.whitehouse.gov/issues/education/k-12/educate-innovate>.

¹⁴ See <http://www.ed.gov/stem>.

¹⁵ See <http://www.gk12.org/about/>. See also <http://www.nsf.gov/pubs/2009/nsf09549/nsf09549.htm>.

¹⁶ See <http://www.changetheequation.org/>.

¹⁷ See <http://changetheequation.org/blog/stem-success-dallas>.

¹⁸ See <http://www.carnegiesciencecenter.org/stemcenter/>.

231. At a threshold level, and as has been detailed by the European Union today, IP systems, including patent registrations systems, provide a vast educational resource, making vast amounts of knowledge available, often at a click of a button, for students and educators as well as innovators and creators. Beyond the significant investment in its IP registration systems, the United States has realized the priority of IP education through numerous educational initiatives.

232. For example, the USPTO's Office of Education and Outreach engages in considerable STEM and IP outreach programmes. We will mention only a few today.

233. Under the "Science of Innovation" project, for instance, USPTO and the National Science Foundation collaborate with NBC Learn to provide shelf-ready resources for teachers to promote STEM education that assists students and teachers in making the connection between research and development and the creation of IP, including better understanding how STEM knowledge is connected to IP development, and how IP protection helps inventors share their work, as well as capitalize on it.¹⁹

USPTO's annual "National Summer Teacher Institute on Innovation, STEM and Intellectual Property" (NSTI) combines experiential training tools, practices, and project-based learning models to support elementary, middle, and high school teachers in incorporating concepts of making, inventing, and innovating into classroom instruction.²⁰

234. The USPTO also works with the Foundation for Inspiration and Recognition of Science and Technology on initiatives focussed on upper elementary and middle school students, which engage them in computer science and programming. The goal of these initiatives is to assist students to create IP and to give them the means to understand how to protect it and in some cases commercialize it.²¹

On-the-job training and employee capacity building

235. Turning from STEM and IP education, we will touch briefly on the importance of on-the-job training. Enabling our innovators does not stop in our schools and universities, and continues on into employment.

236. Maintaining an innovative economy requires a skilled technical workforce, which requires not only education in STEM and IP in the classroom, but also practical on-the-job training. This gives our scientists and engineers the opportunity to continue their education, enhance their skills and stay up-to-date with the latest developments and discoveries.

237. The OECD has articulated the importance of training as part of the continuum of education for innovation, explaining:

This complementarity of education, training and innovation suggests a virtuous circle whereby a workforce with a higher initial level of education stimulates employers to further develop their productive capacity through training and both of these improve the capacity of the workforce to deal with technical change ... A vicious circle is evident whereby low initial educational attainment constrains further acquisition of knowledge and capacity to engage in innovation.²²

238. Such workforce capacity also promotes collaboration and diffusion by integrating advances in academia with "real world" challenges. For example, the Workforce Innovation and Opportunity Act, which entered into force in the United States in 2014 allows the public workforce system to train more systematically youth and adults, who are out of work to start their own businesses.²³

¹⁹ See <http://www.uspto.gov/learning-and-resources/outreach-and-education>.

²⁰ See <http://www.uspto.gov/learning-and-resources/outreach-and-education/national-summer-teacher-institute>.

²¹ See <http://www.firstinspires.org/>.

²² Toner, Phillip, "Workforce Skills and Innovation; An Overview of Major Themes in the Literature", OECD Education Working Papers, No. 55, page 32.

²³ "A Strategy for American Innovation"; National Economic Council and Office of Science and Technology Policy, October 2015, page 46.

239. Other US Federal innovation-oriented training programmes include the National Science Foundation's Innovation Corps (I-Corps), which "provides entrepreneurship training for federally-funded scientists and engineers, pairing them with business mentors for an intensive curriculum focussed on discovering a demand-driven path from their laboratory work to a marketable product."²⁴

Diffusion

240. Finally, education provides an essential conduit for diffusion. University classrooms and laboratories often serve as international collaboration centres, massing the respective contributions of innovators from around the world.

241. Idea-sharing is indeed the essence of education. And our respective university laboratories and research centres engage in the daily incremental application of innovations from one context to the pressing questions in other fields of technology and from other regions. Promoting education also promotes diffusion.

242. As one commentator suggests, "accelerating diffusion of innovation ... is the dynamic driving today's world and tomorrow's"²⁵, concluding that "one could make the argument that customers – especially the so-called early adopters – are the true innovators in the development process."²⁶

243. While this may represent something of a unique articulation of theories of innovation diffusion and absorptive capacity, it fully captures the importance of diffusion in our innovation policies. Put another way, diffusion and absorption are inherently part of the innovative process, not only in terms of spreading innovation, but also as innovation itself through adaptation. Diffusion therefore can catalyse future innovation, including in different sectors, in different countries to deliver new contributions with respect to economic and social demands previously distinct from the original innovation.

244. Not surprisingly, education, including in STEM and IP, play an integral role in such diffusion. As OECD researchers have explained, "improved technology is diffused ... through education, training and experience."²⁷ This is consistent with the theory of innovation diffusion, including by one of its key proponents, Everett Rogers. In his seminal work, entitled "Diffusion of Innovation", Rogers enumerates five elements of diffusion, which include adopters.²⁸ Adopters are further grouped into five categories, with early adopters defined by their advanced education.

245. Absorptive capacity theory draws similar conclusions regarding the fundamental importance of education to the dissemination of knowledge. According to one study on innovation systems – which enumerates the 20 components of absorptive capacity – primary, secondary, tertiary and university education are each identified as critical.²⁹ Not surprisingly, IPR regimes are also listed among the 20 critical components of absorptive capacity.

Conclusion

246. To conclude, at its core, today's agenda item on education and diffusion is about realizing human potential. We have looked closely at how education, in STEM and IP, is vital to innovation, both in terms of its generation, as well as its diffusion.

247. While education in STEM and IP facilitates the innovation that drives technological change, education also provides one of the best ways to diffuse the benefits of innovation, to absorb such

²⁴ A Strategy for American Innovation; National Economic Council and Office of Science and Technology Policy, October 2015, page 48.

²⁵ Schrage, Michael, "Innovation Diffusion; Last Word: For Better and For Worse, Today's Technological Innovations Spread Faster Than Ever"; *MIT Technology Review*, 1 December 2004.

²⁶ Schrage, Michael, "Why Weeds? If You Use Technology While It's Still Buggy, You're an Innovator Too", *MIT Technology Review*, 1 January 2002.

²⁷ Toner, Phillip, "Workforce Skills and Innovation; An Overview of Major Themes in the Literature", OECD Education Working Papers, No. 55; page 28.

²⁸ Rogers, Everett, *Diffusion of Innovation*; 5th Edition, Simon and Schuster, 2003.

²⁹ Narula, Rajneesh, "Understanding Absorptive Capacities in an 'Innovation System', Context: Consequences for Economic and Employment Growth", Danish Research Unit for Industrial Dynamics, DRUID Working Paper No. 04-02, December 2003.

change and to catalyse future innovation. Education is, therefore, integral to perpetuating the virtuous cycle of innovation and its diffusion.

11.6 Chinese Taipei

248. Chinese Taipei is pleased to join the United States and other Members in sponsoring this agenda item: "Intellectual property and innovation: education and diffusion". We also very much appreciate the contributions from the European Union, Japan, Switzerland and the United States on this subject.

249. Education is, of course, central to innovation, and plays an important role in national innovation strategies. The addition of intellectual property rights (IPRs) to the curriculum is an essential part of such strategies. This ensures that innovators understand not only how to protect their work, but also how to use IPRs to help cultivate new resources for the development of high-quality industries.

250. We are currently striving to turn ourselves into an island of advanced sciences and technologies. In line with this objective, and in order to cultivate more IPR and STEM professionals, the Ministry of Economic Affairs, the Ministry of Education, and the Ministry of Science and Technology are now funding many research and executive projects.

251. STEM education is essentially aimed at strengthening the quality of our manpower and our overall competitiveness. The curriculum combines scientific inquiry, technology implementation and engineering design with mathematical analysis. It also cultivates students' abilities to explore and solve problems, become team players and prepare themselves for creative thinking. In short, it enables students to adapt to the never-ending changes in science and technology.

252. Our 12-year Compulsory Education curriculum is multidisciplinary and "hands-on", and is designed to equip high-school graduates with all the necessary tools for their subsequent education or employment. This is precisely in line with the purpose of STEM education. Several STEM education curricula are currently in experimental stages of development. A couple, which are unique and have proven potential, have already been developed.

253. We have been funding research into the development of STEM education for a few years now. According to our findings, in a variety of subjects, the principles of STEM education have already been incorporated into the curricula of primary schools, high schools, vocational schools, and universities. Specific areas include 3D printing, educational robotics, mechanical and civil engineering construction, industrial design and electronics, as well as science and technology.

254. STEM education has definitely had a positive impact on innovation in our domestic industries, particularly in the nurturing of creative talent well-versed in various fields of technology, and in the promotion and development of high-quality industries. Manpower is central to innovation, therefore creative talents must be encouraged if we are to achieve greater technological development and product innovation. To this end, we have actively encouraged development in the Internet of Things (IoT), and green, cultural and creative industries. We shall certainly continue to cultivate multidisciplinary talents in the future towards the betterment of our high-tech industries.

255. Although we have already implemented numerous policies aimed at developing STEM education, there is still room for us to improve and upgrade our systems. So we are very much looking forward to hearing from other delegations about their current policies in this regard, and to learning from their experiences and successes.

11.7 Singapore

Overview: the importance of intellectual property for Singapore's economy

256. Strong IP regimes have been proven to spur growth, create new jobs, and foster socio-economic development. In Singapore, industries with a strong IP focus account for almost half of Singapore's GDP, and generate 43% of all jobs in our economy. Jobs in industries with a strong IP focus are also of good quality, and pay an average premium of 29% more compared to

jobs of a similar level in other industries. On a broader scale, such industries make up 47% of international trade.

257. Recognizing the growing importance of IP as a driver of business growth in this knowledge-based and innovation-driven globalized economy, we have launched a five-year programme costing S\$19 billion to support research, innovation and enterprise activities. This will supplement our existing IP Hub Master Plan, which was launched in April 2013 with a view to developing our IP services sector, and create high-value job opportunities for Singaporeans.

258. But it is not enough to simply build the ship; it still needs a trained crew to sail. Intellectual property education and awareness is an essential prerequisite for reaping the maximum benefits from a strong IP ecosystem and the opportunities it offers. We have therefore implemented a number of initiatives that target all ages, from school children to professionals, with the aim of empowering our workforce with specialized IP skill sets.

The IP Competency Framework (IPCF): multidisciplinary pathways for IP professionals

259. The first initiative is targeted at professionals who already have a good technical background in IP and are knowledgeable about the IP ecosystem in Singapore and beyond.

260. The IP Competency Framework (IPCF) was developed to map out structured, multidisciplinary pathways for IP professionals. Developed by the industry for the industry, it focusses on imparting specialized skill sets to professionals, such as IP strategists, IP lawyers, patent attorneys, IP technology consultants, IP management consultants and IP valuers.

261. To ensure the quality of service standards and to protect the users of IP services (in other words, the public), the Intellectual Property Office of Singapore (IPOS) works closely with industry bodies to certify professionals who have demonstrated a prescribed level of skills, experience and know-how in their areas of specialization. For example, IPOS works with Singapore's Institution of Engineers to jointly certify IP Technology Consultants, and with the Singapore Business Advisors and Consultants Council to certify IP Management Consultants. These certifications ensure that IP professionals remain in touch with the latest industry developments and have the requisite skills, while gaining recognition for their knowledge and experience.

The Intellectual Property Academy in Singapore – a touchpoint for professional IP education and training

262. The second initiative, the Intellectual Property Academy of Singapore, is an accredited training provider that enables individuals to chart their career paths in the IP industry. It also serves as the capacity-building arm of our Intellectual Property office and offers a broad range of graduate and certification programmes, executive programmes and overseas programmes. The Intellectual Property Academy also collaborates with renowned institutions to promote and enhance IP knowledge and capability. Some key partners include the World Intellectual Property Organization, the Franklin Pierce Centre for Intellectual Property, the Centre of Intellectual Property Studies of the University of Strasbourg, the Sino-Singapore Guangzhou Knowledge City, the International Intellectual Property Commercialization Council, Renmin University of China, Jinan University, and our local Singapore Institute of Technology. Notably, the annual WIPO Summer School in Singapore has brought together students and young professionals from all over the world for an active discussion and exchange of ideas. The Intellectual Property Academy also conducts a range of high-level IP conferences and roundtable discussions, such as the biennial Global Forum on Intellectual Property, enabling the exchange of ideas on the latest trends and key issues in the IP arena.

School outreach: raising intellectual property awareness among the creators and consumers of tomorrow

263. The third initiative is focussed on engaging the next generation - schoolchildren. IPOS collaborates with the Ministry of Education in Singapore to infuse the topic of IP into the school curriculum. Students are exposed to basic IP and copyright concepts, including IP as manifested in various forms and formats.

264. Given the high rate of social media use among our youth and Singapore's high Internet penetration rate, IPOS also carries out social media campaigns on Facebook and Twitter that appeal to a younger audience through the "Honour Intellectual Property" or "HIP" Alliance. The HIP Alliance's materials, which include articles and comics, are designed to subtly communicate key outreach messages, such as consuming media through legitimate channels and standing up against piracy, and entreating the target audience to spread awareness amongst their peers.

Conclusion

265. With economic growth increasingly driven by innovation and knowledge creation, the protection and exploitation of IP has never been more relevant and important for future growth. In building an ideas-driven and innovation-driven society, we will all need to make IP knowledge and skills easily accessible for our future generation who will be tomorrow's inventors, designers, composers, and consumers.

266. We hope that our presentation today has been useful, and we look forward to further discussion at the TRIPS Council on how Members, particularly developing countries, can build up their human resources in the IP field.

11.8 Hong Kong, China

267. Hong Kong, China is pleased to co-sponsor this discussion item together with Australia, the European Union, Japan, Peru, the Russian Federation, Singapore, Switzerland, Chinese Taipei and the United States, under the "IP and Innovation" series of the Council. We are delighted to have the opportunity to share our experience on education on IPRs with the Membership.

268. Hong Kong, China fully understands the importance of a robust IPR protection regime for investors and creators. In addition to a robust legal framework, effective enforcement actions, strong cross-boundary cooperation and close engagement with stakeholders, we also have in place a comprehensive public education strategy to nurture a culture that appreciates, respects and exploits IPRs, especially the younger generation.

IPR education at schools

269. Our Government is committed to promoting awareness of IPRs of individuals and respect for the rights of others. The Education Bureau (EDB) strives to provide students with ample learning opportunities to develop an understanding of the concepts and values in relation to IPRs in our holistic school curriculum. The issue of IPRs is a cross-disciplinary issue and has been covered in our school curriculum in many subjects such as General Studies at primary level, Life and Society at junior secondary level, Liberal Studies at senior secondary level, and moral and civic education.

270. For primary school students, the focus is more on developing awareness on obtaining and using information ethically, as well as nurturing positive values such as integrity and responsibility. When they reach a more senior level, students are asked to relate acts of possible infringement of copyright in software and Internet piracy, and to familiarize themselves with some of the legal consequences related to the infringement of copyright in Hong Kong, China through Life Events Exemplars under moral and civic education.

271. Various education resources such as educational television programmes on IPRs and a dedicated Cyber Ethics website for Students and Youth have been developed for schools to help nurture students' understanding of IPRs and the positive values of such rights. Professional Development Programmes have also been designed for teachers to enrich and enhance their understanding of IPRs in curriculum development, as well as learning and teaching such as seminars on IPRs and music.

Education on intellectual property rights outside the school curriculum

272. Outside the formal school curriculum, the Intellectual Property Department organizes a number of IPR education programmes to cater for students at different stages of their development.

273. For primary and secondary schools, well-trained IP tutors are sent to schools to introduce students to the idea and concept of IPRs under our school visits programme. We have also launched the Interactive Drama Programme which aims to promote awareness of the adverse effects of internet infringement and respect for creativity, originality and IPRs among students in an interesting and interactive way. Theatre company performers interact with students during the performance and students can gain a more lively experience of why IPRs should be respected. To encourage students to familiarize themselves with the concept of copyright and the need to respect other people's labour and skills behind it, we also jointly organize various competitions and a prize presentation ceremony for the Copyright Education Campaign every year.

274. For tertiary students, speakers are invited from such sectors as graphic design, the music industry, the movie industry, IP bodies, to encourage creativity and to share first-hand views and experience in their working environment and strategies of IP protection. Competitions are also jointly organized such as a start-up challenge, design and printing competition with industry organizations for students.

275. Our law enforcement agency for IPR infringement, the Hong Kong Customs, also works with the IPR industry to cultivate a sense of respect for IPRs among the younger generation. The Hong Kong Customs has launched the Youth Ambassador against Internet Piracy Scheme in collaboration with the industry and the Intellectual Property Department. This programme comprises different educational activities such as exchange programmes between Hong Kong, China and Mainland China or overseas countries, local visits, film shows, creation contests and award presentation ceremonies. These activities give young people a more interactive experience in learning about IPR protection and the fight against infringement.

276. We are glad to have heard experiences from several Members under this agenda item. Hong Kong, China looks forward to more interventions today.

11.9 Russian Federation

277. Intellectual property education and diffusion is reasonably viewed in many countries as one of the key aspects of the national innovation strategy. It must be taken into account, however, that this sphere of IP contains many aspects pertaining to many different professional fields. This aspect may be conventionally divided into several issues: legal protection, commercialization, and management of IPRs. Thus, IP education may take many forms and the target audience must be primarily taken into account in this process.

278. Currently, the process of modernization of the educational system is ongoing in the Russian Federation with due consideration of the demands for professionals with knowledge in the sphere of IP and innovation processes. Apart from the above, the development of IP education can be explained by the increasing contention that many Russian universities pay for the training of professionals in this sphere of legal protection and commercialisation and management of IPRs. This is because higher education allows the highest skilled specialization to take place which ensures a more efficient presentation of IP-related material to various target audiences.

279. I want to present an overview of the established system of higher education in the sphere of IP in the Russian Federation. The issues of legal protection and IP enforcement are normally started within the framework of programmes of law studies. Since the training of lawyers in bachelor and masters degrees necessarily implies the learning of a wide range of legal disciplines, most higher education institutions confine themselves to IP courses in the form of extra-curricular sessions or seminars. This allows students demonstrating an interest in IP laws to receive a background in IP systems. For example, based on its faculty of law, Moscow State University organizes an inter-departmental course on juridical support of commercialization of IPRs, which incorporates a series of lectures and practical sessions. Kutafin Moscow State Law University creates an operating IPR faculty. This department was established as a result of the preparation between the university and the Intellectual Property Court of the Russian Federation. The Russian State University of Justice also realizes its education in the sphere of IPR protection, in particular, within the Master's Programme of court protection of IP. This programme was designed for judges and lawyers. A number of leading higher education institutions in technical areas offer education in juridical studies with a focus on the sphere of IP. In particular, the National Research Nuclear University (MEPHI) offers a special learning course in legal support of innovation economy and the Bauman Moscow State Technical University offers a major in IP management.

280. Intellectual property education may be of no less importance for scientists, representatives of technical professions and managers of innovative companies than for lawyers. Specialists in the area of innovation should be aware of the economic value of IPRs, able to manage such assets and keep afloat to implement their commercial potential. A number of federal universities offer programmes on IP management within the innovation studies course. The Federal University of Siberia, the National Research Technical University of Kazan, Saint Petersburg State Polytechnic University and many others.

281. In Skolkovo newly created technological hubs called innovation centres have been established in order to support innovation activities with a proper education, including the Skolkovo Institute of Science and Technology in which IP issues are those of key learning subjects.

282. In the Russian Federation, a unique higher education institution specializing in IP, also exists. As an institution, the Russian State Academy of Intellectual Property (RGAIS) is subordinate to the Federal Service of Intellectual Property of the Russian Federation. RGAIS activities encompass many levels of training of IP professionals. The focus of the main work is to provide high-level education under a bachelor or master degree. RGAIS also offers advanced training for seminars, short courses, and distance learning. At an advanced level of education, post-graduate courses for scientific and academic professionals in the sphere of IP are offered as well, including a doctoral degree. Apart from that, RGAIS ensures professional training for lawyers, as well as delivering courses for patent attorneys' candidates.

283. Taking into account the need for qualified specialists in the sphere of protection, commercialization and management of IP, the higher education institutions of the Russian Federation carry out a number of additional activities in this field of IP education and diffusion such as, for example, the establishment of standards in the area of IP. Training of professionals in this field of innovation and IP must be in compliance with the requirements of the market. Thus, the Federal State Educational Standards and the Federal State Professional Standards in this field of IP are being counter-developed. Federal State Educational Standards constitute a list of mandatory requirements applied to the implementation of training programmes, including at the level of higher education by the duly certified educational institutions. Professional standards contain the characteristics of the qualification needed by an employee in order to carry out a certain professional activity.

11.10 Australia

284. Australia is pleased to co-sponsor this TRIPS Council agenda item on the role of education and diffusion, particularly in the area of education in science, technology, engineering and mathematics in stimulating global innovation and creativity. Education in these areas is a building-block for sustainable economic and social development by all Members.

285. We welcome this opportunity to share initiatives Australia is implementing to harness skills for the future, and we encourage other Members to share their national experiences on this important topic. Australia will use its intervention to focus on the role of education and diffusion in the areas of science, technology, engineering and mathematics (known collectively as STEM) in promoting innovation and in a creative economy. A full-length version of Australia's statement is available at the door and will be provided to the Secretariat.

286. This Agenda recognizes that STEM are critical to a resilient, adaptable knowledge-based economy.

- This Agenda highlights our strengths - strong economic fundamentals, a stable investment climate and our high quality research organizations.
- It also identifies obstacles we need to overcome. These include falling maths and science skills among our students, and the lowest level of industry-research collaboration in the OECD.

287. In offering a snapshot of our national experience on this topic, Australia highlights some of the initiatives we are implementing under our National Innovation and Science Agenda grouped around four themes

- a. primary and secondary education in STEM;
- b. promoting STEM careers and retaining STEM talent;
- c. commercializing STEM discoveries; and
- d. improving Australia's international innovation and science collaboration.

Primary and secondary education in STEM

288. Australia recognizes that leading countries with high levels of competitiveness and technology entrepreneurship start early. They create lifelong STEM-literacy.

289. This is an area where Australia recognizes we can do better: We need inspired learning and curricula that value STEM, skilled STEM educators and a community that recognizes the public benefits of a STEM education. This is why we are investing in educational initiatives that build on global best practice.

290. One example is "Primary Connections: Linking Science with Literacy", a programme developed by the Australian Academy of Science and supported by the Federal Department of Education and Training. This programme engages students through hands-on classroom activities to apply their problem-solving skills to the world around them.

291. Another example is the first national girls-only Curious Minds STEM extension mentoring programme held in December 2015 at the Australian National University. Children from diverse backgrounds spent four days learning more about science, informatics and mathematics and being mentored by inspiring women in science.

292. The Government is also seeking to drive digital literacy in Australian schools. A new annual "Cracking the Code" competition will encourage young Australians to practise their coding and related skills in logic and critical thinking.

Promoting STEM careers and retaining STEM talent

293. Australia also recognizes students must have clearer pathways from the classroom to a rewarding career: We want to see Australian STEM research contribute to the global flow of new ideas and their smart application, both in newly emerging sectors such as nanotechnology and in more traditional sectors such as agriculture and mining.

294. We intend to meet the growing demand for courses for budding entrepreneurs, so they build the market connections that are vital to start-up success. And we recognize that strong STEM educational outcomes help Australia to remain an international education partner of choice.

295. One challenge we shared with Members during our 2015 dialogue on the role of women in driving innovation was the significant under-representation of Australian women in high level research positions.

296. Under the National Science and Innovation Agenda, the Government is redoubling its efforts to meet this challenge. In September 2015, the Australian Academy of Science and the Australian Academy of Technology and Engineering launched a pilot of an effective UK scheme to increase the number of female researchers in senior STEM roles.

Commercializing STEM discoveries

297. A talented pool of STEM educators and professionals is important to boosting innovative and creative output. Australia has a strong track-record in this area. Success stories of Australia's well-established Cooperative Research Centre Programme include the Cochlear Hybrid system (which has restored hearing to over 140,000 hearing impaired adults and children worldwide), and the development of a world-first genetic diagnostic test which led to Australia eradicating equine influenza.

298. But having talented people is not enough. This was highlighted in a 2015 report commissioned by Australia's Chief Scientist, called Boosting High-Impact Entrepreneurship in Australia. This report highlighted that while Australia performed well in the world's top 1% of cited research papers on STEM, we are punching below our weight in commercializing STEM discoveries.

299. Australia's National Innovation and Science Agenda seeks to put Australia on the path to a more innovative and entrepreneurial economy, where technological breakthroughs occur and are diffused. A number of initiatives are underway in this area. This is where a modern and flexible intellectual property framework that embraces a range of capabilities from open access regimes to smart and agile use of patent and technology transfer strategies is an important element.

Linking to the world

300. Finally, Australia's Global Innovation Strategy aims to improve Australia's international innovation and science collaboration, leveraging off our STEM capabilities and our successful record of partnership.

301. The Square Kilometre Array, a next-generation radio telescope to be located in Australia and South Africa, is a prominent example of science institutions and technology companies collaborating from around the world. At a more modest level, the pilot project Connecting Australia-European Science and Innovation Excellence has delivered 58 new small and medium-sized enterprise and research partnerships and already yielded four patents.

302. In closing, Australia's STEM focus is on building competitiveness, supporting high quality education and training, maximizing research potential and strengthening international engagement. The role of education and diffusion in STEM is essential for innovation. We welcome the contribution of other Members to this discussion.

11.11 Costa Rica

303. Costa Rica attaches great importance to education and now has a literacy rate of 97.4%. This has played a key part in our development. Today, we are facing the challenge of increasing technological literacy in support of entrepreneurship and innovation.

304. Costa Rica is aware of the importance of IPRs in fostering innovation. It has therefore made considerable efforts to design a public policy that assigns a fundamental role to education and diffusion in raising awareness of the significance of IPRs for business people, entrepreneurs, inventors, scientists, and society at large.

305. Costa Rica's National Science, Technology and Innovation Plan 2015-2021 is based on eight core pillars. One of these pillars is to strengthen the strategic use of intellectual property in research, business development and creative initiatives. It aims to make people aware of the importance of intellectual property and its use in order to increase competitiveness in the production sector, as well as to promote the country's social, economic and cultural development.

306. The enactment of the Law on Support for Small and Medium-Sized Enterprises reflects the implementation of this national strategy. The Law stipulates that SMEs will receive the necessary support to enhance their management capacity and competitiveness under innovation, technological development and intellectual property protection projects.

307. Other examples of public policy to foster IPR education are the plans for the Copyright Register and the Industrial Property Register, in order to raise awareness of the importance of protecting creative works. Both bodies have a statutory obligation to promote education in the intellectual property sphere.

308. They have accordingly developed strategic plans that include activities such as responding to inquiries from the public by various means, providing training for secondary school and university students, organizing dissemination tours in various parts of the country, and participating in fairs for SMEs, so as to increase knowledge of the different ways in which intellectual property rights in, for example, works, inventions, trademarks and industrial designs can be protected.

309. The Copyright Registry estimates that the number of applications for registration of works and contracts has risen as a result of the training it has provided. The Industrial Property Registry likewise reports that its Technology and Innovation Centre recorded a significant increase in activity and requests for services in 2015.

310. Costa Rica has worked to develop a comprehensive public policy to foster innovation. In that context, experience in respect of IPR education and diffusion has proved very positive. The work has only just begun, but we hope that it will produce further results in the medium and longer terms, through its impact on businesses and respect for intellectual property among the younger generations.

11.12 Canada

311. Canada is pleased to take part in this discussion on the topic of "Education and diffusion" as it relates to IP and innovation, and to sharing our national experiences on the issue. We also look forward to hearing about other Members' experiences in this regard.

312. The Government of Canada strongly supports innovators, which are key to success in the knowledge-based economy. As some Members may be aware, Canada's Department of Innovation, Science and Economic Development (formerly Industry Canada), recently embarked on the development of an Innovation Agenda, to help Canadian businesses grow, innovate and export. Canada's Innovation Agenda includes expanding effective support for incubators, accelerators, the emerging national network for business innovation and cluster support, and the Industrial Research Assistance Programme (IRAP).

313. As part of this agenda, the Government of Canada recently announced several investments in research at Canadian universities, through the Canada Research Chairs Programme. The programme is a federally funded initiative that includes over 1,700 researchers at more than 70 post-secondary institutions across the country.

314. The Canadian Intellectual Property Office (CIPO) also plays a key role in supporting Canada's Innovation Agenda, through the implementation of new and improved IP business services for Canadian small and medium-sized enterprises (SMEs), innovators, and students – our future entrepreneurs. Over the last ten years, CIPO has created a range of products and services for both SMEs and students, in order to demonstrate the benefits of IP in innovation and how to exploit it in the commercialization of research.

315. For instance, CIPO has developed the IP Case Studies project as a set of teaching tools to demonstrate the strategic value of IP to college and university students. The IP Case Studies aim to give students a baseline knowledge of IP, foster classroom discussion on the use of IP in the inventive process, and explain how IP can be a competitive advantage in business. The case studies are designed to reflect realistic career situations for students, especially those studying engineering, science, business, and industrial design. Since its launch in 2009, CIPO has successfully delivered sessions at more than 70 post-secondary institutions across Canada. CIPO also provides the case studies online, and makes trained Discussion Leaders available to support the delivery of materials at Canadian educational institutions.

316. CIPO also provides an IP Bank of Speakers, to deliver IP presentations to public and private organizations across Canada, including to educational institutions. The IP Bank of Speakers, which is a collaborative effort between CIPO and the Intellectual Property Institute of Canada, offers presentations on IP generally, as well as more specialized presentations on trademarks and patents.

317. For 2016-2017, CIPO continues to establish itself as the centre of expertise on Canadian IP business development and customer service, by designing, developing, testing, and introducing new IP services, products, and tools aimed at improving awareness and the effective utilization of IP among SMEs, innovators, and students. For instance, given the need for IP innovation among businesses and students, CIPO is currently defining its approach to online training courses at different stages of the business lifecycle. Given the surging popularity of Massive Open Online Courses (MOOCs), CIPO is also examining the possibilities of similar courses for IP training.

318. CIPO will also be negotiating strategic partnerships with research and post-secondary institutions to develop a network of partners engaged in the delivery of business services for CIPO, directed to SMEs and innovators. This includes Intermediary Training to assist SMEs in commercializing their research.

319. In conclusion, Canada would like to highlight the importance of IP-related education and outreach initiatives for educational institutions and students, as they set out to commercialize their ideas. As we look towards our students, researchers, and emerging entrepreneurs as the sources of future innovation, such initiatives will help facilitate the diffusion of ideas from our classrooms and laboratories to the global economy.

11.13 India

320. My delegation would like to thank the delegations of Australia; European Union; Switzerland; United States; Japan; Singapore; Peru; the Russian Federation; Chinese Taipei and Hong Kong, China for sponsoring the agenda item on "Intellectual property and innovation: education and diffusion". I would also specially thank the delegation of Switzerland for their communication contained in document IP/C/W/612 dated 23 February 2016 on this agenda item.

321. Let me just recall our intervention when the agenda item on IP and innovation was first introduced in the TRIPS Council. Our statement is still relevant when we discuss education and diffusion under the broad theme of IP and innovation. In that meeting, India pointed out that the word "innovation" appeared just once in the TRIPS Agreement, in Article 7, which states that IPRs "should contribute to the promotion of technological innovation and to the transfer and dissemination of technology", not for the sake of innovation itself, but "to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations". Thus, the TRIPS Agreement makes it very clear that the purpose of the IP system is not solely to protect the commercial interests of the IP holder, but constitutes one of the many tools available to the society to achieve technological development, and social and economic welfare and innovation.

322. Petra Moser, faculty at Stanford University, in the United States, in her paper entitled "Patents and Innovation: Evidence from Economic History" published in the Journal of Economic Perspectives—Winter 2013, after historical comparison of countries with strong and weak patent regimes, concluded:

"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."

323. Innovation should not be viewed within the narrow prism of IP monopolies, but be framed within a holistic, knowledge ecosystem that includes open innovation, open knowledge approaches and delinkage of R&D costs from product prices. According to the trilateral study by the WTO, WHO and WIPO, "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."

324. The trilateral study also highlights that innovation in medical technologies for neglected diseases suffers from market failure as conventional IP-based incentives do not correspond to the nature of demand for treatments of these diseases. To overcome the market failure of the IP system for neglected diseases, the trilateral study mentions open innovation structures such as the

Open Source Drug Discovery (OSDD) model of India's Council of Scientific and Industrial Research (CSIR), and collaborative research such as WIPO Re:Search Sharing Innovation in the Fight against Neglected Tropical Diseases. The study also talks about the concept of delinking the price of the final product from the costs of R&D by "push" mechanisms such as grant funding and tax credits for investment in R&D and by "pull" mechanisms that offer rewards for the final outcome of R&D of certain products such as milestone or end prizes.

325. The WHO at the 68th World Health Assembly (WHA) adopted the "Global Action Plan on Antimicrobial Resistance". The Action Plan, *inter alia*, states that most pharmaceutical companies have stopped research and development of new antibiotics and calls it a "serious market failure" and a "particular cause of concern".

326. In the context of innovation and access to medicines, it is also pertinent to mention the appointment of the United Nations Secretary General's (UNSG) High-Level Panel on Access to Medicines ("the High-Level Panel") in November 2015. The High-Level Panel comprises 16 eminent individuals associated with the promotion of innovation and access to medicines, in line with the ambitions of UN Member States, as articulated in the 2030 Development Agenda, and in support of attaining Sustainable Development Goal 3 to ensure healthy lives and promote the well-being of all. The overall scope of the High-Level Panel is to "review and assess proposals and recommend solutions for remedying the policy incoherence between the justifiable rights of inventors, international human rights law, trade rules and public health in the context of health technologies". The High-Level Panel is expected to present its final report to the Secretary-General in June 2016.

327. Turning to education and diffusion of IP and innovation, India declared the 2011-2020 decade as the Decade of Innovation. The spirit of innovation must 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 will convert knowledge into social good and economic wealth.

328. In India, many Government institutions at centre and state level, industry organizations, and non-governmental organizations are involved in creating awareness of IP. Owing to lack of time, I will restrict myself to a few important programmes:

329. Innovation in Science Pursuit for Inspired Research (INSPIRE) is an innovative programme developed by the Department of Science and Technology to attract talent to the excitement and study of science at an early age, and to help the country build the required critical resource pool for strengthening and expanding the S&T system and R&D base.

330. The Ministry of Human Resource Development, Government of India, is implementing a scheme of Intellectual Property Education, Research and Public Outreach (IPERPO) with the objectives, *inter alia*, of encouraging the study of IPRs in universities and other institutions of higher learning and developing and encouraging study in specialized courses on IPRs; creating awareness about IPRs; and organizing activities such as seminars and workshops for IPR awareness. Under the scheme thus far, 20 IPR Chairs have been established in various universities and institutes, considering their potential for development and growth of IPR education, research and training.

331. The Rajiv Gandhi National Institute of Intellectual Property Management was established by the Ministry of Commerce and Industry in 1980. The Institute is engaged in conducting training and awareness programmes about IPRs and caters to the needs of training of examiners of patents, designs, trademarks and geographical indications, IP professionals, and IP managers. It also imparts basic education to user communities, government officials and stakeholders involved in the creation, commercialization and management of IPRs, and facilitates research on IP-related issues, including the preparation of study reports and policy analysis of relevance to the Government.

332. The Government of India launched a Scheme for Start-ups Intellectual Property Protection (SIPP) in January 2016. The scheme will be implemented by the Controller General of Patents,

Trade Marks and Design and its objective is to promote awareness and adoption of IP among start-ups.

11.14 Bangladesh

333. The delegation of Bangladesh would like to thank the delegations of Australia; the European Union; Hong Kong, China; Japan; Peru; Chinese Taipei; the Russian Federation; Singapore; Switzerland; and the United States for presenting this item. I would also like to especially thank the delegation of Switzerland for their communication contained in IP/C/W/612 which contains very useful and encouraging information regarding the Swiss education system. We would also like to thank the delegation of Japan for their very interesting presentation on their IP programme in schools and the delegation of Australia for their document on national innovation and science agenda under STEM education.

334. This is a very important issue and we consider that IP is an important catalyst which could contribute immensely towards socioeconomic growth and development and well-being. Unfortunately, not all countries benefit from their IP regimes in the same way. We believe that our goal should be to achieve more balance in our IP system, protecting the rights of innovators as well as the needs of the public and the society, that is an equitable balance between the rights and responsibility. I would like to quote from paragraph 3.1 from the Swiss document:

"There is no single or best way to raise awareness or put an IP education and training system in place. Much depends on a country's particular circumstances, stage of development, economic priorities, know-how and other factors."

335. In the same vein, we would also say there is no one-fit-all solution. We consider that based on the experience in the developing countries and LDCs, the education system should promote and encourage innovation first, so that a child is initially aware of the need to imagine and then work on his dream or creativity. The commercial aspect of IP comes later.

336. One downside of the present patent system is to be primarily driven by commercial benefit and thus innovation in the less commercially rewarding fields suffers since innovators are not interested to invest their time and energy in the invention which produces less commercial returns. Their diligence and uncommon requirements in developing countries and LDCs perennially suffer from this dilemma. We are hopeful that education will promote and emphasize the general idea of innovation, and not the commercial interest as exposed by the existing IP system and only then the true benefit of innovation and IP would be realized through education.

11.15 Korea, Republic of

337. First of all, on behalf of the Republic of Korea, I would like to say that it is an honour to be given this opportunity to present our views and suggestions on this agenda item "Intellectual property and innovation: education and diffusion" in hopes of further strengthening the global IP system.

338. Korea has long recognized the crucial roles that IP and entrepreneurship play in economic growth and the creation of decent jobs. Hence, the Korean Government has pursued various policies to promote an IP eco-system in which IP and entrepreneurship can contribute to the creation, utilization and diffusion IPRs.

339. In this regard, the Korea Intellectual Property Office (KIPO) has established 196 IP schools across the country to provide education on invention tailored to students of different levels. In 2014, 230,284 students undertook IP courses in IP schools, a 14.4% increase compared with 2010. Since 2009, KIPO has provided a two-year education programme for some 150 talented participants per year to help build problem-solving skills and entrepreneurship, as well as knowledge of IP fundamentals. In addition, KIPO provides life-long education programmes with 251 online programmes. As of 2014, more than 3.1 million people have accessed these online education programmes.

340. KIPO has also shared experiences with our partners in collaboration with World Intellectual Property Organization (WIPO) and other international IP education institutions by organizing

educational programmes to nurture IP leaders. In 2014, KIPO organized 11 courses to 144 participants from various countries. KIPO has also developed IP PANORAMA, an effective teaching aid on IP laws and regulations, which is now available in 24 different languages.

341. Korea is committed to further developing IP trading courses to help our development partners, which will also contribute to the implementation of the Sustainable Development Goals, in particular Goal 9, to foster innovation.

11.16 Nigeria

342. We are taking the floor not to share our experiences on this issue, but instead to thank the co-sponsors of this agenda item. We have had interest in experiences and examples of what WTO Members are doing in incorporating IP into the curriculum of schools, to interlink schools with enterprises, the relationship between toys and trademarks and to collaboration with universities.

343. This issue is pertinent at this juncture because when one looks at the discussion at the last General Council meeting, it covers such issues as business, incorporating SMEs into the global products chain, and duty-free quote-free market access to name a few, all involving innovation. We therefore believe that this item will encourage discussion on those issues and help in assisting developing countries and LDCs to develop their creative capacity. We therefore wish to agree that experience sharing on this issue is particularly pertinent.

11.17 Brazil

344. At the outset, allow me to thank the proponents of this agenda item "Intellectual property and innovation: education and dissemination". Our delegation welcomes this debate in the TRIPS Council.

345. We understand that Article 7 of the TRIPS Agreement provides us with the necessary background for our discussion. Article 7 states that:

"The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."

346. The TRIPS Agreement clearly defines the IP system as a system of balance of rights and obligations that at the same time should contribute to the production of knowledge and its dissemination.

347. With respect to the production of knowledge and innovation, it is important to state once again that the protection of IP is only one element that leads to a favourable environment for innovation. There are ever more important elements, such as the quality of education, adequate infrastructure, collaborative research systems with a dynamic flow of ideas and access to knowledge.

348. In fact, a system of IP that grants broad rights can be an obstacle to the development of innovation. In past sessions of this Council, my delegation has already elaborated on the harmful effects of low quality patents for innovators. Patents that are not clearly defined create legal uncertainty that can work as a deterrent to innovation. In this session, we would like to make reference to an aspect more connected to the topic "education and dissemination of knowledge".

349. With respect to access and dissemination of knowledge, an unbalanced IP system can become a barrier and hinder access to education and intellectual products for those that need them the most. This hard fact became clear during the negotiations that led to the successful celebration of the WIPO Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh VIP Treaty). In fact, Article 30.3 of the United Nations Convention on the Rights of Persons with Disabilities reads:

"States Parties shall take all appropriate steps, in accordance with international law, to ensure that laws protecting intellectual property rights do not constitute an unreasonable or discriminatory barrier to access by persons with disabilities to cultural materials."

350. Currently, less than 5% of published works are available in an accessible format. In developing countries, there are estimates that only 1% of printed books are available in accessible formats. In the light of this alarming situation, the shortage of works in accessible formats became known as the "book famine".

351. International cooperation could be a tool to allow for the diffusion of knowledge in accessible forms for the benefit of some 314 million people who are blind or otherwise print disabled worldwide, according to the World Health Organization.

352. Nonetheless, since there was no international exception or limitation to intellectual property rights, lawful crossborder cooperation required international licenses from every rightholder - an almost impossible task for institutions with scarce resources.

353. Limitations and exceptions allow national conversion of books into accessible formats within each country. This system, however, is not extended to the international context, in which the absence of limitations and exceptions to copyright effectively prevents the free movement of works in accessible formats such as Braille or Daisy.

354. The Marrakesh VIP Treaty, signed in June 2013, was the result of a great diplomatic effort in the Standing Committee of Copyright and Related Rights. It originated from the proposal submitted by Brazil, Ecuador and Paraguay in May 2009. During the whole negotiation process, our delegation was working in close coordination with delegations of developing and developed countries, towards the adoption of an effective agreement that could promote, in practice, increased production and distribution of books in accessible formats for the beneficiaries of the treaty.

355. The Marrakesh VIP treaty creates two exceptions:

- a. The first exception is national: the free production and distribution of works in accessible formats in the territory of the Contracting Parties.
- b. The second exception is international: it creates unhindered cross-border exchange of such formats. The latter will contribute to significantly expand access to knowledge to blinds and other persons with print disabilities, especially in developing countries - home of 90% of all blinds or otherwise print disabled.

356. In November 2015, Brazil ratified the Marrakesh VIP treaty and we would like to encourage other Members to join us in our efforts towards the full implementation of this important international instrument.

357. In the WIPO-SCCR, discussions on exceptions and limitations are still taking place, aiming at an IP system more conducive to the dissemination of knowledge. Beyond the Marrakesh VIP Treaty, discussions on limitation and exceptions for libraries and archives, for educational and research institutions, and for persons with other disabilities also have the potential to transform the IP system in a more efficient tool to foster education, development, crossborder cooperation and dissemination of knowledge.

11.18 China

358. China would like to convey its thanks to the previous speakers for sharing their respective practices and experiences on education and diffusion with regard to IP and innovation. These practices are quite informative and inspiring.

359. As for IP and innovation, China considers that Article 7 of the TRIPS Agreement should be the most relevant mandate for the discussion and the development dimension should also be considered in the related work.

360. China attaches great importance to IP and innovation, and has undertaken various plans and programmes in this regard. The most recent is the national pilot demonstration working programme on IP education for primary schools and middle schools, which is jointly initiated by the Ministry of Education and the State Intellectual Property Office. In the programme, detailed targets and concrete measures are undertaken to promote educational work on IP in primary and middle schools. Through these plans and programmes, we wish to help pupils and middle school students increase their awareness of IP protection and cultivate the spirit of innovation.

AGENDA ITEM 12: INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

361. No statements were made under this Agenda item.

AGENDA ITEM 13: OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

13.1 Nigeria, on behalf of the African Group

362. At the last meeting of the TRIPS Council, there was a near consensus on granting permanent observer status to ARIPO, OAPI, the GCC and EFTA, so I am re-tabling that proposal to see if there could be a consensus today.

13.2 Ecuador

363. Ecuador maintains the position it expressed at previous meetings and reiterates its support for the participation of the two organizations, the South Centre and the Secretariat of the Convention on Biological Diversity (CBD), as observers to this Organization, or at least as ad hoc observers.

13.3 India

364. India supports the granting of permanent observer status to the three intergovernmental organizations – the South Centre, the CBD Secretariat and the International Vaccine Institute.

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

366. The Convention on Biological Diversity fulfils all the required parameters for observership of the WTO. 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 should be granted observer status.

367. Furthermore, we would like to support the request from the International Vaccine Institute 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. 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.

368. India again urges the Council to consider positively and expeditiously the request of the South Centre, the Secretariat of the CBD 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.

369. With regard to the proposal for granting permanent observer status to four organizations, i.e. ARIPO, OAPI, GCC and the EFTA, we have carefully considered the rules for granting permanent observer status, as contained in document WT/L/161, Annex 3, and we are now in a position to support granting permanent status for two of those organizations, ARIPO and OAPI.

13.4 Venezuela, Bolivarian Republic of

370. We support the granting of observer status to the CBD Secretariat and the South Centre.

13.5 Egypt

371. We would like to associate ourselves with Ecuador, India and Venezuela and support permanent observer status being granted to the South Centre and the CBD Secretariat.

13.6 Brazil

372. Very briefly, Brazil supports the proposal from the delegations of Ecuador, Egypt, India and Venezuela for granting permanent observer status to the South Centre and the CBD Secretariat. I would just like to seek clarification concerning the proposal by Nigeria , i.e. how this longstanding request for permanent observer status would be addressed, and whether we would have this approach dealing only with these ad hoc observers and leaving the longstanding pending request without any answers.

13.7 Bangladesh

373. The delegation of Bangladesh would like to reiterate its support for granting observer status to the South Centre and to the CBD Secretariat as they have been enjoying observership in other organizations. We hope that Members will soon reach a consensus to grant them this status.

13.8 United States of America

374. We support the Nigerian proposal; we are not in a position to support other proposals.

13.9 China

375. China continues to support granting observer status to the CBD Secretariat, at least on an ad hoc basis.

13.10 Indonesia

376. Indonesia supports previous speakers regarding the granting of observer status to the South Centre and the Convention on Biological Diversity (CBD) in this TRIPS Council. The South Centre undertakes strategic and policy-oriented research to assist developing countries in order to achieve a fair and equitable global order. The South Centre also supports developing countries in many issues, including intellectual property, through South-South collaboration and solidarity. The proposal to invite the South Centre is an important issue, considering that the South Centre also has observer status in other intergovernmental organizations, including the United Nations, the Convention on Biological Diversity, the Intergovernmental Panel on Climate Change and WIPO. As we are discussing IP issues, we believe that the South Centre should also be given observer status in the TRIPS Council.

377. We also support the CBD Secretariat as an observer in this TRIPS Council, considering the relationship between the Convention and the provisions of the TRIPS Agreement, especially as regards the role of IP in utilizing genetic resources and selling of benefits and use of those resources and also the protection of associated traditional knowledge. We believe that the participation and contribution of both organizations in this Council will not impair the negotiation process. They will deepen our discussion and widen our perspective on TRIPS-related issue. Therefore, Indonesia would like to emphasize once again its support to the CBD Secretariat and the South Centre to become observers of the TRIPS Council. We hope we can reach agreement on this.

13.11 Tanzania

378. Tanzania would like to reiterate our position that we continue to support the South Centre being given observer status in this Council, and, on the issue raised by Nigeria we continue also to support the request that ARIPO and OAPI be given permanent observer status.

13.13 Brazil

379. So perhaps we need to take longer to discuss this issue before taking a decision. Since the last TRIPS Council meeting, this issue has continued to be on the table. In effect, ARIPO, OAPI, GCC and EFTA have already been granted ad hoc observer status in the past. Since this has been renewed, further discussion might be needed with a view to finding a suitable and mutually acceptable long-term solution that would equally apply to other applicants for observer status for this organization that have a wide support from the membership.

13.14 Nigeria, on behalf of the African Group

380. The Council should take an early harvest decision to grant observer status to those four organizations because there has been no objection from any delegation to this proposal. If, however, it is the view of some delegations that a permanent solution should be found for all pending observer status applications, then I am not sure if this approach will be useful for further discussion.

AGENDA ITEM 14: OTHER BUSINESS

Contribution of IP to facilitate the transfer of environmentally sound technology

14.1 Ecuador

381. Ecuador requested to take the floor under this agenda item, in order to keep the membership up-to-date about actions that are taking place regarding the proposal in IP/C/W/585 that we presented in the Council on 27 February 2013 on the contribution of IP to facilitate the transfer of environmentally sound technology.

382. In the October 2015 meeting at this Council, we provided information that once we had held the first workshop in May 2015 in order to deal with this proposal, my country continued to work at a national level and with international organizations with a view to seeking to hold another workshop that was originally planned for November 2015. However, in order to avoid a conflict or a clash with preparations for the upcoming tenth Ministerial Conference in Nairobi, it was considered that it would be better to postpone the workshop and hold it in the first quarter of 2016. For reasons beyond my control, we have not been able to hold that workshop this quarter and we are continuing to work with other international organizations. We will endeavour to let you know whether we will be able to organize this event in the second or third quarter of this year.

383. I would like to take this opportunity to refer to what happened during the COP21 Conference in Paris on 30 November to 11 December 2015 when the Paris Agreement was adopted. In this Agreement, Parties recognize that climate change represents a threat with potential irreversible effects for human beings and societies on the planet itself. It therefore requires the broadest cooperation of all countries and a participation in an international response that is effective and appropriate. It was also stated that assistance to developing countries in determining appropriate adaptation practices would be necessary in order to seek to promote good practices. The Agreement, furthermore, establishes that it is important for Parties, bearing in mind the importance of technology for putting into practice mitigation and adaptation measures, and bearing in mind the effort for dissemination of technology, to bolster cooperation in development and the transfer of technology. These are just a few components of the elements and the content of the Agreement adopted in Paris in December 2015. Ecuador wanted to share these today, in order to drive home the importance of this issue and, in particular for the issue to be discussed in this Council.

384. Ecuador will continue to spare no efforts in reviewing the proposal that has been put forward in this Council, because it affects all countries. As a contribution of intellectual property it can facilitate the transfer of environmentally sound technology with a view to curbing the harmful effects of climate change.

AGENDA ITEM 15: ELECTION OF THE CHAIRPERSON

15.1 Tanzania

385. In effect, this is not a statement, but rather an apology on behalf of my Ambassador who had to travel to capital to attend important duties equivalent to this one. Hence, I wish to inform the Council that, on his return, he will assume duties diligently as required and he will thank the Members of this Council personally when he comes back.
