RESTRICTED

IP/C/M/82/Add.1

1 September 2016

(16-4636) Page: 1/52

Council for Trade-Related Aspects of Intellectual Property Rights

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 7-8 JUNE 2016

Chairperson: Ambassador Mero (United Republic of Tanzania)

Addendum

The present document contains the statements made during the Council for TRIPS meetings held on 7-8 June 2016.

Subjects discussed

INDEX OF THE STATEMENTS MADE AT THE MEETING OF COUNCIL FOR TRIPS 7-8 JUNE 2016*

* A record of statements as delivered in the formal session of the Council. 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 Japan

1. This delegation is pleased to inform the Council that Japan recently amended its major Acts pertaining to intellectual property, such as the Patent Act, the Design Act and the Trademark Act, making notifications to that effect under Article 63.2 to this Council. The reference numbers of the documents related to the notifications are as follows: IP/N/1/JPN/P/12; D/7; T/7; O/10; O/11 and O/12.

2. The amendments were made in order to improve Japan's system for better protecting and utilizing IPRs and, thereby, promote innovation in Japan. We would like to touch upon a few points of the amendments.

3. Firstly, the Patent Act was revised in order to encourage inventions, based on revising the employee invention system. Several measures were introduced to achieve this purpose.

4. Secondly, the Patent Act and the Trademark Act were revised to reduce the financial burden on users for maintaining patent and trademark rights.

5. Thirdly, the Patent Act and the Trademark Act were revised so that Japan's laws could comply with the provisions stipulated in the Patent Law Treaty (PLT) and Singapore Treaty on the Law of Trademarks (STLT).

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

1.2 European Union

7. The main objectives of the trademark reform were to foster innovation and economic growth by making trademark systems all over Europe more accessible, efficient and effective for businesses and to ensure and develop coexistence and complementarity between the European Union and national trademark systems.

8. The Recast Directive (EU) 2015/2436 to Approximate the Laws of the Member States relating to Trade Marks entered into force on 12 January 2016. The member States need to transpose the new Directive by 14 January 2019. The Regulation (EU) 2015/2424 Amending Regulation 207/2009 also entered into force on 23 March 2016. For the sake of clarity, the Directive intends to harmonize the legislations of the different member States each of which has its own national trademark system. In Europe these national trademark systems coexist with an EU trademark which is managed by the EU and that was modified by the Regulation, hence this package.

9. For the modernization and increase of legal certainty the trademark package changed the "community trademark" term to "European Union Trademark" and the name of our Office for Harmonization in the Internal Market to "European Union Intellectual Property Office". The Office is located in Alicante, Spain, and issues EU trademarks.

10. The definition of the trademark was updated and the graphical representability requirement was removed. This means that signs can be represented in any appropriate form using generally available technology, as long as the representation is clear, precise, self-contained, easily accessible, intelligible, durable and objective.

11. The new Regulation introduced clear provisions on designation and classification of goods and services. After a six-month transitional period all trademarks containing class headings will be interpreted according to their literal meaning regardless of their filing date. During the transitional period EU trademark owners can adjust the specification of their marks to their original intention when they filed the trademark.

12. The Regulation introduced the EU certification mark at EU level, but the geographical origin was deleted from the list of potential characteristics to be certified.

13. The Regulation extended the representation before the EUIPO, pursuant to the new rules that natural and legal persons from the whole European Economic Area can be represented before the Office.

14. Stronger means to fight against counterfeiting in customs situations were introduced. It is permissible for trademark owners to prevent the entry of infringing goods and their placement in all customs situations, also when such goods are not intended to be placed on the market of the relevant member State. The entitlement of trademark owner lapses if the declarant or holder of goods is able to prove that the trademark owner is not entitled to prohibit the placing of the goods on the market in the country of final destination.

15. The new EU Trade Mark law does not impede access by patients – and in particular those from developing countries and LDCs - to legitimately traded medicines transiting through the EU territory. According to EU law, the proprietor of a trademark would only be entitled to stop goods that bear a trademark which is identical to the European Union trademark: that is to say, goods could be stopped only if they infringe existing trademark laws, which is a fraudulent activity sanctioned by all IPR systems in the world. The new provisions do not apply to confusingly similar trademarks or other IPRs such as patents. All in all, the EU is fully committed to all the efforts made to facilitate access to medicines for countries in need. The Regulation reminds customs authorities of the need to have the Doha Declaration in mind when dealing with "generic" medicines in transit.

16. In order to streamline the procedures of the European Union Intellectual Property Office the Regulation eliminates the possibility of filing EU trademark applications through national offices. The search regime is maintained, but users can choose whether they want to receive EU search reports and surveillance letters. The one-month time period before publication of trademark application was abolished, which will speed up the registration process.

17. Very importantly, the fees for European Union trademarks covering all 28 member States were significantly reduced and the amount of fees and rules on payment became an integral part of the Regulation (before they were regulated in a separate Commission regulation). The fee levels were adjusted to focus on bringing renewal fees down to the level of accession fees.

18. The Regulation moves to the one-class-per-fee system at EU level. At national level this is only optional.

19. The new Directive further harmonized national trademark laws including, for example, the protection of trademarks with reputation, trademarks as objects of property, collective trademarks, procedural rules and classification of goods and services.

1.3 Canada

20. Canada is pleased to present three notifications under Article 63.2 of the TRIPS Agreement today. These notifications will be made available on the notifications website in the coming days. We apologize to Members that they were not made available in advance of the meeting, but would like to present on them today and answer any questions.

21. Canada's first notification is titled "Copyright Term of Protection for Sound Recordings and Performances", Bill C/59: an Act to implement certain provisions of the budget tabled in Parliament on 21 April 2015 and other measures. Bill C/59 amends Canada's Copyright Act to provide sound recordings and performances fixed in sound recordings an additional 20 years of copyright protection from the date of publication. Prior to the amendments, sound recordings and performances fixed in sound recordings received a period of 50 years of protection from the date of publication. The amendments extend the term of protection following publication from 50 to 70 years, giving producers of sound recordings and performers an additional 20 years during which they have the right to be paid for the use of their recordings. Bill C/59 received royal assent in Canada on 23 June 2015. The amendments to the Copyright Act have since entered into force.

22. Canada's second notification is titled "Plant Breeders' Rights Act", Bill C/18: the Agricultural Growth Act. Bill C/18 amends Canada's Plant Breeders' Rights Act. The Bill is designed to modernize Canada's agricultural legislation and to encourage innovation in the sector. Among the

changes are amendments to encourage investment in plant breeding in Canada and to foster more accessibility to foreign seed varieties for Canadian farmers. More specifically Bill C/18 amends the Plants Breeders' Rights Act to strengthen the rights of plant breeders and improve accessibility to protection. It extends plant breeders' rights to include reproduction, imports, exports, conditioning and stocking for the commercial purpose of propagating.

23. In addition to the current system that already allows for the sale of propagating material and the production of propagating material intended for sale, plant breeders are allowed to sell a variety in Canada for up to one year before applying for plant breeders' rights protection in order to test the market, advertise or to increase stock, providing automatic provisional protection for a new plant variety from the date of filing which will allow applicants to exercise their rights while applications are pending grant of rights. For example, no legal action in respect of provisional protection could be initiated until after the rights are granted. The protection is extended from 18 to 25 years for trees, vines or any specified categories and 20 years for all other crops unless the breeder terminates them earlier. Amendments to the Plant Breeders' Rights Act under Bill C/18 brought Canada into conformity with the 1991 Act of the International Convention for the Protection of New Varieties of Plants, UPOV 1991. On 19 June 2015, Canada deposited its instrument of ratification with the UPOV Secretary-General, becoming the 53rd country to be bound by this Convention.

24. Canada's third notification is titled "Patent Act - Order amending Schedule 1 to the Patent Act (2014-1)". Canada's access to medicines regime implements the 30 August 2003 Decision of the WTO General Council by permitting the grant of export only compulsory licences to pharmaceutical manufacturers in Canada who wish to supply drugs or medical devices to countries unable to manufacture their own. The products that are eligible for export under the Canadian Access to Medicines regime are listed in Schedule 1 of Canada's Patent Act. The Order amending Schedule 1 to the Patent Act, which Canada is presenting today add three additional HIV/AIDS treatments to Schedule 1 of the Patent Act. When Canada's Access to Medicines regime was first introduced, Schedule 1 was primarily composed of the pharmaceutical products on the World Health Organization's model list of essential medicines that were patented in Canada at that time. The model list of essential medicines represents the minimum medicine needs for a basic healthcare system and at the same time, provides a baseline to ensure that Canada's Access to Medicines regime was able to meet the basic healthcare needs of developing and LDCs in a clear and transparent manner.

25. Schedule 1 has been previously amended twice. The first amendment added a name of a fixed-dose combination consisting of three anti-retroviral agents used in the treatment of HIV/AIDS. The second amendment added a name of a treatment for Type A and Type B influenza.

26. The amendment to Schedule 1 under the present notification adds the names of three additional HIV/AIDS treatments. The objectives of the amendment are twofold. First, it ensure that Canada's Access to Medicines regime remains current with the evolving public health needs of developing and LDCs. The three treatments being added to the Schedule are considered by the World Health Organization as essential to the minimum needs of a basic healthcare system and are listed on the current model list of essential medicines. Second, adding these treatments to Schedule 1 now ensures that a generic manufacturer can come forward with an application under Canada's Access to Medicines regime for an authorization to manufacture and export these products to an eligible country. The Canadian Commissioner of Patents would be in a position to issue an authorization without delay.

27. The stated purpose of Canada's Access to Medicines regime is to increase access to lower cost generic versions of patented pharmaceutical products in order to address public health problems in developing countries. The amendment to Schedule 1 presented today is in line with this purpose by ensuring that Canada's Access to Medicines regime is able to respond to evolving public health needs and further underlines Canada's commitment to the TRIPS Paragraph 6 system, including the Protocol Amending the TRIPS Agreement which we are hopeful will enter into force this year. We would be pleased to answer any questions or receive comments on any of these three notifications.

1.4 Benin, on behalf of the LDC Group

28. I would like to thank Canada for this very interesting information brought to our knowledge. On behalf of the LDC Group, I would like to ask whether Canada could make available a copy of his statement to the LDCs.

1.5 Canada

29. Canada would be pleased to make a copy of our statement available following the meeting and in addition there will be detailed information included in the notification including links to the legislation in English and in French that can be consulted. We are happy to take further questions following this TRIPS Council or at the next TRIPS Council should there be interest.

1.6 Brazil

30. We would like to make reference to the EU Trademark Directive and Trademark Regulation to share our concerns related to possible restrictions to the transit of legitimate goods that might be caused by this Directive.

31. The issue of abuse of enforcement actions of IPRs on goods in transit is unfortunately not a new one in this Council. In December 2008, a shipment of a generic medicine from India with destination to Brazil was unlawfully detained while in transit in the Netherlands. At the time, both Brazil and India expressed their full disagreement with the misuse of enforcement procedures by right holders, which prevented the supply of a life-saving medicine to the Brazilian public health system. Those actions provided the basis for a request for consultations with the EU by Brazil and India questioning such seizures.

32. Brazil is aware of the damages brought by counterfeiting. Efforts by the Government and the private sector to curb the commercialization of such goods due to their negative effects to producers and consumers led to the creation of the National Council for the Combat of Piracy and Counterfeiting. As the experience of WTO Members from all regions shows, fighting counterfeit and piracy is a non-stop activity which poses a number of challenges to enforcement agencies.

33. The enforcement of such rights, however, is not in a void of international trade law. Rules in WTO agreements treat freedom of transit as a basic tenet. While Parties may require the compliance of some provisions by goods in transit, they shall not be subject to unnecessary delays or restrictions; furthermore, those provisions imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable. In this regard, many questions arise when examining the European Union's recent Regulation and Directive. While references to the Doha Declaration on TRIPS and Public Health are made in the recitals of the Regulation and the Directive, they are not reflected in the operative part of the texts.

34. Additionally, we have specific concerns as to the burden on the proprietor of legitimate goods in transit to prove that they do not infringe any trademark right. Contrary to what would be expected in such conditions, it is the proprietor of the good that is responsible to provide evidence that the proprietor of the EU trademark is not entitled to prohibit the placing of the goods on the market in the country of final destination. The declarant or holder of the goods however, may not have easy access to the customs or judicial system in the country of transit, perhaps because they are not based in that country.

35. Furthermore, there are few or no safeguards against the abuse of enforcement procedures. It is not clear how proprietors of goods targeted by illegal and/or illegitimate enforcement procedures should proceed in order to redress the eventual commercial damages caused by the suspension of release of such goods.

36. Right holders initiating an enforcement procedure, thus, have considerable leeway when deciding to pursue their rights or not, with the burden falling disproportionally on the proprietor of the goods in transit in order to provide evidence that there is no violation of rights in the country of destination. Such a condition would not appear to be conducive to the adequate treatment of the matter, but would seem rather as creating unnecessary complications and becoming a barrier to legitimate trade.

37. The rules-based system Members sought to build and strengthen in the WTO is paramount for international trade relations. Therefore, adequate balance should be provided in this matter, and we remain open to discuss with the EU, the compatibility between the new directive with the TRIPS Agreement and other WTO agreements.

1.7 India

38. We would like to thank the delegation of the European Union for notification of the EU Trademark Directive (EU) 2015/2436 contained in document IP/N/1/EU/T/5 and the EU Trademark Regulation (EU) 2015/2424 contained in document IP/N/1/EU/T/6.

39. We have noted that the Directive modernizes and improves the trademark systems of the EU member States, by amending outdated provisions, increasing legal certainty and clarifying trademark rights in terms of their scope and limitations. We have further noted that the Regulation, *inter alia*, streamlines proceedings of the European Union Intellectual Property Office (EUIPO) and increases legal certainty. It defines clearly all the EUIPO's tasks including the framework for cooperation and convergence of practices between the EUIPO and the industrial property offices of the member States.

40. However, India feels that some of the provisions in the Regulation allows EU authorities to confiscate or seize goods, originating from one country and destined for a third country, while in transit through the EU and apparently, without the need for any evidence or any suspicion that it would be imported into the EU market. We feel that these provisions will have profound impact on the access to affordable generic medicines in many countries, as the provisions in the new Trademark Regulation could create barriers to legitimate generic medicines in transit through the EU.

41. India does not support the trade of counterfeits. However, the concern would be on the seizure of goods with trademarks legitimately registered in either the Indian jurisdiction or the jurisdiction of the country of destination, but not in the European Union. Further, this issue may extend to generics as well. From the text of the new EU trademark directive and regulation, it appears that an exception is being created for the purposes of "generics" but the same is limited to the active ingredients with international non-proprietary names (INN) and not to generic medicines in transit. Moreover, the enforceability of the exception-making recitals remains questionable since it is part of the Preamble and not a substantive provision.

42. While abstaining from voting during the adoption of the trademark reform package by the EU Council of Ministers in November 2015, the Netherlands stated that "these provisions will introduce the possibility to detain goods on account of possible infringement of a national or EU trademark, where those goods are merely in transit through EU territory. The Netherlands believes that the proposed measure will put a disproportionate and unnecessary burden on holders of goods and an impediment to legitimate international trade, including for legitimate generic medicines. The Netherlands has had a negative experience in 2008 with detaining medicines in transit and does not want that to happen again".

43. We would support the statement made by Brazil which also refers to the disputes which India and Brazil filed when this episode of importing of medicines at the airport in the Netherlands happened in 2008.

44. I conclude by stating that India raises serious concern on the new EU Regulation and Directive on trademarks. They appear to violate Articles 16, 51 and 52 of the TRIPS Agreement, to the extent that the measure in question fails to make a categorical distinction between goods in transit that pose a risk of diversion into the EU market and those that do not. We once again urge the European Union to reconsider the relevant provisions of the Directive and Regulation.

1.8 South Africa

45. We thank the delegate from the European Union for his presentation on the EU Trademark package. This delegation is concerned about various aspects of the Trademark package that may impact on goods that are in transit in the EU territory, including generic medicines. The Regulation

allows, *inter alia*, EU authorities to confiscate goods not destined for the EU market without adequate evidence or any suspicion to this effect.

46. These provisions may profoundly affect the access to affordable generic medicines in many countries. The explanation given by the distinguished delegate from the European Union that goods will only be intercepted if a trademark in question is identical to an EU trademark raises many logistical and legal questions. The application of this system to goods that are in transit will unnecessarily and disproportionately burden the holder of goods and impede legitimate international trade in this respect.

47. In concluding, this delegation wishes to express its support for the interventions by the distinguished delegates from Brazil and India.

1.9 European Union

48. I would like to recall that the purpose of these kinds of measures is to combat illegal traffic which is the traffic of counterfeit goods. It does certainly not particularly target pharmaceuticals, quite to the contrary. Pharmaceuticals are highlighted in this legislation because in relation to this type of product it is necessary to have a particular level of caution to prevent that there would be any undue detentions. I see in the debate considerable confusion being created between counterfeits and generics. This is a very strange kind of confusion. I think the separation between the two types of products is very clear.

49. There was also reference, again I thank the memory of some of my colleagues, about a set of incidents around eight years ago that never repeated themselves, in a totally unrelated situation. We were talking there about suspicions about patent infringements which had nothing to do with what we are talking about here. In the meantime, measures were taken for these incidents not to repeat themselves and they did not. These laws that allow customs authorities to detain infringing goods that are under their control are not that much different from the law and jurisprudence, for instance of Brazil which allows for the same. It is possible for customs to act against illegal goods when they are under customs control. So frankly I do not know where the idea comes from, that all of this is done without the need for providing any evidence. A quick browse of the legislation does not need a detailed legal analysis. We will clarify this confusion. Customs authorities have the power to detain goods. Finding that the goods are infringing or not and that, therefore, they can be removed from the channels of trade is done by a court so obviously there is need for all kinds of evidence and due process.

50. This being said, we are, of course, happy to bilaterally continue to engage with the countries who have doubts and provide them continued reassurance that what has not happened in the last eight years will continue not to happen. I would say certainly you can have the assumption that these are fairly dangerous products. I would certainly not be giving them to one of my family members. Playing with names and with falsifying or confusing consumers about the name is something that deserves to be particularly controlled. Goods concerned should be detained if the situation arises.

1.10 China

51. China would like to share the concerns raised by Brazil, India and South Africa on the EU's new Trademark Regulation. China believes that the Regulation will potentially create risks and uncertainties to international trade, especially to those goods in transit.

52. China would like to recall that it is well-known by Members that the TRIPS Agreement provides obligations for all Members to protect IPRs. These obligations are implemented through Members' domestic legal systems and practices. Even if these systems and practices are distinctive from each other, refraining from enforcement against goods in transit is broadly recognized as international norm and common practice.

53. China believes that, while taking unilateral measures, Members have to take into account the purpose of the TRIPS Agreement, as well as the multilateral rules which have been established within other WTO agreements. Inappropriate actions against goods in transit go far beyond the

current international norms and practices and will create burdensome and unnecessary restrictions to legitimate international trade, such as generic medicines.

54. Based on the above-mentioned comments, China would like to invite the EU to take Members' concerns into consideration and to ensure the appropriate application of the new Trademark Regulation in order to avoid any impediment to legitimate international trade.

1.11 Indonesia

55. Indonesia also shares the same concern with other Members in the newly introduced Directive by the EU. Indonesia would like to thank the EU for the notification of the new Trademark Directive in order to promote transparency of the enforcement of IPR.

56. Under the Doha Declaration it is emphasized that there is an urgency that the TRIPS Agreement be part of the wider national and international action to address public health problems, among others, by promoting access to medicines for developing countries and LDCs. In line with the effort, the smoothness of transit of goods, in particular generic medicine, also needs to be ensured. The Directive should not create an unnecessary burden which may impede trade. We should support the notion of improving the flow of goods across borders and to reduce total trade costs. In this light, we do hope that the implementation of the new Directive will respect and observe the flexibility developing countries and LDCs have from the Declaration of TRIPS and Public Health, especially as regard the access to affordable Doha generic medicines, taking into account of their good quality, safety and efficacy.

1.12 Mexico

57. My delegation submitted a series of documents. They refer to modifications and amendments relating to geographical indications, Mezcal, copyright including the copyright institute's overall responsibility, provisions/aspects related to broadcasting, public utility and heritage. These were submitted to you according to the different headings as they appear on our agenda that you have the opportunity, of course, to consult.

1.13 Secretariat

58. At the last session of the Council we gave an extensive update and illustration of the progress made in what is a complete overhaul of the mechanics of the system of managing the receipt and processing of notifications and other review material under the TRIPS Agreement. The update on this project this time will be very brief indeed because, due to constraints, we have not progressed since the last session of the Council. The work on this project will resume, indeed, next week. This resumption of work has two specific practical implications for delegations. Firstly, we will be holding an informal workshop and demonstration towards the end of this month and will be inviting delegations to take part. It will be a hands-on exercise, to work with you so as to get a sense of how the new system will operate and to get your direct feedback as practitioners and users. Further details will be communicated in due course. The second aspect is that as we approach the end of the year session, the November session of the Council, there is typically a large increase in the volume of notifications and other review materials. We would encourage delegations to get in touch with us informally because even in advance of the implementation of the full system which we will continue to work with and consult on, we do have interim arrangements, practical arrangements that should make it easier for you to make these submissions. So those two practical points are really the essence today and we will be following up with interested delegations later this month and in the busy period leading up to the November session.

1.14 Chinese Taipei

59. I would like to send a message to Japan, Canada, Mexico and the EU and thank them for their notifications under the provisions of the TRIPS Agreement. I do believe that the discussion today is a very constructive one. I would also like to encourage other Members to continue fulfilling their obligations under the Agreement – namely Article 63 – so as to promote transparency of the IPR system. I would also like to thank the Secretariat once again for preparing today's meeting and for their very interesting presentation on the project of electronic notifications. My delegation

would be very happy to take part in the workshop mentioned by the Secretariat and to work with the Secretariat and all Members so as to create a notification system which is maybe more user-friendly and of course easier to live with.

AGENDA ITEM 2: REVIEWS OF NATIONAL IMPLEMENTING LEGISLATION

No statements were made under this agenda item.

AGENDA ITEM 3: REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B)

AGENDA ITEM 4: RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CONVENTION ON BIOLOGICAL DIVERSITY

AGENDA ITEM 5: PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE

5.1 Brazil

60. Brazil has a well-known position regarding the importance of promoting the mutual support between the TRIPS Agreement and the Convention on Biological Diversity. For us, enhancing the transparency in the utilization of genetic resources and associated traditional knowledge, through the introduction in the TRIPS Agreement of a mandatory requirement for the disclosure of the origin of these resources in patent applications, is an important objective. 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 patent examinations by providing additional information to IP Offices.

61. In this regard, I would like to restate here the terms of the proposal detailed in document TN/C/W/59, particularly regarding its foreseen mechanism to prevent the misappropriation of genetic resources and traditional knowledge and the grant of erroneous patents, reiterating the understanding that the patent offices would not be overloaded with extra work, since they would be just checking-points in the new system.

62. For these reasons, we support the amendment of the TRIPS Agreement through 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, document TN/C/W/59.

5.2 Bolivia, Plurinational State of

63. As all delegates know, the examination of paragraph 3(b) of Article 27 is one of the issues which is included in the Doha Agenda for Development and paragraph 19 of the Ministerial Declaration of Doha of 2001. It is one of the issues also included in the Work Programme and within the framework of the questions relating to this concern. Paragraph 12 of the Ministerial Declaration of Doha mentioned the adoption of the decision on questions and concerns regarding the implementation and application with a view to looking into different implementation issues which are of concern to Members.

64. It also clearly asserts that the negotiations on pending issues regarding implementation were part and parcel of the Work Programme. This is a legal basis and according to the last developments of the multilateral system, it is important that the TRIPS Council and WTO adopt the necessary measures so as to amend or clarify Article 27.3(b) of the TRIPS Agreement in order to be able to prohibit the possibility of patenting all forms of life and to protect rights of farmers and genetic resources and traditional knowledge and folklore of developing countries. As we all know, the adoption of paragraph 3(b) of Article 27 establishes that Members must provide for the patenting of microorganisms and non-biological procedures and also gives Members the possibility of granting patents on plants and animals as well as on procedures which are essentially biological. This situation has led to the proliferation of policies and laws which enable that forms of life are patentable. Paragraph 3(b) of Article 27 provides for the extension of the concept of invention

which leads to the patents of discoveries of functions and characteristics of living organisms, genetic resources or derivatives.

65. To finalize, we would like to say that we welcome any initiative aimed at restarting our work on this matter with a view to achieving a balance in the system which will enable those who have genetic resources to offer the necessary protection to genetic resources in line with the provisions of the CBD.

5.3 India

66. We support the statement made by Brazil. India has been a major victim of biopiracy. Pursuant to the ratification of the Convention on Biological Diversity (CBD), India developed a comprehensive legislation on biodiversity, enacted the 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.

67. 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 biopiracy can be prevented.

68. 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 contained in document 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 Members, including India. This proposal seeks an amendment of the TRIPS Agreement by inclusion of a new Article 29 *bis* for disclosure of origin of genetic resources and/or associated traditional knowledge. A mandatory 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.

69. The Nagoya Protocol of the Convention on Biological Diversity (CBD) entered into force on 12 October 2014. So far 74 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 under Article 14 of the Protocol, is a key tool for facilitating the implementation of the Nagoya Protocol. It enhances legal certainty and transparency on procedures for access, and monitors the utilization of genetic resources along the value chain, including through the internationally recognized certificate of compliance.

70. In view of the entry into force of the Nagoya Protocol and operationalization 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 summary notes by the Secretariat.

5.4 Peru

71. Peru would like to support what has been said by Brazil, Bolivia and India. We are fully convinced of the importance of the intellectual property system as a tool for the economic, social and cultural development of our countries. Therefore, our country also would like to highlight how important it is to deal with this matter as part and parcel of the pending issues regarding the implementation as mentioned in paragraph 12 of the Doha Ministerial Declaration. We believe that it is only through balanced results that really deal with biopiracy that we will be able to establish

the appropriate balance in the system of patents and IPRs which will, of course, benefit us all, especially the local communities, indigenous peoples of developing countries.

72. As we have already said on other occasions, this requires a multilateral regulation. This will probably be the most efficient way of looking into the international issue regarding traditional knowledge and folklore because it will enable all countries to identify the country providing biological resources and would demand that those filing patents indicate the country of origin. We would also highlight that evidence has to be provided for prior consent and benefit sharing. This, together with a need to improve the system so as to avoid biopiracy which, of course, runs counter to the interests of developing countries has led us to co-sponsor document TN/C/W/52 as well as document TN/C/W/59 on the strengthening of the relationship between the TRIPS Agreement and the Convention on Biodiversity.

73. Peru, in this way, would like to protect the access to generic resources which will, of course, give support to all, but also to Peru's local populations. It will recognize the right of peoples to the entitlement of their genetic resources.

74. In the light of what I have said, we think that it is absolutely necessary that the TRIPS Council reflect on this under your leadership through informal consultations so as to see which is the best way of touching upon these issues so that we really deal with the concerns of Members.

5.5 Bangladesh

75. Bangladesh does not support patenting of life forms of plants and animals as per domestic laws and also on moral and ethical grounds. We believe that States are sovereign and traditional knowledge and genetic resources belong to either indigenous people or to the State as the case may be. Resources of nature, like plants and animals, belong to the whole mankind and safeguarding the genetic resources and traditional knowledge and folklore is imperative to protect them from being misappropriated in the form of patents on non-original innovation.

76. This has been a matter of great concern for the developing countries and LDCs. We think that this could be protected by effective disclosure mechanisms and by obtaining prior informed consent. The TRIPS CBD harmonization issue has been a critical implementation issue for all the developing countries and LDCs. Both the TRIPS Agreement and the CBD, as well as the subsequent Nagoya Protocol broadly uphold the use of innovation for the development of the people and we consider these two Agreements as complementary to each other.

77. The CBD has provided for the establishment of legitimate rights of genetic resources and it is only normal that patent applicants would disclose the source of invention if they access and use particular genetic resources, of which they are not the rightful owner. The disclosure requirement is also consistent with the transferring principle established in the multilateral trading system and will help reduce the number of erroneous patents and biopiracy.

78. This mechanism will also ensure the access to beneficiaries and to the rightful owners of the resources. Many developed countries have their disclosure requirement in their domestic IP legislation and this does not pose any problem to administering their patent laws. We hope that the mandate provided for in paragraph 19 of the Doha Declaration and which have been reinforced in subsequent Ministerial Declarations will be implemented in an early and constructive manner.

79. Since you have expressed your concern regarding the lack of movement about these three items, I would say that we have been discussing these three agenda items together as per traditional for a long time. I now leave it to you and the wise consideration of Members whether the time has come to take up the issues separately to give them proper individual focus. Dealing with them together has so far produced little result. We believe that this effort of considering them separately may be worth a try.

5.6 Indonesia

80. Our delegation views the issues of the relationship between the TRIPS Agreement and the Convention on Biological Diversity as well as the protection of traditional knowledge and folklore under these Agenda Items of great importance. It is essential that bold steps be taken by all

countries to address the matter in a concrete and fruitful manner for substantive progress to be made within the WTO.

81. Indonesia emphasizes the need to have cohesion, coherence, and consistency of the TRIPS Agreement and the CBD. Implementation of the two international instruments needs to be mutually supportive and not run counter to their respective objectives. To this end, our delegation believes that we should focus on the objectives, definitions and principles of the CBD and also the Nagoya Protocol, in particular the provisions of prior informed consent for access and fair and equitable benefit sharing. These set the foundation for the protection of genetic resources and associated traditional knowledge. 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 the Nagoya Protocol. Such inconsistency allows room for misappropriation and misuse which would defeat the purpose of the CBD and the Nagoya Protocol.

82. Most Members of WTO are also members of the CBD and many of us are also members of the Nagoya Protocol. We should harmonize the TRIPS with the CBD and the Nagoya Protocol as a coherent and unified international legal system. Given the fact that the protection of genetic resources, traditional knowledge, and folklore is very crucial for developing countries such as Indonesia, we reiterate the urgency of enhancing the discipline of mandatory disclosure requirements with regard to Article 29 of the TRIPS Agreement.

83. Indonesia views that a legal obligation to establish a mandatory disclosure requirement in patent applications is important to prevent misappropriation of genetic resources. A mandatory requirement will also ensure transparency and efficacy of the patent system. Our delegation views that a mandatory disclosure requirement can provide a greater legal certainty for the IP system itself.

84. One of the core objectives of the IP system is to contribute to the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare and to a balance of rights and obligations. This objective can be achieved by having a mandatory disclosure requirement which will create a balance of rights and obligations between the providers and users of genetic resources as well as local communities who are the holder/beneficiaries of the associated traditional knowledge. In order to achieve this, an amendment to the TRIPS Agreement to include a provision on mandatory disclosure requirement is necessary.

85. Indonesia also sees the need to take into account discussion of these issues in several multilateral fora, especially with regard to the Sustainable Development Goals (SDGs) and 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 utilization of genetic resources and promote appropriate access to such resources as one of their targets in order to achieve one of the goals of the future agenda of global development that replaced 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. These negotiations can highlight the importance of the issues and complement each other to produce a fairer, more balanced and effective protection regime of GRTKF. Therefore, we call upon the Council to give simultaneous and adequate attention to address issues towards common efforts in other fora to ensure that GRTKF are protected and utilized in an appropriate manner.

86. Last but not least, our goal can only be achieved through sincere cooperation and partnership among all stakeholders. Hence, Indonesia invites other Members to strengthen their commitment and stimulate further dialogue to accomplish the desired results.

5.7 Ecuador

87. Ecuador has repeatedly argued in this Council that an analysis and discussions 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.

88. This type of patent should be prohibited, since life or parts thereof should not be considered a tradeable good subject to inventions and, therefore, patents.

89. We reiterate the need for multilateral legal instruments that can improve the use of genetic resources, traditional knowledge and traditional cultural expressions, and give them effective and adequate protection. In this regard, Ecuador believes there is a need to establish legal mechanisms to allow disclosure of the source of origin, prior informed consent, and access to, and the equitable sharing of benefits. As a result, Ecuador firmly believes in the relationship between the TRIPS Agreement and the CBD.

90. Furthermore, we reiterate our support for the proposal that the Convention 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. The information provided will help to enhance our judgement, thus improving the quality of our discussions.

91. Finally, Ecuador raised the possibility that the Secretariat prepare an update of the factual notes on previous topics, since the last compilation of the ideas discussed was produced in 2006. We believe that updated versions of documents IP/C/W/368/Rev.1/Corr.1, IP/C/W/369/Rev.1 and IP/C/W/370/Rev.1 would provide us with a clearer idea of what had already been discussed a number of years ago.

5.8 Egypt

92. The protection of biological resources, traditional knowledge and folklore presents an important developmental issue for Egypt. In view of the importance of this issue, we continue to support engagement in full negotiations on the relationship between the TRIPS Agreement and the Convention on Biological Diversity, which is a critical part of the Implementation-Related Issues and Concerns as contained in the Doha Work Programme. Therefore, we urge other Members to engage in this issue of prime importance to developing countries, as part of the conclusion of the DDA.

93. Technical discussions on this issue have been ongoing for almost a decade so far. 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 materials or associated traditional knowledge to disclose the source and country of origin of the biological resource and the associated traditional knowledge used in the invention. Furthermore, the applicant shall also provide evidence of prior informed consent and evidence of fair and equitable benefit sharing under the relevant national regime.

94. Egypt continues to encourage the engagement of the Director-General in his mandated consultative process on the relationship between the TRIPS Agreement and the Convention on Biological Diversity. We look forward to the outcome of this kind of consultations, and we request all Members to constructively engage therein, taking into consideration that this issue is one of high priority for developing and LDCs.

5.9 Cuba

95. My delegation would like to support what was said by Peru, Brazil, Plurinational State of Bolivia, Indonesia, India and other Members on the need to activate our discussions so as to make disclosure mandatory for genetic resources and also prior informed consent. This is the position of my delegation and we are ready to work so as to achieve this objective.

96. We would also like to support the request made by Ecuador on several occasions on the need to update the factual briefs. We see no problem in this being done. It would be very useful to have this update.

5.10 China

97. China's position on the TRIPS Agreement and the CBD was clearly stated during the last Council meeting in March and it has been reflected consistently in documents TN/C/W/52 and TN/C/W/59. China notes that the two documents were co-sponsored by the majority of Members and could serve as a sound basis for Members' discussion.

98. As regards the introduction of a mandatory disclosure requirement in the TRIPS Agreement, China believes it 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.

99. China would like to support inviting the CBD Secretariat to brief the TRIPS Council on Nagoya Protocol. Such a brief will improve Members' understanding of the protection of genetic resources, and strengthen the collaborative efforts between WTO and other international organizations.

100. Also, China would like to request to update the three factual notes, which are IP/C/W/368/Rev.1, IP/C/W/369/Rev.1 and IP/C/W/370/Rev.1, so that Members could be provided with helpful information for constructive debates, since the last updates were made ten years ago.

5.11 Colombia

101. Colombia has repeatedly stated that the protection and sustainable use of genetic resources, traditional knowledge and traditional cultural expressions is only really possible through the introduction of clear international rules and obligations to guarantee adherence to the principles and objectives assumed under the United Nations Convention on Biological Diversity (CBD) and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. The only way of achieving a genuinely inclusive intellectual property system is to find solutions that can benefit all Members, solutions that include these issues of particular importance to the developing countries and the LDCs.

102. 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 objectives. Nevertheless, two decades later we have seen no progress. Now, after MC10, we have a fresh opportunity to move the negotiations forward. The Council should therefore ensure that this interest, which is shared by the majority of Members, is at long last taken on board, and steer the discussions towards a satisfactory conclusion.

5.12 Canada

103. Canada continues to believe that the TRIPS Agreement and the Convention on Biological Diversity are mutually supportive agreements and that there is therefore no need to amend the TRIPS Agreement in this regard.

104. However, Canada is not opposed to holding a briefing by the CBD Secretariat in the TRIPS Council in the spirit of cooperation and dialogue in this Council, should there be sufficient interest from Members.

105. We are also not opposed to the suggestion that the Secretariat update the three factual briefs. This would all, of course, be without prejudice to national positions.

106. Canada welcomes the ongoing work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore – the IGC. Canada continues to believe that the IGC is the best and most appropriate forum for discussion of these complex issues until such time its outcomes are secured by our experts on these matters under the IGC 's intensive schedule of activities.

107. Canada is an active and committed participant in that important work. Canada takes note of the concrete discussions and exchange of national experiences at the recent session of the IGC and continues ongoing work in the IGC with a view to accurately pinpointing the issues at hand and identifying appropriate mutually beneficial approaches to these issues.

108. Canada also wishes to reiterate our view that matters relating to Article 27.3(b) of the TRIPS are an implementation issue as outlined in the Doha Ministerial Declaration – not a negotiation issue. Canada also believes that the relationship between the TRIPS Agreement and the CBD is

also an implementation issue, as are protection of traditional knowledge and folklore. We continue to support approaches on these issues that provide for national policy flexibility on these matters.

5.13 Japan

109. 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. But we have to, at the same time, bear in mind that any measures taken should not adversely affect the existing intellectual property system or innovation utilizing genetic resources and associated traditional knowledge.

110. At the last Council meeting in March, this delegation outlined the negative impact that the disclosure requirement would have on innovation. Namely, it would cause industries to discourage 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.

111. Concerning these issues, we believe the WIPO IGC is the most appropriate forum for holding technical discussions on IP aspects. The 30th Session of the IGC was held just last week. Japan also actively contributed to the discussion in that session. We believe that discussions in the WIPO IGC should be prioritized, since WIPO is one of the most appropriate international organizations that specialize in IP.

5.14 Korea, Republic of

112. On these agenda items, our delegation's position will be the same. I will repeat our delegation is not in favour of the revision of the Article 27.3(b) as we believe that the current provision of the necessary flexibilities allow Members to protect biotechnological inventions within the specific protection systems.

113. We do believe also that WIPO is the appropriate forum to deal with these issues.

5.15 United States

114. Regarding genetic resources, traditional knowledge and folklore, we continue to believe, as others have identified, that WIPO serves as the best forum to address these issues.

115. With regard to these three agenda items we discuss together, progress is not a function of modalities, whether these items are treated separately or together in different modes, or a briefing by the Secretariats of other international organizations or factual notes. Progress here, on this issue, is a function of the divisive nature of this issue, of the continued divergences of positions on these issues and perhaps of our continued lack of understanding regarding some of the inconsistencies that we have heard with respect to support for some or other provisions or some or other positions under this agenda item. For example, we have heard today that genetic resources are both sovereignly held or held by indigenous communities or by all of mankind and we struggle to reconcile how those can work together.

116. We also hear today while many delegations oppose patenting of certain life forms, that when they are patented, there should be disclosure requirements. Again, there appears to be a fundamental inconsistency regarding positions on these different issues. So we would certainly welcome more information and a better understanding from delegations about how to reconcile these inconsistencies.

117. Finally, with respect to the various requests that have been made today with respect to briefings and summary notes, the United States is not in a position to support these requests, but again, remains open to discussions including bilaterally with delegations both in between TRIPS Council meetings and at the margins and of course in the meetings themselves.

5.16 Switzerland

118. As a member of the coalition of 108 Members under IP/C/W/52, we are not going to repeat Switzerland's well-known position on the two implementation issues of TRIPS-CBD and the GI extension, as well as the GI register. Let me recall that document IP/C/W/52 contains modalities language and solutions to the topics in question.

119. We continue to support that the three factual briefs be updated by the Secretariat.

120. As for the proposal for a workshop, this is not something we can support at this point of time and need to do further consultations in capital, but we remain certainly open to discuss any further proposal in that direction.

AGENDA ITEM 6: NON-VIOLATION AND SITUATION COMPLAINTS

6.1 United States

121. The United States continues to maintain its position that NVNI (Non-violation Nullification or Impairment) 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.

122. This morning, rather this afternoon, we wanted to take a different approach and explain our understanding of how an NVNI dispute under the TRIPS Agreement would proceed in practice and to identify the many safeguards at each stage of such a dispute. At the outset, it is important to recall the rare nature of such claims in the GATT and the WTO contexts. For example, the October 2012 revised summary note by the Secretariat on non-violation and situation complaints (document IP/C/W/349/Rev.2) distils the common understanding of Members on this point citing nearly 20 submissions from delegations. The summary note states succinctly the view has been expressed that violation, non-violation, nullification and impairment has an exceptional character. It has been noted that the Panel in *Japan – Film* considered that non-violation remedies should be approached with caution and should remain an exceptional remedy.

123. We have been clear on this point as well, as the US has previously recognized, the number of instances in which non-violation complaints could succeed by meeting the requirements under the TRIPS Agreement is very limited. In its February 2014 presentation to the TRIPS Council, the Secretariat noted that NVNI claims were brought in just eight GATT-era disputes and five of which were successful, but only three of those five panel reports were actually adopted. In the WTO-era as of 2014, NVNI claims were raised also in just eight out of 474 disputes that had been initiated to that point. To be more concrete, NVNI claims were raised in only 1.8% of WTO disputes initiated as of the date of the Secretariat presentation.

124. It is, therefore, safe to say, that NVNI claims are truly an exceptional remedy. The exceptional nature of the remedy, however, does not diminish the significance because there are instances where panels have ruled and where WTO Members have adopted such rulings that a measure of one Member has nullified and impaired the negotiated WTO concessions of another Member. This is a serious issue. This is a matter of serious concern for all Members. As panels have agreed, indeed, the panel in *Japan – Film* while noting the exceptional nature of NVNI claims, also stressed their importance stating that non-violation remedies is an important and accepted tool of WTO and GATT dispute settlements.

125. So WTO Members, panels and the Appellate Body are not likely to see many NVNI claims under the GATT, under the TRIPS Agreement or other WTO Agreements. That said, even if they did, such claims would likely be addressed according to a 20-year old standard of NVNI complaints that requires three elements. First, application of a measure by a WTO Member. Second, a benefit accruing under the relevant agreement. Third, nullification and impairment of the benefit as the result of the application of the measure. Notably, with respect to that second element, panels have confirmed that in order for expectations of benefit to be legitimate, the challenged measure must not have been reasonably anticipated at the time of the concession was negotiated. If the measures were anticipated, a measure could not have a legitimate expectation of improved access to the extent of the impairment caused by these measures.

126. This is an important element we think which should not be overlooked and that goes to whether the measure could have been foreseen. Here again, we look to Switzerland's comments on this issue – the issue of foreseeability is critical with respect to the use of the TRIPS flexibilities that several delegations have identified today and in the past. As the Swiss delegation has noted, a non-violation complaint cannot be brought against another Member for utilizing a flexibility foreseen in the TRIPS Agreement. One of the necessary conditions that the complaining party must demonstrate is that the offending measure could not have been foreseen. That a Member may make use of a flexibility provided in the TRIPS Agreement is, just as any other right under the TRIPS Agreement, foreseeable by other Members. In such a dispute, the parties and third parties all present in those cases including to present their defences of the positions they have maintained here in the Council. Significantly, the panel in the *Japan – Film* dispute, found that the burden of proof rests on the complaining party. To provide a detailed justification for its claims in order to establish a presumption that what is claimed is true and as we have explained in seven of the 16 NVNI disputes in the history of the GATT and the WTO, the panel has found that the complaining party failed to meet its burden of proof.

127. So even in the limited instances where an NVNI claim is brought, the panel has not exercised judicial economy and the complaining party has met the burden of proof, including by demonstrating that the measure could not have been foreseen, the panel would still be subject to the DSU, including Articles 3.2 and 3.5. As delegations are aware, Article 3.2 states clearly that recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.

128. Beyond these legal safeguards, we have yet to find a single instance in the 63-year history of NVNI disputes that provides any concrete evidence of the concerns raised by some delegations. Take exceptions, for example, neither the numerous free trade agreements which include NVNI claims, nor GATT or WTO jurisprudence provide any examples of any curtailment of such exceptions provided under the WTO Agreements.

129. As we have enquired in past meetings, why would NVNI claims limit the use of exceptions in the TRIPS Agreement when NVNI claims have never limited the use of exceptions under Article XX of the GATT 1994.

130. The long history of compatibility of GATT NVNI claims with GATT exceptions were measures related to issues including public morals, human health, conservation of exhaustible natural resources, should go far to allay the concerns regarding the application of NVNI claims in the context of the TRIPS Agreement.

131. To conclude, non-violation complaints are fully appropriate in the context of the TRIPS Agreement and have long been a part of the WTO and the GATT. Non-violation complaints serve an interest of all WTO Members which is to assist Members in protecting against measures that nullify and impair negotiated concessions. Non-violation complaints are part of the balance of rights and obligations of the TRIPS Agreement, the time has come to allow the moratorium on non-violation complaints to expire.

6.2 Peru

132. Members know Peru's position regarding non-violation and situation complaints. I think that is what is expressed in document IP/C/W/385/Rev.1. The draft decision proposed in document IP/C/W/607 dated 29 July 2015 was supported by a large group of Members. This proposal mentioned this type of case shall not apply to the settlement of disputes under the TRIPS Agreement.

133. For my delegation, this proposal remains as the former one on the table and I think it is the only one as well. We encourage that discussions be conducted by you on the basis of this proposal. I am sure that we can make some progress before the next meeting.

6.3 Japan

134. Japan's view on this issue has not changed.

135. 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 modalities of non-violation and situation complaints in the area of the TRIPS Agreement.

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

6.4 Bolivia, Plurinational State of

137. Bolivia is also a co-sponsor of document IP/C/W/385/Rev.1 which, as was properly said by the distinguished colleague of Peru, should be the basis of any future consultation on this issue. So therefore, it does not support the enforcement of this measure under the TRIPS Agreement.

6.5 Switzerland

138. We have carefully listened to the interventions of the previous delegations.

139. Our position is clear. Switzerland continues to take the view that non-violation and situation complaints are applicable to the context of TRIPS, similarly as to GATT and GATS.

140. The language of Article 64.2 and 64.3 of the TRIPS Agreement does not leave any doubt: the two paragraphs make clear reference to non-violation and situation complaints and the moratorium which applied in the first place. If the moratorium ends, non-violations and situation complaints become applicable under the TRIPS Agreement.

141. We are open to discuss modalities as was proposed by the Chair, but do not see a need for such discussion. If no specific modalities are put forward, any non-violation and situation complaints procedure would be governed by the DSU and jurisprudence. It would provide enough guidance to adjudicate such a case.

6.6 Brazil

142. Brazil, as Peru and Bolivia, is also a co-sponsor of IP/C/W/385/Rev.1. We also second the view of the delegation of Peru, co-sponsored by Bolivia, that the way forward should be based on the proposals that were made on this subject.

6.7 China

143. China notes that the Nairobi Ministerial Conference decided to further extend the moratorium of the application of non-violation and situation complaints under the TRIPS Agreement. During the Council meeting in March and during the informal process of this meeting, debates on this issue continued, but we noted that divergence was observed obviously.

144. China shares the points reflected explicitly in document IP/C/W/385/Rev.1. This document provides both background information and concerns raised by a large number of Members. We believe that non-violation and situation complaints are not applicable under the TRIPS Agreement.

145. However, we would like to engage in discussion according to the mandate given by Ministers.

6.8 India

146. India supports the statements made by Peru, Bolivia, Brazil and China. India is a co-sponsor of documents IP/C/W/385/Rev.1 and IP/C/W/607. In the run up to the Ministerial Conference in Nairobi, there was a great confluence of interest on making such complaints inapplicable to TRIPS. There was a draft Ministerial Decision proposed in IP/C/W/607.

147. Serious concerns remain on the debilitating impact of non-violation and situation complaints in TRIPS, especially as regard the regulatory policy space of Members, TRIPS flexibilities as well as

the increasing 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.

148. 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 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."

149. Though the AB reversed this reasoning of the Panel on the ground that non-violation and situation 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 non-violation and situation complaints apply. A cursory glance at recent international investment arbitrations against States by some pharmaceutical companies utilizing the "legitimate expectations" principle to challenge not only IP regimes, but also judicial decisions is a troubling development. Allowing non-violation and situation complaints under the TRIPS Agreement will essentially replicate this development in the WTO dispute settlement forum.

150. 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.

151. We do not stand convinced by the reasons provided by a couple of Members of its place in the TRIPS context. While whether the TRIPS Agreement is a market access agreement may or may not be relevant for its applicability, it is clear that the drafters did not unequivocally apply non-violation and situation complaints 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 Membership.

152. 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 and situation complaints inapplicable to TRIPS. We also wish to reiterate that until there is a consensus on the scope and modalities of the applicability of non-violation and situation complaints to TRIPS, they will not apply to the TRIPS Agreement.

6.9 Canada

153. Canada welcomes the opportunity to address this important issue of the applicability of non-violation and situation complaints remedy to the TRIPS Agreement. Our position on this issue is well-known. It has remained unchanged over the years. In this regard, we wish to refer Members to previous interventions when we raised concerns about the applicability of the NVNI remedy to the TRIPS Agreement, specifically, the lack of certainty and predictability over how non-violation and situation complaints could apply in the context of a dispute under the TRIPS.

6.10 Ecuador

154. Ecuador is also a co-sponsor of document IP/C/W/385/Rev.1. Like other delegations, we think that this document should serve as a basis for discussions on this issue. Once again, we would like to say that the TRIPS Agreement does not protect market access because there is no exchange of tariff concessions, but rather to the contrary it is a *sui generis* agreement which has minimal standards regarding IP rights. Therefore, non-violation and situation complaints do not have any scope in this Agreement.

6.11 Indonesia

155. Indonesia, once again, reiterates its full supports toward the Nairobi Ministerial Conference decision which puts a moratorium of the implementation of non-violation and situation complain to any settlement of disputes under the TRIPS Agreement until 2017.

156. Indonesia remains in its position on this issue. As a co-sponsor of document IP/C/W/385/Rev.1, our view has been fully reflected on that document since we are convinced that the application of NVSC would create legal uncertainty and undermine the predictability and security that the system seeks to provide to all WTO Members. Furthermore, we believe that it would raise fundamental and unnecessary concern in this house.

6.12 South Africa

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

158. The insertion of Article XXIII.1(a) and 1(b) of GATT 1994 under the TRIPS Agreement will undermine the sovereign rights of the respective Members insofar as putting in place the laws that will protect IPRs within their borders are concerned. The insertion will furthermore restrict the flexibilities provided to Members and defeat the balance that has been maintained under the TRIPS Agreement.

159. South Africa recognizes the need for the protection of intellectual property rights. However, we believe that the insertion of non-violation and situation complaints will not be practical under the TRIPS Agreement.

6.13 Bangladesh

160. You may kindly recall that the LDCs repeatedly expressed their deep concern regarding non-violation and situation complaints at all Council meetings. Bangladesh also believes that the legal grounds for non-violation and situation complaints are very weak. This has been amply supported by the fact that Members unanimously extended the moratorium several times.

161. We are particularly concerned as different flexibilities under TRIPS could be a subject of non-violation and situation complaints any time. It had been mentioned that the burden of proof will be on the complainant, but unfortunately on the other side of the coin, there is also the burden of defence and the huge cost of an unnecessary defence can very well be avoided if the non-violation and situation complaint is not applied in such legally uncertain and unchartered situations.

162. We think that IP/C/W/385/Rev.1 could be a good basis to advance further discussions.

6.14 Cuba

163. Cuba shares the information that is in IP/W/385/Rev.1 and my delegation endorses what was raised by Peru, Bolivia, India, China, Brazil, Ecuador and other Members who have expressed the view that NVNI should not be applicable to intellectual property. Because of this we endorse the legal arguments in the information given by India which we think is very interesting as a justification for this assertion.

6.15 Argentina

164. The position of Argentina has not changed. It is well-known that Argentina considers that this type of complaint is not applicable to the TRIPS Agreement as is explained in document IP/C/W/385/Rev.1 which my country is a co-sponsor of, together with many other Members.

6.16 Russian Federation

165. The Russian Federation is a co-sponsor of document IP/C/W/385/Rev.1 and IP/C/W/607. Our view is that provisions of subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994 shall not apply to the dispute settlement under the TRIPS Agreement. Our delegation welcomes any constructive discussion on the issue of non-violation and situation complaints.

6.17 Chinese Taipei

166. I would like to underline the following points having to do with NVNI. I would like to inform delegates that in 2012, a summary note on non-violation and situation complaints was established by the Secretariat in document IP/C/W/349/Rev.2. It is a very useful document to understand the current situation in this regard.

167. Since 2013, the United States, Peru, Brazil and other Members have also submitted proposals on this subject in order to facilitate the far-reaching discussion on this question with Members, particularly concerning the scope and modalities applicable in the context of the TRIPS Agreement. For the next TRIPS Council in November, I would recommend to the Secretariat to update the summary note that I just mentioned in order to reflect these realities.

6.18 Korea, Republic of

168. Our delegation shares the concerns expressed on the NVNI by previous speakers. Our position remains the same, i.e. that non-violation complaints are not applicable to the TRIPS Agreement since we have not had any new argument to change our position on this issue.

6.19 Egypt

169. Our position is well-known. We really believe that non-violation and situation complaints under Article XXIII, 1(b) and 1(c) of GATT 1994 are not applicable to the TRIPS Agreement and I would like to thank most cordially my colleague from Peru for his expression. We certainly believe that the best solution to overcome this issue would be that the document IP/C/W/607 be the basis of our discussions in this context.

6.20 Colombia

170. Colombia is of the view that a transparent, predictable and equitable instrument to solve disputes is crucial. However, we think that TRIPS, as opposed to the other agreements of the WTO, is to provide minimum standards for IP rights. So non-violation and situation complaints are a tool that is not balanced and not created to protect rights and obligations under TRIPS. These are already addressed by the main obligations and flexibilities of the Agreement where it is already well established that more extensive protection under this instrument is not needed. Colombia reiterates its position shared by the majority of Members that non-violation and situation complaints should not be applicable under the TRIPS Agreement.

6.21 Nigeria, on behalf of the African Group

171. The African Group is a co-sponsor of documents IP/C/W/385/Rev.1 and IP/C/W/607 that is the decision paper which states that the non-violation and situation complaints should not apply under the TRIPS Agreement. We agree that the TRIPS Agreement provides minimum standards unlike the GATT Agreement. For fear of restricting the flexibilities that are contained in the TRIPS Agreement, especially of those of us coming from Africa for whom the issue of access to affordable medicines has always been an issue, we believe that non-violation and situation complaints should not apply.

172. We do agree with Peru that the proposal in IP/C/W/607 should form the basis of our discussions on this matter.

6.22 European Union

173. We, the European Union, are firm believers in this provision that you mentioned this morning that, unless we have something new to say, we prefer to keep our flag down. I rarely intervene on this point because that is the situation on our side. I think it would be interesting that the summary note that was prepared a while ago by the Secretariat and that, at the time, was invaluable in providing a very accurate and very informative picture of this discussion could be updated because I believe there has been progress since then. There have been more detailed discussions in this Council. There has been progress in the bilateral framework. We believe that such an update would be extremely informative and provide valuable input for parties to continue the discussion on this point.

6.23 Brazil

174. Just to add my voice to the European Union regarding this proposal. We could, if we were to update ourselves, have briefing sessions by the WTO Secretariat, as they were held in 2014. Those briefing sessions could provide updated information to delegates both on the issue of non-violation and situation complaints and on the triplets. We would be in favour having this experience once again.

6.24 India

175. We would like to support the statement made by Brazil that if all Members agree for updating the brief on non-violation and situation complaints then similarly the other actual briefs on the triplets should also be updated because, as I mentioned in the morning, there is also new information on the TRIPS CBD issues. For example, document TN/C/W/52 of 2008 is not reflected in the factual brief as well as document TN/C/W/59 of 2011, and similarly the entry into force of the Nagoya Protocol. All these new developments are not reflected in the factual brief. Whenever a new delegate comes, it would be really difficult for him to know everything by reading the factual brief which was updated in 2006.

6.25 United States

176. I think we support the proposal by the EU. It is an interesting proposal. We are concerned about efforts to link this with an update of another factual paper which we had opposed under a previous item and now we are returning to that for a second bite of the apple. That linkage is something that we are not in a position to support. We would support certainly an update of the Secretariat summary note on NVNI, but are not in a position to agree to an update of the paper regarding the CBD issues for the reasons we have identified previously.

6.26 Chairman

I propose that the Council take note of my summary of the informal discussion as well as the statements made by delegations in informal mode and agree to revert to this matter at its next meeting. Also there has been no objection to the proposal that the Secretariat summary note in IP/C/W/349/Rev.2 be updated and I therefore suggest that the Council so agree.

6.27 India

177. We are not supporting the updating of the brief if it is only done for non-violation and situation complaints. If it is done for the other three Secretariat papers mentioned, then we agree. Otherwise we don't agree.

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

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

No statements were made under this agenda item.

AGENDA ITEM 9: TECHNICAL COOPERATION AND CAPACITY-BUILDING

No statements were made under this agenda item.

AGENDA ITEM 10: IP AND INNOVATION: SUSTAINABLE RESOURCE AND LOW EMISSION TECHNOLOGY STRATEGIES

10.1 Japan

178. We have prepared some slides and print-outs are placed outside so for everyone to see.[1]

179. The Japanese Delegation would like to give a short presentation on this topic.

180. Slide 2 shows the changes in the number of patent filings to the Japan Patent Office in this field of technology, which relates to energy, resource saving, environment and social infrastructure. We can see that the number has almost doubled in the past eight years, which supports the claim that this is a quickly growing field of technology.

181. Next, I would like to make three assumptions concerning some characteristics of technology in this field.

182. The first characteristic is that there is a very wide range of techniques, varying in complexity and effect. Let us say we want a certain effect, for example, the purification of water. The specific technique can range from a simple filtering device to a huge water purification plant. This may not necessarily be high-tech. Thus, the potential licensee would have to select from a broad range of specific techniques, as well as the targeted effect. This could cause a "matching problem", that is, the difficulty in finding the right technology for the right region, which I will discuss later.

183. The second characteristic is that we can find different techniques having the same effect. This means that there would be competition among techniques. Thus, in this field of technology, it would be difficult for a certain patent holder to block innovation, since it would only benefit competitors having techniques with similar effects.

184. The third characteristic is the importance of know-how. Many techniques in this field require know-how to select and integrate the elements which comprise the technique in order for it to work efficiently and be cost-effective. Thus, know-how, often protected as trade secrets, is the key factor for innovation in this field.

185. Next, based on my previous assumptions, I would like to discuss some ideas to accelerate local innovation.

186. First, we could increase competition among techniques, in other words, among potential licensors and investors, which would in turn lower the price of licences. Since licensors provide the technology and the investors provide the capital necessary for innovation, a licensor/investor-friendly environment would promote local innovation. Such environment would include effective IP protection which would help to alleviate the risks involved in investments made to diffuse technology.

187. Second, in order to speed up local innovation, we would need to deal with the "matching problem". This is a problem that we also face even in Japan. There is no simple solution, and we will need to be patient. However, we can think of ways to move forward. Considering the vast number of technologies available, the basic idea is to use a "needs-oriented" approach. It would probably be easier for the potential licensee to narrow down the technology based on their

[1] See Room Document RD/IP/10.

objectives. It would be helpful to have information tools to search the technology and potential licensor.

188. Here, patents have a very important role. Patents define techniques to be searched in databases and link them to their holders. The holders will also have the crucial know-how to work the techniques.

189. It also would be helpful to develop the human resources to do the search and matching. This is an area which international cooperation could be useful.

190. Third, it would also be helpful if the patenting process would timely grant patents.

191. So, would we bring IP to work for innovation? I mean we need to use IP in this area. Slide 5 shows some efforts related to the ideas shown on slide 4.

192. There are free patent databases, including those provided by the Japan Patent Office, WIPO, and I haven't listed it here, but the European Patent Office also has a very useful patent database. These can be searched using English, and also the WIPO database, in the EPO database, uses machine translation technology so it can be searched in many different languages.

193. There are also technology databases, including those provided by UNIDO Investment and Technology Promotion Office Tokyo, and from the Global Environment Centre Foundation. These are only in Japan. I think there are more you can find out throughout the world.

194. With regards to timely patent examination, the Japan Patent Office provides accelerated examination for green technology and collective examination of inventions related to a certain product, both are free of charge.

195. With regards to human resource development and other cooperation in this field, various government offices and organizations in Japan have international cooperation schemes, including those already reported in our document, IP/C/W/610.

196. We believe these IP efforts, along with a licensor/investor friendly environment, have the potential to speed up innovation.

10.2 European Union

197. We are very happy to contribute once more to the key point of this agenda item of this Council and today we start with a couple of questions and our perspective of how these questions can be answered. So how will we tackle challenges like climate change, energy supply, the scarcity of resources and the impact of demographic changes? How will we improve health and security and sustainably provide water and high-quality, affordable food?

198. In Europe, we believe that innovation plays a key role to respond to these questions. The EU assigned a central role to innovation to underpin the smart, sustainable and inclusive growth of the Europe 2020 Strategy.

199. Innovation is about promoting growth and ultimately benefiting societies. Innovation is not just research or technology development and its applications. It encompasses both research-driven innovation and innovation in business models, design, branding and services that add value and respond to people's needs. It is about building and changing a whole system: products, processes, markets and organizations. It is about reaching the users, involving the suppliers as well as the consumers everywhere, across borders, across sectors, and across institutions.

200. Innovation is also about inclusiveness. Achieving the objective of transformative economies and societies requires the involvement of different actors in the innovation cycle (academia, public and private sector, civil society, etc.). In this perspective, not only major companies are important, but also small and medium enterprises in all sectors and the social economy and citizens themselves – what we often refer as "social innovation" – also matter. Cooperation

throughout the innovation chain, including international cooperation between countries, is also very important.

201. In this context, the relevance of innovation also in relation to sustainability is evident. The sustainability agenda puts people at the centre and calls for working together to promote sustained and inclusive economic growth, social development and environmental protection. Rio+20 also acknowledged the potential contribution of green economy to achieving sustainable development.

202. A recent report by the Green Growth Best Practice initiative assessed the lessons from experiences of pursuing green growth across all levels of government and all regions. It pointed at green innovation policy and labour market and skills development policies as a pre-requisite for a transition to green growth in many countries.

203. This report highlights that a "green transformation" requires more than technological innovation and needs to be complemented with open, social and financial innovation. Finally, the report illustrates a clear pay-off of Government investment in green innovation as government investment in green research and development successfully translates into development and commercialization of break-through green technologies.

204. All of this provides a clear call for fully integrating innovation in development.

205. The role of innovation and technology for the implementation of the sustainable development goals. Here I would like to talk about the creation of a favourable policy environment which should include reforms to tackle fragmentation; modernization of education systems at all levels and capacity building in countries that still lag behind in the innovation chain; enhanced cooperation between science and business; and increased international cooperation in research and innovation by opening and national research programmes.

206. The UN's sustainable development goals also recognize the importance of research and innovation for agriculture and food security, clean energy, vaccines and medicines. In this context, research cooperation among countries will be central to ensure the co-creation of solutions as well as knowledge sharing. Ultimately, this would favour the access to and ownership of the research results generated by all actors involved.

207. The discussion often concentrates on the transfer of technologies through trade and gives relatively less attention to the transfer of knowledge and know-how that is possible through research cooperation. Innovation also entails a different use or application of existing technologies.

208. Research and innovation cooperation is often more important than commercial aspects of the technology transfer process in the field of promising, but less mature technologies, or technologies that need to be adapted to local conditions.

209. By jointly identifying areas of research and innovation cooperation it is possible to set the basis for technology facilitation. Also, the exchange of knowledge between regions of the world confronted with similar problems can contribute to create economies of scale that are equally important for technological deployment.

210. There is another aspect of technological innovation and research cooperation that is often overlooked. This is the use of technologies such as space-technology and *in situ* monitoring can support the implementation of sustainable development goals through the provision of data and reliable geospatial information for monitoring progress against their targets. Initiatives like the Global Earth Observation System of Systems (GEOSS) that was launched following the 2002 World Summit on Sustainable Development in Johannesburg and in which also the EU participates, can make an important contribution in this respect and to achieve the "data revolution" needed to support the post-2015 agenda.

211. The EU's research programmes are among the most open in the world and promote cooperation with non-EU countries (both industrialized and emerging economies, and developing countries) taking into account their different research and innovation capacities. Through these programmes, the EU has supported a number of sustainable development-related projects and

international cooperation activities in different areas and across different disciplines, ranging from sustainable development governance to sector-specific activities.

212. Also Horizon 2020, our current programme for research and innovation, recognizes the need for increased international research cooperation efforts and enhanced science-policy dialogue. Sustainable development is an overarching objective of our Horizon 2020 programme.

213. In recognition of the importance of knowledge circulation, open access has been identified as a mean to improve knowledge circulation and thus innovation. On this basis, open access will be mandatory for EU-funded research results produced with funding from Horizon 2020 – the new EU programme for research and innovation.

214. Let me give you some examples of the programmes that are engaged with many Members of this TRIPS Council.

215. The first one is eartH2Observe. This is a programme that links to water. The eartH2Observe project will support efficient and globally consistent water management and decision making by providing comprehensive multiscale (local, regional, continental and global) water resources observations.

216. There are several LDC Members in this programme, including Bangladesh and Ethiopia. The EU contribution is around €9 million. The technology transferred includes applications of local and global hydrological models.

217. We also have an EU-India research and innovation cooperation on water technology. Together with India, we launched a pilot initiative on water related challenges. Two examples of joint projects that resulted from this coordinated calls are:

- The ECO-India project that aims at developing innovative, cost-effective and sustainable approaches for producing potable water and treating wastewater at community level, focusing in particular on arsenic-affected water-stressed regions in India. The project consortium represents a world-class interdisciplinary research team from several research institutes and SMEs in Europe, India and Israel.

- The project on Natural water systems and treatment technologies to cope with water shortages in urbanized areas in India, or NaWaTech project. It aims to explore, assess and enhance the potential of natural and technical water treatment systems in order to improve their performance and reliability to cope with water shortages in India.

218. I would also like to refer to a couple of programmes that are managed by our member States and more detail will be available in the written submission. One of them is the Climate Technology Innovation Centres. This is a programme which the UK has provided since December 2013, over £19 million to support the establishment of nine Climate Innovation Centres. Climate Innovation Centres provide targeted services such as finance and training. They assist the private sector to profitably develop innovative technology and business solutions to domestic energy, resource and environmental challenges.

219. Another programme is promoted by Sweden: the DemoEnvironment Programme gives the opportunity to use proven modern environmental technology solutions that are new to their countries. 2012 and 2013 projects include, *inter alia*, air environment and renewable energy demonstration project in Inner Mongolia and China; waste management and renewable energy project in Namibia and Indonesia; and water and sanitation planning grant in South Africa.

220. To conclude let me briefly address another project funded and pursued by Sweden. It is the Electrical Distribution Management Training. This programme enables networking among professionals in the field of electrical distribution and facilitates future technology transfers by potential partnerships and cooperation. It has run since 2007 with a 145 participants of which more than 70% came from LDCs, such as Ethiopia, Gambia, Liberia, Malawi, Mozambique, Rwanda, Sierra Leone, South Sudan, Tanzania, Uganda, and Zambia.

221. 30 projects in different countries have concerned rural electrification. In total around 230,000 households and other consumers have benefited from these projects. 41 projects in different countries have concerned loss reduction whereas the loss of electricity has been reduced by 15%. 18 projects have concerned improvement of customer services, mostly in in Tanzania. 12 projects have concerned renewable energy, such as small scale hydropower, wind power, solar energy and bio-energy. These are just some examples of programmes that have been pursued in this area and where intellectual property and innovation contribute to the goals that we are discussing today.

10.3 United States

222. We welcome this opportunity to co-sponsor agenda item 10 on IP and Innovation: Sustainable Resource and Low Emission Technology Strategies. We thank Canada, the European Union, Japan, Singapore, Switzerland, and Chinese Taipei for also co-sponsoring this item today.

223. This item offers TRIPS Council delegations the opportunity to share experiences and exchange best practices, including regarding ways they have sought to meet energy demands, while addressing the quantity of energy consumed, the nature of energy supplied, and the impacts of using various energy sources, including how IPRs can advance technological innovation that conserves natural resources, including where they are exhaustible.

224. Exhaustible natural resources include coal, oil, natural gas, uranium, iron ore, copper, nickel and other minerals. If depleted, these resourced cannot be restored. When they are gone, they are gone.

225. Depleting such resources is a monumental concern, but it is not the only concern. A related concern involves resources whose consumption leads to the depletion of other resources, including as a result of harmful emissions. Certain fuels, for example, when consumed, reduce clean air and the ozone layer.

226. Resource consumption and related by-products, such as waste and emissions, can have a variety of significant deleterious effects on the environment, including drought, deforestation, extinction, environmental degradation, ozone depletion, and pollution of water, of land and of air.

227. For example, 12 million hectares are lost per year from drought and desertification, where 20 million tons of grain could have been grown, and arable land loss is 30 to 35 times the historical rate. These patterns lower greenhouse gas and carbon dioxide absorption, but also create additional challenges to food security.

228. The consequence of failure is stark. The importance of success is immense, not only for our generation, but for generations to come.

229. Here is where innovation, and the IP that sustains it, offers one of many possible opportunities. Together, IP and innovation provide a critical response as part of national and international strategies to address the common challenge of resource sustainability.

230. As we heard in today's side event, IP is critical for investment and collaboration, scalability and optimization for sustainable resource technology innovation and diffusion.

231. Technological innovation can play a critical role in conserving exhaustible natural resources and limiting the negative impacts related to resource consumption. We will focus today on renewable resource and low emission technologies.

232. As opposed to exhaustible natural resources, renewables are resources that can be replenished naturally. Some of these resources, like sunlight, air, and wind, are continuously available, subject to certain constraints, and their quantity is not noticeably affected by human consumption.

233. In turn, renewable and related technologies include biofuels, biomass, carbon capture, energy efficiency, fuel cells, geothermal, hydro/marine, low emission, solar photovoltaic, solar thermal, and wind.

234. But, the development and diffusion of such critical technologies cannot be assumed. Like the resources these technologies conserve, sustainable resource and low emissions technologies can be exhaustible or inexhaustible, depending on the innovation environments that surround them.

235. We can neither presume that resources are infinite, nor can we presume that these technologies will be endlessly forthcoming. While many of these technologies are available today, many more are under development. Without the appropriate enabling environment for innovation, we may never know what game-changing technologies in this area may have yet to be imagined.

236. Such technologies must be sustained, such innovation must be conserved. As we will discuss, IPR enables renewable innovation. Conversely, technological stagnation and resource exhaustion go hand in hand.

237. Many inventors and many countries have risen to this challenge. In fact, since the WTO TRIPS Agreement entered into force, patenting rates – including patent applications and patents granted – for clean energy technologies have increased by approximately 20% per year, which far outpaces patenting rates for fossil fuel technologies. The most intensive patenting growth rates occurred with respect to biofuels, carbon capture, hydro/marine, solar photovoltaic, and wind.

238. As in the TRIPS Agreement, the importance of innovation has been confirmed in other international venues. In September 2011, for instance, the UN Secretary General Ban Ki-moon launched the Sustainable Energy for All initiative, which includes innovation as a key priority. And in December 2015, UN Members concluded the Paris Agreement, which states emphatically that "[a]ccelerating, encouraging and enabling innovation is critical for an effective, long-term global response to climate change and promoting economic growth and sustainability".

239. Indeed, clean and renewable energy has matured and grown in the last decade. In 2014, total global investment of $278 billion was made in the renewable energy sector, marking a 55% increase from the global investment in 2009 of $178 billion.

240. Similar trends are evident in many countries and regions around the world. In Latin America, for example, the level of renewable energy implementation is significant at 29%, although the energy needs of the region grew by 76% between 1995 and 2010. Yet, such needs may explain the significant growth in patent applications for adaptation technologies – including desalination, off-grid water supply, remote energy services and weather-related technologies – in the Latin American region, which have increased by 51% on average per year since 2000.

241. Africa has also made significant accomplishments. While the regions share of total clean energy patents remains relatively low, a study by the United Nations Environment Program and the European Patent Office concludes that there is a relatively high level of clean energy innovation occurring in Africa, where energy storage/hydrogen/fuel cell technologies account for 37% of patents for such innovation and renewable energy technologies account for 25% of patents on such technologies. The African growth rate for mitigation technologies is 59%, and the average rate for patent applications for adaptation technologies is 17% per year.

242. The United States is also doing its part too. For example, the Patents for Humanity Program is a United States Patent and Trademark Office (USPTO) initiative, which recognizes innovators who use game-changing technology to meet global humanitarian challenges, including resource conservation.

243. The programme provides business incentives for reaching those in need: winners receive an acceleration certificate to expedite select proceedings at the USPTO, as well as public recognition of their work. The Programme showcases how patent holders with vision are pioneering innovative ways to provide scalable and sustainable solutions for those in need. Nearly all of the winners work actively in countries around the world.

244. While the scope of this programme extends beyond the use of natural resources, such use is a key priority for the programme. For example, two of the five selection criteria are sanitation and householder energy.

245. The programme began in 2012, with ten awards and six honourable mentions. Two of the six award winners were in clean technology space.

246. One of the winners, for example, was Procter & Gamble (P&G) developed a small, inexpensive packet of powder that makes dirty, unsafe water clean to drink. Over the last decade, P&G has set up over 120 partnerships with NGOs, local and national governments and health organizations to deliver the packets to those in need. To date, P&G has invested more than $35 million and delivered over 5 billion litres of clean drinking water, preventing an estimated 200 million days of illness and helping to save nearly 30,000 lives.

247. Beyond the Patent and Trademark Office and the Patents for Humanity Programme, the United States is engaged in numerous renewable energy technology initiatives.

248. The US Department of Energy operates a multitude of programmes, including by the Office of Energy Efficiency and Renewable Energy, covering geothermal, solar, water, wind and other renewables. For example, its Technologist in Residence programme strengthens lab-industry relationships to support industry needs and leverage the national lab network to clean energy R&D.

249. It is important to stress that many of these and other US programmes have a strong international component. The Department of Commerce, for example, operates two programmes of particular relevance – the Renewable Energy and Energy Efficiency Exporter Portal and the Environmental Solutions Export Portal. Through these portals, the Department provides a one-stop-shop for all of the support the Department provides exporters of these goods and services, including trade missions, trade shows, market analysis, counselling and other assistance to US renewable energy and energy efficiency technology exporters.

250. Significantly, another programme is the Enhanced Capacity for Low Emissions Development Strategies Programme (E-CEDS), which takes an economy-wide approach at achieving sustainable growth. Led by the US Agency for International Development and the US State Department, the programme brings together expertise of multiple US agencies, and others to provide technical assistance with over 25 partner countries on emission-lowering strategies.

251. In conclusion, these are but a few of the numerous policy initiatives and case studies exemplifying US and international sustainable resource and low emission technology strategies.

252. Innovation, sustained by IPR, features prominently throughout. As we have demonstrated today and in previous statements under this agenda item, IPR protection and enforcement are essential to promoting innovation in sustainable resource and low emission technologies.

253. Conversely, we cannot consider natural resource scarcity without assessing innovation scarcity. Without effective IPR protection and enforcement, R&D capacity can be severely diminished, technology transfer arrangements are often discouraged, and investment in innovation may be significantly reduced. Without innovation, sustained by IPR, we face the very real risk of a technology drought, leaving our energy demands, our environmental obligations, and perhaps most importantly, our stewardship responsibilities for our children unmet.

254. To sum up, IPR is a critical part of a sustainable innovation strategy. With IPR, innovation can be a renewable resource.

10.4 Chinese Taipei

255. This delegation is pleased to join the United States and other Members in sponsoring Agenda Item 10. We also very much appreciate the opportunity to share and exchange with other Members best practices in using innovation to tackle issues on global warming.

256. I shall start by giving you a short overview of the innovative efforts my government is making in the area of green energy. Then, I shall go on to describe the six elements of our National Energy Programme, and bring you up-to-date on the development of new energy. After that, I shall report on where we have got to on Green Patent applications. And, finally, I wish to pass on to you some recommendations regarding IP and Green technology strategies.

257. As you are probably aware, our economy is one of those that is very dependent upon international trade. Demand for energy has increased significantly in the last 20 years. And, being an island with its own independent electricity grid, and without any gas pipelines, we are extremely reliant upon imported energy, which accounts for over 98% of energy demands. In the most recent Submission of our Intended Nationally Determined Contribution, we have committed to an economy-wide target of reducing greenhouse gas emissions by 50% from the "business-as-usual" level by 2030.

258. We have launched the "National Energy Programme (NEP)", which sets out to integrate resources from different sectors, to create an interactive platform for cooperation between industries, public sectors, academia and research institutes, with the specific aim of achieving three key objectives: energy security, energy efficiency and cleanliness.

259. The NEP consists of six elements, namely: energy conservation; alternative energy; smart grid; offshore wind power and marine energy; geothermal energy and gas hydrate; carbon reduction and clean coal.

260. In terms of energy conservation, it is designed to optimize energy efficiency by reaching a dynamic balance between energy management and the supply chain, such as the smart grid, renewable energy, etc.

261. With respect to alternative energy, the aim is to lower the utilization of fossil fuel by the active development and promotion of its replacement with clean energy. The policy objective is to lower carbon-dioxide emission by 2025 down to the same level as that of the year 2000.

262. In addition, we are hoping to reinforce the development of offshore wind and ocean power, then achieve by innovative methods to a level of domestic power production of 2.1 billion kWH (kilowatt hour) and carbon reductions of 1.3 million tonnes by the year 2020.

263. I would now like to describe, if I may, some of the key achievements of the Industrial Technology Research Institute (ITRI), which is the pre-eminent R&D think-tank for our industry.

264. In order to meet the needs of sustainable development, the Green Energy and Environment Laboratories of ITRI has devoted its resources to developing renewable energy; energy efficiency; alternative energy; and energy management.

265. Let me give you some examples: firstly, an energy scenario simulation tool, which goes by the name of the Taiwan 2050 Calculator, provides the data and information for public energy education, policy communications, the public debate of the energy issues, discussion of the future energy mix, energy resource research, and energy strategy-development and policy-making.

266. Secondly, there is a product called ButyFix®, which is the main effort to reduce our carbon footprint by switching from the use of fossil fuels to bio-fuels.

267. Thirdly, to help our hi-tech industries to minimize air pollution, the ITRI has also developed something called the New Local Scrubber (NLS), which very effectively cleans the hi-tech exhaust stream by use of new technologies, such as a low-temperature PFC catalytic reactor.

268. Last but not least, I would now like to show you a few short clips on the High-Efficiency Calcium Looping Technology (HECLOT), by limestone, which can increase calcification efficiency.[2]

269. Now, I just want to take a moment to consider the linkage between intellectual property (IP) and green technology innovation. Our numbers of patent applications on green technologies have been increasing at a remarkable rate since the year 2000. Most of the inventions involve LED illuminations and then hydrogen/fuel cell technology (accounts for 10.1%). This indicates the high level of maturity already reached in our development of green technology. I would also like to mention that, in order to constantly encourage the development of relevant green technologies,

[2] The video clip can be accessed at: https://www.itri.org.tw/eng/Content/MsgPic01/Contents.aspx?SiteID=1&MmmID=620651711540203650&MSid=621024013054352667

any patent applications relating to technologies for developing or improving energy conservation, new sources of energy, renewable energy vehicles, technologies for carbon reduction and resource saving, all qualify for filing in the Accelerated Examination Programme (AEP). A total of 82 applications involving green technologies were filed through the AEP in 2015.

270. So, one thing we know is certain, plenty of innovative thinking is required to cope with climate change when formulating an energy strategy, wherever it is. Furthermore, with our eyes firmly set on achieving a "win-win" situation for both the economy and the environment, we are committed not only to developing core, top-level patents, but also to helping with their commercialization in high-tech industries through innovative business models.

271. Before finally concluding, Mr Chairman, I would just like to emphasize the importance of IP & Innovation by quoting the words of our new Minister, Dr Chih-Kung Lee, of the Ministry of Economic Affairs, at his first press conference after recently taking office on 20 May. Dr Lee mentioned his attendance at a Global S&T Meeting in 2002 in the United States, where he heard Mr Thomas J. Donohue, President and CEO of the US Chamber of Commerce, talking about the distinctions between invention and innovation. Mr Donohue defined the former as "putting resources or money into creating new knowledge", and the latter as "turning that knowledge into money or resources". These two driving forces facilitate a positive cycle, enabling the entire economy to generate more resources and knowledge. Though it has been 14 years since he originally heard these remarks, they still ring very true to Minister Lee. In the future, he intends to lead my Ministry "towards reaching the goal of generating more positive cycles in terms of government-industry-academia cooperation, and policies to achieve positive results".

272. I hope this gives you a flavour of the huge importance we attach to innovation in the green industry. We very much look forward to hearing from other delegations about their current policies in this regard, and to learning from their own success and experience.

10.5 Canada

273. Canada is pleased to co-sponsor the IP and Innovation agenda item on sustainable resource and low emission technology strategies.

274. Clean technologies are a key component of Canada's approach to promoting sustainable economic growth and will play a critical role in the transformation to a low carbon economy.

275. During the recent United Nations Climate Conference, COP-21 in Paris, alongside 194 other participating countries, Canada agreed to take steps to support eh transition to a low carbon economy by limiting global temperature increases to less than 2°C above pre-industrial levels.

276. Also at COP-21, Canada announced its participation in the launch of the Mission Innovation Initiative, a clean technology initiative that partners 20 countries as well as leading representatives from the private sector. The initiative seeks to double government investment in clean energy research and development over the next five years and to spur private sector investment in clean technology.

277. Canada's clean technology industry consists of over 800 companies, mostly comprised of small and medium-sized enterprises which operate in every region of Canada in areas such as oil and gas, mining, power generation, transportation, agriculture, forestry and forest products, as well as water and energy efficiency.

278. This industry directly employs 50,000 Canadians and generates over 12 billion Canadian dollars – that is US$9.2 billion in revenues per year. 68% of Canadian clean technology companies are exporters which generate export revenues of more than 6 billion Canadian dollars or US$4.5 billion per year.

279. As part of Canada's recent March 2016 Federal Budget, the Canadian Government proposed to provide over 1 billion Canadian dollars – that is US$760 million over four years beginning in 2017-2018 to support the development of clean technology including in the forestry, fisheries, mining, energy and agriculture sectors.

280. Turning to IP-specific policy initiatives, Canada continues to encourage policies that stimulate the creation and diffusion of technologies to respond to environmental challenges. In 2011, the Canadian Intellectual Property Office moved to accelerate the prosecution of patent applications relating to environmental or green technologies within the Canadian IP system in order to expedite the commercialization of technologies that could be useful in the mitigation of environmental threats or to conserve the natural environment and resources.

281. In order to be granted access to the expedited examination service for green technologies, a patent applicant must submit a declaration stating that their application relates to technology, the commercialization of which would help to resolve or mitigate environmental impacts or conserve the natural environment and resources. No additional fee is required for advancing the examination of patent applications related to green technologies.

282. These amendments are intended to assist in stimulating the creation and diffusion of technology and to encourage and protect innovation and technology transfer by providing quick access to Canada's IP regime. The amendments further assist in contributing to an effective response to environmental challenges and helping to ensure that patented environmentally beneficial inventions reach the marketplace more rapidly.

283. Since these amendments in 2011 participation has increased with a rising number of applications for expedited examination each year. In addition to the amendments to the patents rules, the Canadian Intellectual Property Office also maintains a database of all patent applications that currently benefit from expedited examination under this initiative. Designed to facilitate access to information on green technologies, this database assists those seeking to licence or partner with green technology innovators and therefore serves to accelerate the diffusion and commercialization of green technologies.

284. To conclude, Canada would like to highlight the importance of green technologies and product development, as well as the important role of the IP system. In this regard, as we collectively face environmental challenges including climate change, we look forward to learning more from other Members' experiences in this important policy area.

10.6 Switzerland

285. We wish to thank the co-sponsors and the previous delegations for their interventions and presentation of national experience and best practices in the area of Clean Technology Strategies.

286. We hope to add some further aspects to the Council's discussion and are going to give you a brief summary of some initiatives and institutions that Switzerland has in place to foster clean technologies. The initiatives promote - in the wider context - sustainable development. Some of them go back to the sustainable development plan of the United Nations, with objectives specified in the Johannesburg Plan of Implementation in 2002 and the UN framework Convention goals on Climate change of 1992.

287. For the development of new and significant energy-efficient solutions to happen, unremitting efforts are required. The objective of substantially reducing the use of natural resources and harmful effects of economic growth on the environment cannot be achieved without resorting to special mechanisms that effectively incentivize investment and risk-taking. Intellectual property, including the patent system, plays a crucial role in the developments of clean technology and associated business models. This was also well demonstrated by panelists in our panel event on IP and Innovation at noon.

288. The following are examples of measures taken by the Swiss Government promoting innovation in clean-tech. They all are designed to contribute to a sustainable and resource-efficient economy.

289. Switzerland puts a major focus on the evaluation of opportunities for research and innovation in the field of clean technologies. Back in 2002, at the time the Johannesburg Plan was agreed, Switzerland drafted a national Sustainable Development Strategy which put an emphasis on the equilibrium between three pillars of sustainable development: the economy, the society and

the environment. The strategy's concept is to involve all key stakeholders in the relevant processes, i.e. the cantons, municipalities, civil society and the private sector.

290. Part of the fulfilment of the Sustainable Development Strategy is the Clean-Tech Masterplan. It was developed in 2011 as a coordination and communication tool across government and institution boundaries, and should optimally position the Swiss economy in the global growth market for resource-efficient products, services and renewable energy. The Masterplan aims at promoting innovation in the clean-tech area, efficient coordination among scientific, business, government and policymaking sectors, while ensuring an effective intellectual property system.

291. Other strategies pursued by the federal Government to promote innovation in the environmental sector are the Energy Strategy 2050 and the Green Economy Action Plan. These are complementary legal instruments that contribute to the fulfilment of innovation policies for a sustainable and green future.

292. We will not go into detail of the mentioned strategies, but would like to give you two examples of platforms which effectively support innovation in clean-tech.

293. EMPA, the Swiss Federal Laboratories for Materials Science and Technology, is an innovative research institute of the Federal Institute of Technology in Zurich. It has a particular expertise in clean-tech projects which are carried out in cooperation with private enterprises. EMPA conducts technology research and development activities which focus on new ideas in the areas of environmental, energy, and sustainable building technologies. The institution is considered an innovation hub and facilitator for Switzerland's economy and industry.

294. One of EMPA's major goals, besides facilitating a safer and more sustainable living environment, is to generate innovation in the form of intellectual property assets. This can best be achieved by working in cooperation with business partners. EMPA contributes to various innovative projects which make use of all kinds of materials. A good example are EMPA' 's timber-based innovations which are developed in its Department of Applied Wood Materials. The timber projects combine the latest developments in wood research with expertise in modern wood construction. With one eye on the goal of broadening the range of applications for the renewable resource, the researchers give wood completely new functions and improve the properties of wood-based materials.

295. The protection of intellectual property generated in those projects is of paramount importance to EMPA. Through an efficient technology transfer system, EMPA helps turn research results into marketable innovations. It registers new research results as IPRs early on and offers them in a package to interested industrial partners for commercial usage. The concept allows for the cooperative development of new discoveries and facilitates the launch of innovative products on the market.

296. A further example are flexible solar cells which have recently been developed with a new record of efficiency for converting sunlight into electricity. The new kind of solar technology shall provide for more cost-effective solar electricity. The technology is currently awaiting scale-up for industrial applications.

297. Another example of a concept for effective promotion of innovation in the area of clean-tech is the "Minergie" label, a Swiss low energy standard. The label is mutually supported by trade and industry, the Swiss Confederation, the Cantons, as well as the principality of Liechtenstein. The label is a registered trademark.

298. The initiative for the Minergie standard and label was launched in 1994. The corresponding trademark is owned by a Swiss association. The label is widely used, also beyond the border of Switzerland. The association supports the development of innovative sustainable solutions for the construction of buildings, for related services and components. They all have to meet a high standard of energy-efficiency in order to obtain the Minergie certification. The label is designed as a quality label to promote sustainable technologies for new and refurbished low-energy-consumption buildings. And it shall promote the consumer's trust in the products and services bearing the Minergie label.

299. In conclusion, it can be noted that the successful transition to a greener economy requires innovation-friendly framework conditions, including a solid IPR regime, as well as a strong commitment on the part of science, enterprises, investors, and society overall. The policy measures for the attainment of a green economy presented in our intervention are designed to achieve such framework conditions and to ensure a continued engagement of the relevant players. The engagement for sustainable development is a long-term process which necessitates cooperation between all levels of government with partners from business, civil society and science.

300. Switzerland hopes that the examples presented have provided Members with a brief and useful overview of some of Switzerland's initiatives for the development and diffusion of clean technology.

301. We look forward to hearing from other Members how they address the issue at the national and international level – and we would be interested to learn more also in the next Council meeting, should any delegations wish to come back to this agenda item at a later point of time.

10.7 India

302. My delegation would like to thank the delegations of the European Union, Japan, Switzerland, the United States and others for tabling an agenda item on "IP and Innovation: Sustainable Resource and Low Emission Technology Strategies".

303. At the outset, I would like to urge sponsors of ad hoc agenda items on IP and Innovation to submit a brief paper so that other Members would know what exactly that will be discussed so they could contact the capitals and get the appropriate information to participate actively in the TRIPS Council on this agenda item.

304. Intellectual Property is only one element in a larger innovation ecosystem and IP laws alone do not promote technology development. According to the Trilateral Study by WTO, WHO and WIPO on "Promoting Access to Medical Technologies and Innovation: Intersections between public health, intellectual property and trade:

> "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."

305. 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 with 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 about open innovation structures such as Open Source Drug Discovery (OSDD) model of India's Council of Scientific and Industrial Research (CSIR) and collaborative research such as WIPO Research Sharing Innovation in the Fight Against Neglected Tropical Diseases. The study also talks about the concept of delinking 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 like milestone or end prizes.

306. India declared the decade of 2011-2020 as the Decade of Innovation. The spirit of innovation has to permeate all sectors of economy from universities, business and government to people at all levels. India has announced a new national IPR policy last month to stimulate a dynamic, vibrant and balanced IPR system in India to:

- foster creativity and innovation and thereby, promote entrepreneurship and enhance socio-economic and cultural development; and

- focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance.

307. The Paris Agreement on Climate Change was adopted in December 2015 with a central aim to limit an average global temperature rise to well below 2°C above pre-industrial temperatures. The Paris Agreement acknowledges and recognizes the development imperatives of India and other developing countries. The Agreement has unequivocally acknowledged the imperative of climate justice and has based itself on the principles of equity and common, but differentiated responsibilities. The Agreement differentiates between the actions of developed and developing countries across its elements.

308. In the run up to COP-21, India submitted its Intended Nationally Determined Contribution (INDC) to the UN Framework Convention on Climate Change (UNFCCC) in October 2015, which provides, *inter alia*:

- to reduce the emissions intensity of its GDP by 33% to 35% by 2030 from 2005 level;

- to achieve about 40% cumulative electric power installed capacity from non-fossil fuel based energy resources by 2030;

- to create an additional carbon sink of 2.5 to 3 billion tonnes of CO2 equivalent through additional forest and tree cover by 2030.

309. India has also adopted several ambitious measures for clean and renewable energy, energy efficiency in various sectors of industries, achieving lower emission intensity in the automobile and transport sector, non-fossil-based electricity generation and building sector based on energy conservation. Thrust on renewable energy, promotion of clean energy, enhancing energy efficiency, developing climate resilient urban centres and sustainable green transportation network are some of the measures for achieving this goal.

310. The renewable energy technologies contribute to better air quality, reduce reliance on fossil fuels, curb global warming, add jobs to the economy and, protect environmental values such as habitat and water quality. Solar power in India is poised to grow significantly with Solar Mission as a major initiative of the Government of India. A scheme for development of 25 Solar Parks, Ultra Mega Solar Power Projects, canal top solar projects and one hundred thousand solar pumps for farmers is at different stages of implementation. In November 2015 an International Solar Alliance was launched in Paris with 121 solar resource rich countries, including India lying fully or partially between the Tropic of Cancer and the Tropic of Capricorn. This alliance will promote joint efforts through innovative policies, projects, programmes, capacity building measures and financial instruments to mobilise more than US$1,000 billion of investments by 2030 that are needed for massive deployment of affordable solar energy. International Solar Alliance headquarters are being anchored in India.

311. India is one among the 20 countries that launched the Mission Innovation in Paris in November 2015 to reinvigorate and accelerate public and private global clean energy innovation with the objective to make clean energy widely affordable. This has already been mentioned by my Canadian colleague. I conclude by quoting from our Prime Minister Narendra Mode's statement during the launch of the Mission Innovation in Paris:

> "Innovation is vital for combating climate change and ensuring climate justice … We need research and innovation to make renewable energy much cheaper; more reliable; and, easier to connect to transmission grids. We can make conventional energy cleaner. And, we can develop newer sources of renewable energy. This is a global responsibility to our collective future. Our innovation initiative should be driven by public purpose, not just market incentives, including on intellectual property. That also means strong public commitment by suppliers to developing countries. That will make clean energy technology available, accessible and affordable for all. … Innovation must be backed by means to make it affordable and ensure adoption."

10.8 Australia

312. The Australian Government is in caretaker mode pending a national election. In this context and subject to caretaking conventions, Australia is intervening to share information about past policies and practices as regards sustainable resource and low emission technology strategies. This information is conveyed without committing any incoming government to any future action. With this understanding, Australia welcomes this exchange of national experiences and best practice on how technological innovation can drive economic growth hand-in-hand with emissions reductions and sustainable resource management.

313. We recognize that climate change poses significant challenges for the global trading environment as well as for people and economies more generally. Continual innovation and economic adaptability will be critical to meeting these challenges. Effective and balanced intellectual property laws and policies form part of a broader suite of measures Australia has adopted to support transition to a lower emissions economy and a more climate resilient growth.

314. Effective IP frameworks help incentivize innovation and create entrepreneurs, businesses and companies to invest their capital, build markets, new products and services, and share their knowledge and skills to foster follow-on innovation.

315. For example, Australia is using science and technology to unleash the economic potential of our oceans. In October 2015, Australia called on innovators, entrepreneurs, NGOs and academics to rethink how advances in aquaculture could provide solutions that promote economic development and environmental sustainability. This aquaculture challenge runs until the end of June with the winners awarded 3 million Australian dollars to develop their innovations.

316. Australia has also supported emerging technologies to make the leap from demonstrations to commercial use. Intellectual Property Australia offers fast-tracking patent examination for green technology. This initiative aims to help green innovators find a fast track to the marketplace by offering priority to environmentally friendly technologies in the patent application system.

317. Australia has sought to foster collaboration to meet the challenges of a changing climate and finite natural resources base. In particular, we have promoted the sharing of knowledge and technology to boost climate resilience and foster clean energy use especially in the Indo-Pacific region.

318. As Members know, we report annually on the initiatives that we have in place to promote and encourage technology transfer by institutions and enterprises fulfilling our commitment in Article 66.2 of the TRIPS Agreement. These include projects undertaken by Australia's leading science and research organizations. A good example is the Australian Centre for International Agricultural Researchers Resilient Farming Systems Intensification project in Bangladesh. Working with farmers, researchers and institutions, this project is introducing agricultural technologies and conservation agricultural principles that increase the resilience of small-holder farmers to climate change. The results data technologies and impacts that emerge from this and other Australian centres for international agricultural research development projects are published.

319. Registered intellectual property is used only when it assists in disseminating research results in the interests of helping those in the Indo-Pacific region to adapt their farming, fishing or forestry practices to a variable climate.

320. Australia is also on track to become a supporter of WIPO Green under our recently extended fund and trust arrangement with the World Intellectual Property Organization. This initiative seeks to contribute to green technology, innovation and transfer, including by connecting green technology providers and seekers. Our contribution will target our Pacific neighbours and promote transfer of green technologies to meet their specific environmental needs.

321. Clean energy will play a key role in global efforts to reduce emissions and grow national economies. Australia has also been supporting climate change adaption and mitigation efforts in a number of developing countries, especially in the Indo-Pacific region. We were pleased to have lent our support to the first Pacific project financed by the Green Climate Fund. This project aims to improve urban water supply and waste water management in Fiji.

322. Australia has also contributed to the World Bank Energy Sector Management Assistance Programme. Our contribution will enable ten Pacific Island countries to integrate solar and wind power into electricity grids while maintaining reliability, affordability and adequacy of supply.

323. In concluding, Australia has recognized the importance of effective and balanced intellectual property settings to promote R&D capacity and incentivize investment in climate resilient and sustainable resource solutions for our common future.

324. We have welcomed information shared by other Members in this discussion and encourage others to join us in sharing their best practices and lessons learned.

10.9 Bangladesh

325. We sincerely thank all the sponsors of this agenda item. We are extremely happy to see the advancements between different technologies in different sections and I congratulate every Member which has spoken and presented its developments in various areas.

326. We all know that renewable energy technologies and technologies related to climate change, gene technology for food security, medical sectors and agricultural produce secured for various sustainable development needs are very expensive and considered to be high end.

327. We vehemently thank their inventors and their defenders for their achievements. However, the IP regime in LDCs are markedly different from IP regimes in developed countries. We will see that, as the days go by, the population using these technologies will be more in developing countries and LDCs than the population in developed countries. Just for the sheer number, just yesterday we saw that by 2050 we will have to increase food output by 70% for our 10.5 billion people.

328. Here the LDCs are the worst victims of climate change, food insecurity, lack of medicine and healthcare. For this we have TRIPS Article 66.2 and 67 which we hope that the developed countries will generously use to share their technologies with us. I thank, once again, all the proponents.

10.10 China

329. China would like to thank all of those Members for making presentations on this topic. These presentations showed how IP strategies could facilitate technology development which will contribute to our collective efforts to achieve the targets set out under the Paris Agreement on Climate Change.

330. China notes that the Paris Agreement also established a technology framework to promote and facilitate enhanced action on technology development and transfer in order to support the implementation of the Agreement. Presentations made by some Members also referred to how some projects, including some capacity building activities had been initiated to help developing Members improve their capacity to make response to climate change. China would like to encourage Members, especially developed countries, to share more experience in this regard in this Council.

10.11 Korea, Republic of

331. I would also like to thank the co-sponsors for this initiative and their interesting presentations.

332. Our delegation wants to share some policies on sustainable resources and low emission technology strategies. Korea has made efforts to strengthen its IP competitiveness in major technology industries which contribute to the development of sustainable resources and low emission strategies.

333. To be specific, Korea has introduced an accelerated examination process for green technologies in order to help companies acquire patent rights earlier. Applicants can request an accelerated examination of patent applications for any form of eco-friendly technology that

minimizes the emission of greenhouse gases or pollutants. Some examples include greenhouse technologies, energy efficient technologies, clean technologies, low energy technologies, environmentally friendly and recycling technologies.

334. In addition, the Korea Intellectual Property Office is carrying out projects to support companies that own sustainable resources and low emission technologies, such as solar powered technology and green cars. These companies can be provided with professional consultations on IP management strategies and analysis results of patent-related information, including application trends and disputes surrounding green technologies.

335. Our delegation looks forward to having another opportunity to share some facts of these policies in the future.

10.12 European Union

336. We have been working hard on possibilities to make these debates more focused and more targeted and maybe also more interesting and more inclusive. I would say out of the Chairman's proposals, one that we can certainly support is this possibility to make comments at the subsequent session. I think that could make the debate richer for those who do not have the possibility to prepare when the first presentations are made.

337. Regarding the other two proposals, we are considering them carefully and we will come back to this maybe at the next session.

10.13 South Africa

338. Perhaps just to get back to some of the comments made by the Chairman during his summary. South Africa intervened last week in the informal meeting. I think one of the issues was whether or not agenda items should be accompanied by some sort of summary of the issue to be discussed when a Member introduces such a topic. Of course, we have heard very carefully what the Secretariat had said, that in, well, as it was stated, 50% of the cases, Rule 4 of the Working Procedures has been followed where there was some sort of information being presented. In other cases, this was not necessarily followed. So just to consolidate, South Africa was of the view that, from a practical perspective, it is better for anyone introducing a new topic to circulate with it some information so that Members can prepare and participate.

339. We have also spoken about rules of engagement, that is the issue of inclusivity, the issue of balance and so forth. In line with that, we reiterate our statement that from a practical point of view, it is better to circulate additional information so as to make discussions more practical.

340. Perhaps on a last issue, the proposal to roll over perhaps certain discussions to our next meeting: we have not discussed that directly in the informal meeting, but I think this delegation will have some sort of concern because it is not that we talk about regular items here. We talk about an ad hoc item that is inscribed for a particular meeting. Should we roll these over to a next meeting? I think we do create at least, from a practical point of view, some sort of permanency so this delegation would have some sort of concerns in respect of how this is done. For the record we state that this would have to specifically require consent from the Membership if that practice should be adopted.

10.14 Chairman

341. I take note of your comments that ad hoc issues cannot roll over to another meeting unless it is agreed in this room because it has been promoted to be a permanent agenda item. I was just wondering whether this particular issue can nevertheless be considered for the next November meeting or you have total reservation although no one was arguing that now we can start the negotiations. Those who are proposing here now, they are sharing things, they are observing in the process of trying this area of sustainable resource, production and consumption. This came from Paris and I think it is subject to that to be considered in this Council, but before you do that you start educating each other and share experiences that can be useful to the membership. Maybe you can take the floor, and clarify what was said at the last meeting, and then today your

position on whether this particular topic can be taken up at the Council's meeting in November again or not, you have the right to say no.

342. The other comments you made also are very pertinent and we will ask the Secretariat to take care of that so that we do not get into things that make some Member States uncomfortable. The Secretariat around me is to advise me on how best to handle situations like the one that was brought up by the South African delegation.

10.15 South Africa

343. I think South Africa was very clear at the informal last week. Of course, we have to follow rules. If there are rules and practices, these rules and practices must be applied to the extent possible.

344. Now having stated opposition specifically on the point of roll over – whether or not the current agenda item may be considered at the next TRIPS Council meeting – I believe it will set a precedent that perhaps may compromise our ability to manage ad hoc items. From that perspective. This delegation is not in favour of actually having this particular item rolled over. Not because we are of the view that the topic is not important. I think all of us agree that the topic is important, but of course, from a rules-based perspective, we believe it is more cogent that any proponent or any delegation that wishes to suggest a particular topic do that for a future agenda, but under the current agenda we don't believe that it is practical for us to agree that this particular matter should roll over.

10.16 Secretariat

Given that we had this discussion in an informal meeting, I just wanted to clarify for the record the advice that the Secretariat gave in the informal meeting. Indeed, the practice is that sometimes Members submit documentation together with their request for an item, sometimes not, but the Rules of Procedure of the General Council, that are also applied by the TRIPS Council, do not require documentation. It is therefore not a matter of whether Members are complying with the rules of procedure or not.

10.17 India

345. I would like to support the statement made by South Africa. We ask the sponsors of the agenda item to submit relevant documentation so that the Members could understand what is the background of such an item so that they could get input from their respective capitals and take active participation in the discussions in the TRIPS Council. I think it will make the discussion more inclusive by hearing views from other Members also on such agenda items.

346. We fully support South Africa that this rolling over should not be done either. It would set a precedent for the future. Though we also agree with South Africa that the current agenda item is very interesting and stemming out of the COP-21 Paris Conference.

10.18 Bangladesh

347. As per rules, procedure and practice, nobody is stopping any Member to propose any agenda item, so instead of taking a decision to roll over, let us wait for any Member to propose this for the next TRIPS Council, as this has always been done before. So if any Member feels that this agenda item should be discussed in the next TRIPS Council, let us wait for a request.

348. I also support that background material or proposal be distributed in advance so that delegates can effectively contribute to the discussion.

10.19 Brazil

349. I would just like to add my voice to South Africa, India and Bangladesh. Regarding the questions on the procedure, specifically as Bangladesh rightly said, was exactly the comments we were going to make. It would be important to know whether this agenda item that is an ad hoc item, will be included in the agenda of the next meeting before we decide on having a rollover of

the subject. We also understand and agree that it would be useful to have information beforehand so delegations can prepare. My delegation also has plenty of experience to share on the green technology and would be very glad to share with the Members. Therefore, it would be useful to have the information way prior to the meeting.

10.20 Chairman

350. If you want to bring an ad hoc item, you are the one who is going to do it. For us, the Secretariat, we will look at the programme and then include the ad hoc item as requested. If your ad hoc item was on today's agenda, following it up at our next meeting would establish a precedent which, according to South Africa, would not be appropriate. This said, if you have other things to share with us, you are welcome because this is a dynamic world. We are not going to hide in rules and not say new things even if they are not committing anybody. We want to learn on new things on what IP issues that might be foreseen for the future. This is important, dynamic and intellectual because we learn from each other. We are not going to roll out anything, we are not going to suggest another item as Secretariat or Chair, but we are not going to say no to ad hoc issues either if a Member is proposing. It is up to you.

AGENDA ITEM 11: WORK PROGRAMME ON ELECTRONIC COMMERCE

11.1 Canada

351. Further to our formal communication to Members in document IP/C/W/613, Canada is pleased to present a proposal to re-engage the TRIPS Council in discussions under the WTO Work Programme on Electronic Commerce.[3] Canada's long-standing perspective is that E-commerce provides new ways of doing business, opens new business opportunities, fosters new efficiencies, gives small and medium-sized enterprises access to wider markets and for consumers provides increased competition and product choice.

352. Canada's proposal follows from the recent Ministerial Decision of 19 December 2015 made at the Tenth WTO Ministerial Conference, MC10, to continue work on the WTO Work Programme on Electronic Commerce "based on the existing mandate and guidelines and on the basis of proposals submitted by Members in the relevant WTO bodies as set out in paragraphs 2 to 5 of the Work Programme". Particular to intellectual property, Article 4.1 of the Work Programme originally established in 1998, this would be document WT/L/274, tasks to the TRIPS Council to "examine and report on protection and enforcement of copyright and related rights, protection and enforcement of trademarks and new technologies and access to technology". Canada's proposal also follows from the Nairobi Ministerial Declaration Guidance at paragraph 29 "to reinvigorate the regular work of the Committees" of the WTO. We note that formal TRIPS Council discussions on electronic commerce under the Work Programme last took place between 1998 and 2003, during which time Members engaged in constructive discussion on those provisions of the TRIPS relevant to the Work Programme as well as related developments in the international IP framework. The TRIPS Council documents and reports prepared by the Secretariat for those discussions would no doubt serve to continue as a foundation for future engagement in this area.

353. At the same time, in the intervening years since the last formal TRIPS Council discussions in 2003, we have seen remarkable advances at the intersection between intellectual property and E-commerce with rapid growth in the role of digital technology and telecommunications, as facilitators of commerce in countries spanning all levels of development. IP continues to intersect with E-commerce in a number of ways. Not only do E-commerce transactions often involve the sale of IP protective goods and services, for example, music, films, pictures, software, books, etc., but IP also underlies the systems that make E-commerce work. For instance, the underlying systems and devices that facilitate and enable E-commerce transactions are often protected by a range of IP rights, for example, copyright designs, patents, integrated circuit designs, trade secrets, trademarks, etc.

354. With these developments in mind, we would welcome an exchange of views from the TRIPS Council Membership on the desirability of a dedicated standing TRIPS Council agenda item on the Work Programme on Electronic Commerce or an alternative option such as ad hoc discussions. In

[3] See Room Document RD/IP/11.

view of previous work in this area, renewed engagement on this topic could, for instance, allow Members an opportunity to share national experiences and national policy development efforts at the intersection between IP rights and E-commerce with a view to helping Members better understand and catalogue emerging global policy norms and developments in this area. This discussion could be guided by the range of issues covered under Article 4.1 of the 1998 Work Programme, such as national policy experiences on E-commerce relating to the protection and enforcement of copyright related rights and trademarks, as well as with respect to new technologies and access to technology. We remain encouraged that these avenues for discussion remains sufficiently broad and may serve to encourage the sharing of national experiences and practices across a full range of IP and E-commerce topics of interest to Members spanning all levels of economic development.

355. To provide an example of the type of information exchange and sharing of national practices that Canada envisages under this item at future TRIPS Council meetings, I would now be pleased to present on a recent innovative law enforcement initiative aimed at addressing the sale of counterfeit trademark goods over the internet. Following the presentation, Canada would welcome the views of Members on a proposal for a standing item or ad hoc discussions on E-commerce in fulfilment of the MC10 Ministerial Decision as well as comments and questions on the specific presentation that I am about to deliver.

356. My presentation will provide an overview of a recent innovative IPR and E-commerce initiative which we believe is having a very positive effect for consumers, IPR holders, credit card companies, banks and the government. The programme is titled Project Chargeback and is led by the Canadian Anti-Fraud Centre – a small unit under Canada's national police service. The objectives of the programme are effectively threefold. It responds to complaints of consumers regarding deceptive E-commerce websites selling counterfeit goods. It refunds consumers that have inadvertently purchased counterfeit goods, including for example clothing or counterfeit pharmaceutical products. Third, it reduces overall profits of counterfeit sales, including by organized crime.

357. Slides 4 and 5 provide an overview of how the programme works. The crux of the initiative revolves around the worldwide zero tolerance chargeback policy adopted by credit card companies which require issuing banks to refund card holders that have unintentionally purchased and received counterfeit or pirated merchandise if they can provide confirmation by the right holder or law enforcement that the goods are not authentic. Once a product is confirmed counterfeit the credit card companies refund 100% of the original charge to the victimized consumer. The initiative relies on collaboration between the consumers, governments, credit card companies, IP right holders and banks. In terms of the general process, consumers that have inadvertently purchase a counterfeit product file a complaint with the Canadian Anti-Fraud Centre providing information including the details of the goods (usually by submitting a photograph), website address of where they purchased the goods, the date and the amount of the purchase. Next, the Canadian Anti-Fraud Centre confirms, often with the assistance of right holders, that the goods are not authentic and will relay the information to the credit card company and issuing bank to assess and initiate a chargeback which then typically results in the termination of the merchant account used by the website to process payments for the sale of counterfeit goods. This has the downstream effect of reducing the ability of counterfeit good sellers marketing their counterfeit goods to other potential customers. Also, the victimized consumer is constructed to not return counterfeit merchandise to the seller. By not returning the item, the counterfeit good seller subsequently loses the cost of the product and is unable to sell that item to someone else.

358. In terms of the impact in just one specific case of the programme, consumers recover 100% of the loss they occur in the counterfeit goods purchase. The counterfeit seller loses the sale of the product along with a US$25 chargeback fee per refund and likely termination of their merchant account by the bank or payment processor. In addition, a payment processor or bank could be fined for a high number of chargebacks and could lose access to Visa, Mastercard or other credit card companies. Further losses to the counterfeit good sellers include loss of the product which is not returned by the consumer, loss of the production costs of course and loss of the shipping costs, including shipping charges and packaging.

359. The results of the programme are significant and speak for themselves. Just to give you a few numbers: over the seven-month period between 1 October 2015 and 30 April 2016, 7,460 consumers have recovered 100% of their losses, averaging between 300 and 350 dollars per

victim. Since 2010, over 5,000 merchant accounts have been identified - over half of these have been terminated. In addition, over the past two years, approximately 40 brick and mortar retail merchant accounts have been closed in Canada due to the programme. I have just provided a high-level overview of the programme, but should Members or their colleagues at capital have more interest in the Project Chargeback programme, please refer to the website above or come speak with me or follow up. While this operation is quite small in terms of human resources, in fact only a handful of people operate this programme, we have already received interest from several countries that are interested in learning more to replicate the programme in their countries. I hope the presentation of interest to Members. We feel it is the type of national experience of interest regarding IP and E-commerce that could serve as a mere example of the sorts of presentations that other Members could make on IP policy initiatives of interest under the E-commerce Work Programme at future TRIPS Council meetings.

360. To conclude, in view of the MC10 Decision to renew work on the Work Programme on Electronic Commerce, as well as the Ministerial Decision instruction to the General Council to hold periodic reviews of the work of WTO Bodies, Canada would be interested in hearing the views of the Membership on the desirability of a standing item on this issue or ad hoc discussions at future TRIPS Council meetings.

11.2 Switzerland

361. We would like to thank the delegation of Canada for tabling the subject of E-commerce and for sharing its national initiative about the cooperation with credit card companies. This initiative appears to be a good example of a remarkable approach to target trade in counterfeit and pirated goods over the internet.

362. Since the adoption of the Work Programme on Electronic Commerce in 1998 the world has undergone a great number of electronic and digital evolutions from which the need to regulate electronic commerce has emerged. Digital trade is much about interfacing or connecting domestic trade regimes, so as to allow for interoperability and provide for the necessary certainty in processes.

363. In our view this in an area where the WTO has an important role to play, with regard to its rule-setting function in trade policy, but also its ability to foster dialogue on digital trade matters. While identifying the need for complementing and adapting rules relevant to E-commerce, it is important to take into account already existing guidelines and treaties in other international Organizations and in the field of global internet governance.

364. For the protection of IPRs in E-commerce, there are a number of multilateral treaties, in particular the TRIPS Agreement and WIPO agreements, which already contain general and specific rules that provide the basis to address also new challenges when dealing with electronic business transactions. Following the Nairobi Ministerial Conference, the TRIPS Council may now look into deepening specific IP-related issues in E-commerce, on a non-prejudicial basis. Switzerland particularly welcomes such initiatives as introduced today by the Canadian delegation which will enable an open dialogue. Switzerland looks forward to engage in future discussions.

11.3 United States

365. The United States thanks Canada for the addition of this agenda item to today's meeting, as supplemented by communication document number IP/C/W/613. We also welcome Canada's explanation of its recent law enforcement initiative addressing the sale of counterfeit trademark goods over the internet and we found today's presentation to be very interesting and helpful.

366. In preparing for this agenda item, we reverted to the original and foundational documents establishing and elaborating views on the General Council's Work Programme on Electronic Commerce. One of those documents is a background note by the Secretariat IP/C/W/128. This note provides an informative overview of the work programme, the relevant provisions of the TRIPS Agreement and the commercial and trade considerations relevant thereto. The note frames the interdependence of E-commerce and IPR very well, it states "The expected growth of electronic commerce is closely linked with the growing importance of intellectual property. Indeed, much of the trade on the Internet and other electronic communications networks involves the selling or

licensing of information, cultural products and technology protected by intellectual property rights. For consumers who buy products and services at a distance, it may be increasingly necessary to rely on the reputation attached to trademarks and other distinctive signs. Intellectual property plays an important role also in promoting the development of the infrastructure of communications networks."

367. Further, with respect to the TRIPS Agreement, and its relevant digital trade, the Secretariat explains that while the TRIPS Agreement negotiations were largely concluded by December 1991 in advance of the modern digital economy, noting that "the technology-neutral language used in the Agreement are relevant in the digital network environment". Continuing, specifically the TRIPS Agreement provisions on "patents as well as copyright, layout designs of integrated circuits and undisclosed information, trade secrets play an important role in promoting the technological development of the infrastructure of electronic communications networks i.e. the software, hardware and other technology that make up information highways. IPR provides protection to the results of investment in the development of new information and communications technology, thus giving the incentive and the means to finance R&D aimed at improving such technology."

368. These observations by the Secretariat frame this issue very well. The United States looks forward to interventions under this item, including to consider what US measures and measures of other WTO Members may be discussed as part of this topic.

11.4 Chinese Taipei

369. We welcome the proposal by Canada on this item. We also thank Canada for the informative presentation, we are impressed by Canada's determination to combat the selling of counterfeit goods online by a proactive approach to tackle the problem. We are pleased to have this opportunity of briefly sharing with the Council some of our own thoughts and experiences on the issue of IP and E-commerce.

370. According to *Practical E-commerce*, a leading internet publication, E-commerce is booming in our domestic market. We are among the world leaders in terms of E-commerce penetration – roughly 62% of our residents have at some time purchased online, and E-commerce now accounts for 11% of our retail sales. Moreover, due to our geographical proximity to China and Japan, cross-border E-commerce has grown enormously as well, with our shoppers buying from Chinese and Japanese websites, and *vice-versa*.

371. As E-commerce broadens and becomes more and more popular, we must remind ourselves of the reasons why IP is so important to E-commerce, and indeed why E-commerce is so important to IP. E-commerce, perhaps more than any other systems of doing business, often involves selling products and services that are based on patents and IP licensing. Music, pictures, photos, software, designs, training modules, systems, etc., can all be traded through E-commerce, and in these cases, IP is a key component of the value of the transaction. IP is also important to things of a certain value that are traded on the internet because they need the protection of the latest technological security systems and of IP laws, otherwise they may be stolen or pirated, and whole businesses can be destroyed.

372. We are well aware, too, that most of the famous online retailers and marketplaces, like *Alibaba, Amazon, Facebook, Taobao*, *E-Bay*, etc., have all introduced intellectual property policies and infringement reporting mechanisms in order to protect the rights of consumers and IP rights holders alike.

373. My government would be happy to continue discussions on this issue, and to learn from the best practices and experiences of other Members in tackling the problems of online counterfeit goods and trademark infringement.

11.5 India

374. We would like to thank the delegation of Canada for their submission on Work Programme on E-commerce contained in document IP/C/W/613. We would also like to thank the delegation of Canada for their presentation on their recent innovative law enforcement initiative (Project

Chargeback initiative of the Canadian Anti-Fraud Centre) addressing the sale of counterfeit trademark goods over the Internet.

375. The Nairobi Ministerial Decision on E-commerce directed the WTO Committees "to continue the work under the Work Programme on Electronic Commerce since our last session, based on the existing mandate and guidelines and on the basis of proposals submitted by Members in the relevant WTO bodies as set out in paragraphs 2 to 5 of the Work Programme".

376. The current mandate of the WTO Work Programme on E-commerce is an exploratory non-negotiating one. We recognise the global expanse and the potential of electronic commerce and we welcome the cooperation and sharing of best practices for promotion of E-commerce on an exploratory basis. We support this item to be an ad hoc agenda item only, preferably accompanied with a submission by the sponsor of the ad hoc agenda item, to enable other Members to share their national experiences appropriately.

11.6 Brazil

377. We would like to congratulate the Canadian Delegation for the initiative of bringing this important topic for discussion at the TRIPS Council.

378. Brazil has been conducting a broad and careful examination of this topic. Discussions on E-commerce, for their novel and dynamic nature, impose challenges to authorities in charge of establishing national regulations. These challenges are related to the national level - as exemplified by the presentation of Canadian experience on fighting counterfeiting and piracy in E-commerce - and the international level. The adoption of a work programme on E-commerce in the TRIPS Council, thus, would require a previous deeper debate.

379. In this complex and multi-layered discussion, we can still identify a main guideline. And this guideline that should provide direction to state agents is clear: the same rights protected off-line should be, in the measure allowed by technology, be protected in the digital environment. Among these rights, we underscore that the territoriality of copyright and related rights, consumer protection, data protection and the right to privacy must be incorporated in the digital environment. These rights cannot be made available "off-line only".

11.7 European Union

380. Let me start by thanking Canada for including this item on the agenda, and for launching this interesting discussion, and for making a couple of concrete proposals, and for the interesting presentation on the concrete programme that is being put into place to compensate for purchase of counterfeit goods over the internet.

381. The EU has extensive experience in this area and also may have one of the oldest laws. Our E-commerce Directive which contains provisions on how to address intellectual property situations in this electronic environment already dates more than 15 years. So we certainly have experience to share, and an enormous interest in the recognition of the importance of this matter.

382. In Europe we are now engaged In the Digital Single Market Strategy. This is a strategy to complete our internal market, we have for many years worked on the circulation of goods, services, citizens and of capitals. Now we are going into detail to make this Single Market extend also into the digital environment. In this strategy that was presented in May 2015 and in the Single Market Strategy of October 2015, the Commission announced that it will make legislative proposals in 2016 to modernize the enforcement of intellectual property rights, focusing on online commercial-scale infringements. This is the so called ''follow the money'' approach. The Copyright Communication of December 2015 also announced that the Commission will take immediate action to engage, with all parties concerned, in setting up and applying ''follow the money'' mechanisms to combat online piracy and counterfeiting, based on a self-regulatory approach.

383. In July 2014, the Commission had adopted the Communication "Towards a Renewed Consensus on the Enforcement of Intellectual Property Rights: An Action Plan" In this Action Plan, the Commission sought to re-orientate its policy for intellectual property enforcement towards better compliance with IPRs by all economic actors involved. Rather than penalizing the citizen for

infringing IPRs (often unknowingly), these measures paved the way towards a ''follow the money approach'' that seeks to deprive commercial scale infringers of the revenue flows that draw them into such activities.

384. The Commission facilitates stakeholder dialogues that promote collaborative approaches and voluntary, practical solutions to problems in IPR enforcement in evolving technological and commercial environments. One such approach was the signing of a Memorandum of Understanding in May 2011, following a series of meetings, that brought together major internet platforms and right holders for products for which counterfeit versions are often sold online. The MoU commits companies to undertake certain measures and trade associations to further promote the MoU among their members.

385. More recently, on 14 March 2016, the Commission held a Stakeholders' general meeting on online advertising and IPR, bringing all the interested parties together (the advertising industry, intermediaries, content protection sector, online media, right owners, civil society, consumer organizations, brands and advertisers). The stakeholders discussed the possibility of establishing a voluntary agreement at EU level in order to avoid the misplacement of advertising on IP-infringing websites, thereby restricting the flow of revenue to such sites while safeguarding the reputation of the advertisers and the integrity of the advertising industry.

386. These are a few examples of very intense activity that the EU has engaged in this area. Unfortunately because of the lack of time to conclude internal consultations, I cannot give a position regarding Canada's proposal for a permanent agenda point, but we will be considering it with interest and at the next Council we will be ready to give you a more conclusive answer on this.

11.8 South Africa

387. I would like to take this opportunity to thank Canada for its instructive presentation on initiatives it is taking in respect to enforcement regarding pirated or counterfeit goods. This delegation takes the floor merely to indicate that in respect of the proposal to consider, either a permanent agenda and/or ad hoc item that at this point, we have not been able to consider the proposal as it has only been made in this particular meeting. From an initial point of view, we believe that E-commerce is an important area of discussion and this delegation would be supportive of perhaps an ad hoc approach from meeting to meeting.

11.9 Korea, Republic of

388. We are grateful to Canada for introducing the paper and sharing its particular initiative on IP and E-commerce. I also thank the other Members for sharing views and information on their national policies and practices on this issue. Our delegation believes that E-commerce has an increasing role in international trade and has an ever greater bearing on development. It is therefore important for us to continue discussions on this in a systemic and in-depth manner. In order to promote Member-driven discussions, MIKTA, a grouping of Mexico, Indonesia, Korea, Turkey, and Australia will host an E-commerce workshop at the WTO in early July. Korea hopes to take this opportunity to have useful discussions, including on the path forward.

11.10 China

389. China would like to thank Canada for the document submitted and the presentation made. We also would like to thank other members' information and comments.

390. China notes the significant and beneficial roles played by E-commerce in promoting access of firms, especially those SMEs from developing Members to expend their trade and investment opportunities. During the past few years, China's economy also has been driven tremendously by the emerging of E-commerce and the value chain developed. In 2015, the business scale of E-commerce in China reached 18 trillion RMB (equal nearly 3 trillion USD) and the Chinese E-commerce market has become one of the biggest in the world. The achievement made in China benefits not only from new technologies and novel business models, but also from innovative regulatory approaches which we would like to share briefly with all distinguished delegates.

391. These approaches, synchronizing with the technology development in the sector, characterize with collaborative efforts between regulatory authorities and operators of E-commerce platforms, self-discipline established by the industry and more involvement of local IP authorities in collecting and verifying evidence and in enforcement process against infringement. Within the current legal framework and without imposing additional burden to users' right, these new approaches provide effective and efficient protection on IPRs and at the same time, also create a business-friendly environment for E-commerce, facilitate the integration of SMEs and individuals to the national and global trade.

11.11 Bangladesh

392. I would like to thank Canada for proposing this very useful agenda item, and their project initiative is a very necessary and exemplary initiative which could be imitated by all other countries. I have two small pieces of information to seek from them if they are able to provide it now, or maybe later. Firstly, Canada has mentioned that in the case of a complaint, regarding a deceptive E-commerce website selling counterfeit goods, this chargeback initiative immediately responds. I would like to know if the deceptive E-commerce websites are hosted in servers outside of Canada, how do they deal with it because I assume that most of the websites of this kind of trade would be hosted outside of Canada. I do not know if you have any specific modalities to deal with it.

393. Secondly, it has been mentioned in Canada's presentation that this chargeback initiative confirms the validity of complaints with right holders, that is the authenticity of the goods. So the right holders are actually spread all over the world, and it is a herculean task to actually contact and get confirmation from them. With such a small number of persons, how do they manage such a huge responsibility?

394. While I have the floor, I may also add that we may agree to discuss the issue under an Agenda item in the future, and I would also like to remind everybody that we had a tacit understanding that, while we all agree to have a Work Programme on E-commerce, development issues and needs of the developing countries will be duly considered while we proceed with any programme.

11.12 Canada

395. Thank you to my colleague from Bangladesh for two excellent questions. With respect to the first question regarding how to deal with websites that are not hosted within Canada, this gives me an opportunity to clarify that the programme does not result in shutting down of websites themselves. What the programme can do is shut down merchant accounts, in fact at the choice of credit card companies and the banks that are associated with those websites, so that it is not in fact the Government of Canada that takes the decision, it is the credit card companies and the banks through the process of the Project Chargeback that is facilitated by this small unit inside the Government of Canada. I think that answers the first question, but I am happy to follow up on that point if it is not a sufficient answer.

396. With respect to the second question regarding how does such a small unit confirm the validity of so many complaints with rights holders worldwide, I obviously do not administer the programme myself and I can follow up for more information. But my understanding is that over the three or four years that the programme has ramped up an increasing number of rights holders and rights holder legal counsel who have participated in the programme such that the efficiency of the programme grows with each year that it progresses, such that the network of rights holders that are able to participate are able to do so and make confirmations more efficiently, more effectively and more clearly. In terms of locating rights holders, it is usually quite simple in that the branded products that are being counterfeited sort of self-identify themselves in terms of where you need to look to contact the initial brand holder of the product that is being counterfeited.

397. I hope that answers both of my colleagues questions but I am happy to follow up if the answers were not sufficient.

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

12.1 Seychelles

398. The Seychelles would like to inform the meeting that it has completed the ratification process with regard to the TRIPS Protocol. The

399. instrument of acceptance will be deposited to the Director-General this afternoon.

12.2 Secretariat

400. Traditionally this item has been used to update Members factually on developments elsewhere in the WTO that may be of interest to TRIPS Council delegates.

401. During discussions on how to make the work of the Council ever more useful and informative for Members, it has become clear that there is another area of WTO work that gathers together significant amounts of information on developments that are of current topical interest from a wider policy point of view. Also, in the context of our technical overhaul of the information services provided to Members, as we look to make existing information more readily available and useful for Members, we are looking at how cross-cutting information from other processes in the WTO can be made available in a manner more suited to more contemporary ways of working with this kind of information.

402. We therefore provide a brief update on material concerning developments elsewhere strictly for background information. There is no suggestion that this has any procedural or substantive significance for this Council. It is simply that this information is presented throughout many documents elsewhere and it can be difficult to obtain an overview of recent developments, despite the objective of greater transparency.

403. Delegates to the Council will be aware that the parallel work of the WTO Trade Policy Review process addresses the full range of trade policy measures, including measures in the area of trade-related aspects of intellectual property rights. However, it is not as well known that the TPR process publishes in very extensive, very detailed documents, a great deal of information on current policy issues and that this includes an active dialogue between Members on current issues of IP law and policy. Accordingly, we provide an update on this material.

404. Nonetheless, this brief update does not seek to cover the numerous trade-related IP measures and experiences that have been reported in recent Trade Policy Reviews: there is frankly too great a wealth of information, far too rich to be covered in a small compass. Rather, just to give a general impression of areas that are of particular interest, this update covers a small number of areas where Members have shown express interest in the policy measures of other Members. For us objectively in the Secretariat these expressions of interest do suggest that there is some active interest among Members in the flow of this information. Some of the areas that have been taken up in this dialogue include:

- the relationship between IP, trade and development;
- the relationship between the IP system and various aspects of economic performance, domestic innovation, the international and national diffusion of technologies;
- national IP strategies and IP-related development policies, such as measures to use the IP system to promote foreign direct investment, the linkages between innovation, IP and development planning, and specific initiatives to enable domestic firms (including SMEs) to make better use of the IP system for economic development;
- linkages between IP and tax and regulatory issues, price mechanisms, and competition policy;
- implementation of the TRIPS amendment to promote access to medicines;

- current and planned adherence to multilateral IP conventions beyond the scope of the WTO, such as a wide range of WIPO treaties, including the recently concluded Marrakesh Treaty for facilitating access to published work for people who are blind, visually impaired or otherwise disabled, as well as regional coordination and harmonization of IP standards and administration;

- approaches to exhaustion of IP rights, including in some specific industry sectors;

- enforcement measures for IP rights, including border control measures, treatment of goods in transit, statistics on enforcement, the role of different domestic enforcement authorities and how they coordinate their work, measures to improve the handling of civil and criminal IP matters, and civil and criminal actions to protect trade secrets. Members have also discussed the role of alternative dispute resolution, and the interaction between competition policy and enforcement have also been covered;

- online enforcement measures, technological protection measures and authentication measures for copyright works, as well as consumer awareness to reduce demand for pirated and counterfeit products;

- the administration of IP rights, particularly examination and registration of industrial property rights, looking at such matters as examination backlogs and delays, patent quality opposition procedures, measures to improve the clarity of decisions taken, arrangements for work-sharing and similar coordination between industrial property offices, as well as initiatives such as priority systems for patents on green technology and the promotion of humanitarian licensing;

- on the substance of IP law and policy, discussions covering a wide range of IP areas including patents, undisclosed information, trademarks, geographical indications, and copyright;

- discussions covering patent exceptions in the pharmaceutical area, protection of clinical trial data, protection of traditional knowledge and genetic resources in domestic law, the use of related patent disclosure mechanisms, protection of clinical trial data, and protecting trade secrets within the context of suppressing unfair competition;

- in the trademark area, discussions covering the scope of protectable trademarks, approaches to enforcing trademark rights online, and the link with geographical indications, as well as different approaches to the protection of geographical indications, including in the context of bilateral agreements and looking at specific forms such as appellations of origin;

- on copyright, discussions covering such matters as the online and digital environment, the role of copyright management organizations and related issues, levies on recording media, the use of optional registration systems and compulsory licensing arrangements for translations of copyright works as well as looking at copyright administration within the context of regional integration agreements.

405. I stress that this summary is only an incomplete sample of those areas where Members themselves have shown specific interest in other Members' policy experiences to the point of posing particular follow-up questions in the process. This brief account is very far from providing a full account of the areas of IP law and policy that are covered in this process and indeed it is only intended to give a very brief initial glimpse into the wealth of policy information available from this source. This is not intended to have any implications for the work of this body itself. Far from it. It is simply to draw attention of Members of the Council to the fact that this information does exist and suggest that it may be of wider policy interest. We would be very happy in more informal mode to guide any interested delegation to the detailed materials that we have covered in this update if they do have an interest in any particular area.

AGENDA ITEM 13: OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

No statements were made under this agenda item.

AGENDA ITEM 14: OTHER BUSINESS

14.1 Ecuador

406. Ecuador has requested to speak on this agenda item in order to keep the Members duly informed of the developments under way concerning the proposal in document IP/C/W/585, submitted to this Council in February 2013, on the "Contribution of intellectual property to facilitate the transfer of environmentally rational technology".

407. At the national level, this issue continues to be discussed in its own dedicated Interinstitutional Committee. The Committee is composed of the Ministry of Foreign Affairs; the Ministry of Foreign Trade; the Ministry of the Environment; the National Secretariat for Higher Education, Science, Technology and Innovation, with ministerial status; the Ecuadorian Intellectual Property Institute; and various universities. It examines issues such as: those relating to how the flexibilities in the TRIPS Agreement can contribute to better and more dynamic technology transfer; case studies on voluntary licensing for patents involving environmentally rational technology, its cost and the conditions for technology transfer; and the application of compulsory licences for environmentally rational technology in accordance with international regulations; etc., in order to establish the possible ways of reformulating the proposal submitted to this Council, taking into consideration the criteria outlined and observations made by a large number of Members in this body.

408. Furthermore, Ecuador continues its consultations with various international bodies to bring about a second workshop which seeks to draw conclusions in order for progress to be made on this significant issue. We will provide information on this possibility in due course.

409. At the last Council meeting we emphasized the importance of the adoption of the "Paris Agreement" in December 2015 under the framework of the United Nations Conference on Climate Change.

410. The Agreement established that the Parties, noting the importance of technology for the implementation of mitigation and adaptation actions, and recognizing existing technology deployment and dissemination efforts, shall strengthen cooperative action on technology development and transfer. This was one of the mandates approved by all our countries to curb the damaging effects of climate change.

411. Ecuador would like to thank the co-sponsors of agenda item 10 for having made reference to their experiences on intellectual property and innovation. Mr Chairman, you stated in your summary on this item how important technology transfer and cooperation between developed countries and developing countries would prove. Ultimately, this is what is sought by Ecuador's proposal.

412. As a result, Ecuador will continue in its efforts to revise the proposal submitted to this Council and to contribute to international cooperation in this area.

14.2 Chairman

413. There is a critical mass of information in this room which could make this TRIPS Council very vibrant. Sometimes we limit ourselves because we are entrenched in the position of the 1960s and this is 2016. The world has changed so much and I am just open-minded. New thinking is needed that addresses carbon footprint, climate change, poverty, poor production and consumption that leads to more pollution of the world and so on. This TRIPS Council is supposed to address intellectual property that is related to technology that will always lead us to a green economy.

414. If that is the case, we have to give space to new ideas in this room in informal mode. I think the informal mode here taught me one thing, i.e. that people have a lot of understanding of the

issues and we can use it for the better. We can always make this Council to inform the world where to go because intellectual property will lead to new green technologies that address climate change and sustain the sanctity of resource assessment, etc.

415. We should not be a hostage of rules. If the rules of 1960 are not good for today, let us talk like intellectuals here and say this rule, in informal mode, is outdated and let us do something about it. If you find it is not, then you can create platforms to look at it again and see how best to make it better for us.

416. So let us return to our offices, thinking that this is a new Council trying to revive itself, to address the most difficult subject of IP. IP is totally scientific, it is technological and it is informational. This is where we make decisions that make sense for the world of tomorrow.