



**Council for Trade-Related Aspects of
Intellectual Property Rights**

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 6 JUNE 2019

Chairperson: H.E. Ambassador Lundeg Purevsuren (Mongolia)

Addendum

The present document contains the statements made during the Council for TRIPS meeting held on 6 June 2019.

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*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.

1 ELECTION OF CHAIRPERSON

1. No statements were made under this agenda item.

2 NOTIFICATIONS UNDER PROVISIONS OF THE AGREEMENT

2.1 Australia

2. Since Australia last updated the Council under this agenda item, we have introduced further legislative and regulatory changes, which have been notified to the WTO Secretariat using the e-TRIPS platform.

3. In brief, the changes are as follows:

- a. First, the Intellectual Property Laws Amendment (Productivity Commission Response Part 1 and Other Measures) Act 2018 [IP/N/1/AUS/19]:
 - clarifies the circumstances in which the parallel importation of trademarked goods does not infringe a registered trademark;
 - changes the period that must elapse before certain non-use actions of a trademark can be taken;
 - closes a loophole to improve how essentially derived variety declarations can be made for plant breeders' rights;
 - removes a requirement for patentees to provide certain data relating to pharmaceutical patents with an extended term; and
 - implements a number of measures intended to streamline and harmonise the administration of the Australian IP system.
- b. Second, new regulations were introduced to give effect to these legislative amendments [IP/N/1/AUS/20].
- c. Third, the Wine Australia Regulations 2018 [IP/N/1/AUS/21] were introduced, replacing the former Australian Grape and Wine Authority Regulations, which were automatically repealed according to a pre-determine deadline. The new Regulations removed redundant provisions, simplified language and restructured provisions for ease of use.
- d. Fourth, the Copyright (International Protection) Amendment Regulations 2018 [IP/N/1/AUS/18] extended protection for secondary uses of sound recordings in Australia to recordings from an additional 32 countries which provide equivalent protection to Australian sound recordings.
- e. Fifth, the Copyright Amendment (Online Infringement) Act 2018 [IP/N/1/AUS/17] amended the online copyright infringement scheme in section 115A of the Copyright Act 1968, which is aimed at allowing the Federal Court of Australia to issue injunctions requiring the blocking of access by users in Australia to overseas online locations that facilitate large-scale infringement of copyright.
- f. Sixth, the Copyright Amendment (Service Providers) Act 2018 [IP/N/1/AUS/15] extended the operation of the safe harbour scheme in the Copyright Act 1968 and limited legal remedies available against carriage service providers to a broader range of service providers in the disability, educational and cultural sectors
- g. And finally, new regulations were introduced to give effect to the legislative amendments contained in this Act [IP/N/1/AUS/16].

2.2 Japan

4. This delegation is pleased to inform the Council that Japan recently amended various laws. These include the Copyright Act; the Act on Protection of the Names of Specific Agricultural, Forestry and Fishery Products, and Foodstuffs; the Trademark Act; the Patent Act; and the Act concerning International Applications. Japan notified this Council about the amendments in accordance with

Article 63.2 of the TRIPS Agreement. The reference numbers are IP/N/1/JPN/36, 37, 38, 39 and 40. Taking this opportunity we would like to briefly explain some major points about the amendments.

5. First, the Copyright Act was amended in order to meet various new needs that have arisen with the development of digitalization and networking. Based on this amendment, works can be easily used in the information industry, without requiring authorization from right holders, as long as the works are used for the purpose of learning as a means to develop artificial intelligence. The Copyright Act was also amended in order to comply with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Based on this amendment, the term of protection of works was extended to 70 years after the author's death. Japan notified the amendment in document IP/N/1/JPN/36.

6. Secondly, the Act on Protection of the Names of Specific Agricultural, Forestry and Fishery Products and Foodstuffs was amended to add a transitional period of prior use and expand the regulatory scope to encompass advertisement and price lists. Japan notified the amendment in document IP/N/1/JPN/37.

7. The Trademark Act was also amended and notified in document IP/N/1/JPN/38.

8. Lastly, the Patent Act and the Act concerning International Applications were amended in order to implement a new system for reducing and exempting fees. Japan notified these amendments in IP/N/1/JPN/39 and 40.

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

2.3 Cuba

10. In November 2001, Cuba commenced review of the implementing legislation for the TRIPS Agreement. At that time, it submitted Decree-Law No. 203 of 24 December 1999 on trademarks and other distinctive signs and its implementing regulations, approved by Resolution No. 63/2000 of 22 May 2000, together with the legislation supplementing the measures on compliance and the replies to the Checklist of Issues on this topic.

11. Subsequently, in 2002, it submitted Decree-Law No. 228 of 20 February 2002 on Geographical Indications and the replies to the Checklist of Questions pursuant to Article 24.2 of the Agreement.

12. In 2013, it submitted laws on patents, industrial designs, plant varieties and layout-designs of integrated circuits, which are the subject of Decree-Laws Nos. 290, 291 and 292 of 20 November 2011, respectively, which entered into force in April 2012.

13. In 2014, the Council of Ministers approved the policy on the industrial property system, based on the country's economic and social development guidelines.

14. The policy underpinning the industrial property system in Cuba enables the adoption of measures to protect public health and nutrition, safeguard public interests for scientific-technological and socioeconomic development, and counteract any inappropriate use of acquired industrial property rights or practices that unjustifiably restrict trade or undermine technology transfers. It also ensures the protection, management and commercialization of industrial property rights and undisclosed information.

15. In order to implement this policy and supplement the current regulatory framework, two Decree-Laws, two Decrees and five Resolutions have been adopted. They are as follows:

Decree-Law No. 336 of 30 June 2016: "Contractual provisions on industrial property in legal transactions"

16. This Decree-Law establishes the contractual provisions on industrial property that must be included in legal transactions for the purchase of technology, and economic, scientific and technical collaboration, and identifies restrictive contractual provisions that impede, limit or distort trade in an unreasonable or unjustified manner.

17. It seeks to ensure that the productive and commercial exploitation of industrial property intangible assets is based on contracts that do not include restrictive or unreasonable commercial clauses that undermine industrial and commercial performance in national and foreign investment, and that balance considerations and ensure that the recipient of the technology is granted freedom of business and commercial performance and the rights to future intangible goods. It also seeks to ensure that economic and scientific-technical collaboration agreements include industrial property provisions that guarantee the protection of the parties' rights to pre-existing knowledge, innovations and technologies and to the fruits of joint collaboration.

Decree-Law No. 337 of 30 June 2016: "Protection against unfair practices concerning industrial property"

18. The provisions of this Decree-Law apply to unfair practices concerning industrial property carried out by any means, by natural or legal persons, provided that such practices occur during the exercise of industrial or commercial activities.

19. The Decree-Law defines the acts considered to be unfair practices concerning industrial property (any act that runs counter to honest practices in industry and commerce, especially acts causing confusion, false assertions, etc.) and provides for the protection of undisclosed information that is legitimately under the control of natural and legal persons, and of test data stored by regulatory bodies that authorize the marketing of pharmaceutical and chemical products for agriculture that use new chemical entities. It also establishes who may apply to the competent court and the actions that may be brought when economic interests are directly harmed or threatened by an unfair practice concerning industrial property.

Decree No. 342 of 28 February 2018: "Regulations implementing Decree-Law No. 290 on inventions and industrial designs"

20. This Decree establishes the Regulations implementing Decree-Law No. 290 of 21 November 2011 on inventions and industrial designs, which regulate the procedure for the granting of patents and certificates for the registration of utility models and industrial designs.

Decree No. 343 of 28 February 2018: "Industrial property system"

21. This Decree seeks to establish the principles, objectives, rationale and indications for the design and implementation of the industrial property system of the Republic of Cuba. It provides a methodological guide for the management of the industrial property of the various social actors.

Resolution No. 151 of 29 June 2018 of the Minister of Science, Technology and the Environment: "Regulations governing the implementation of the Patent Cooperation Treaty (PCT) in the Republic of Cuba"

22. This Resolution supplements Decree-Law No. 290 on inventions and industrial designs, updating the procedure for the implementation of the Patent Cooperation Treaty (PCT) in Cuba, especially in relation to the Cuban Industrial Property Office, which shall serve as the receiving, designated or elected Office for the filing of patent applications at the multinational level.

Resolution No. 152 of 29 June 2018 of the Minister of Science, Technology and the Environment: "Procedure for the remuneration of inventors, authors and breeders"

23. This Resolution supplements Decree-Law No. 290 on inventions and industrial designs and Decree-Law No. 291 on plant variety protection.

24. It establishes the procedure enabling authors, inventors and breeders to receive a share of the profits made by the entity through the exploitation of a creation obtained through a legal labour relationship or the provision of services, which has resulted in the issuance of a patent or registration that is in force in the territory of exploitation and generates economic benefits.

Joint Resolution No. 1 of 29 June 2018 of the Minister of Agriculture and the Minister of Science, Technology and the Environment: "Procedure for the technical examination of plant varieties"

25. This Joint Resolution supplements Decree-Law No. 291 of 21 November 2011 on plant variety protection, which establishes the procedure for granting breeder's rights over a plant variety.

Resolution No. 60 of 29 June 2018 of the Director of the "Alejandro de Humboldt" Institute of Fundamental Research in Tropical Agriculture: "Regulation approving plant variety examination fees"**Resolution No. 375 of 29 June 2018 of the Minister of Agriculture: "Regulation governing the establishment of the Examination Centre for the technical examination of plant varieties"**

26. Both Resolutions supplement Decree-Law No. 291 of 21 November 2011 on plant variety protection, which establishes the procedure for granting breeder's rights over a plant variety.

27. This legislation demonstrates the implementation of industrial property in the Cuban legal system in accordance with international standards, which contributes to the generation, development and protection of intellectual products, innovation, technology transfers, domestic and foreign investment, scientific and technological cooperation, and trade in goods and services, which are balanced accordingly with national development interests and public policies.

28. I would like to thank the technical team of the TRIPS online platform for their assistance with the submission of this legislation through e-TRIPS.

29. Lastly, Cuba is ready to respond rapidly to any additional questions on the legislation presented in the meeting.

2.4 Chinese Taipei

30. I am pleased to report that we duly notified to the TRIPS Council on 6 May 2019 our amendment to the Patent Attorney Act in document IP/N/1/TPKM/22.

31. Articles 4, 37, and 40 of the Act have been amended to guarantee equal rights for persons with disabilities to engage in work and to pursue a freely chosen occupation. In addition, the Act no longer contains provisions that forbid people from practicing as patent attorneys or patent agents if they were diagnosed as suffering from mental illness or physical and mental abnormalities by specialist physicians commissioned by the relevant competent authorities. The amendment entered into force on 23 November 2018.

2.5 European Union

32. The European Union would like briefly to introduce the notifications, documents IP/N/1/EU/22, IP/N/1/EU/23 and document IP/N/1/HUN/2 on behalf of Hungary.

33. The two Acts notified by the EU are of an implementing nature. They supplement and give effect to rules on Geographical Indications (GIs) in the wine sector contained in the basic acts, adopted in 2013 Regulation (EU) No 1308/2013, which was notified to TRIPS in February 2017.¹

34. The two Acts cover matters such as procedures for registration and for approval of the amendments to product specification, and clarify the roles of the producers, non-EU authorities and producers, and of the EU authorities.

35. Two main objectives have guided the Commission in this work: "to improve subsidiarity" and "to reduce the length of the procedures". For example, producers in non-EU countries (or their national authorities) will be able to approve minor amendments to GIs protected in the EU without

¹ Document IP/N/1/EU/G/4-IP/N/1/EU/11.

seeking EU approval. This mirrors a similar simplification introduced within the EU. Six months deadline for the scrutiny of the Commission was introduced.

36. The two Acts represent a crucial simplification which will benefit to both EU and non-EU GI producers.

37. With regards to document IP/N/1/HUN/2, Act LXVII of 2018 on the amendments to certain laws of industrial property (hereinafter referred to as Implementing Act) was published and the new rules are applicable from 1 January 2019 in Hungary. The Implementing Act predominantly introduces amendments to Act XI of 1997 on the Protection of Trademarks and Geographical Indications (hereinafter referred to as Trademark Act) in order to transpose the Directive (EU) 2015/2436 of 16 December 2015 to approximate the laws of the Members relating to trademarks.

38. As the consequence of the amendments, trademark applications will no longer need to represent marks graphically. The new requirement is that the sign shall be capable of being represented in the register in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor.

39. The amendment also revises the system of absolute and relative grounds for refusal; redefines the scope and limitations of trademark protection; clarifies the provisions on use of trademarks and details the procedural rules of renewal.

40. Furthermore, the Implementing Act translates changes into the legal text relating to international trademarks in the light of the recent changes in the relationship of the Madrid Agreement and the Madrid Protocol, Due to these changes, the Trademark Act reflects the prevalence of the Madrid Protocol.

2.6 Canada

41. Canada would like to note that we have submitted two notifications, regarding recent amendments to Canada's Trademarks Act, as well as Canada's new Industrial Design Regulations and accession to the Hague Agreement Concerning the International Registration of Industrial Designs. These amendments have been submitted under document number IP/N/1/CAN/20 and IP/N/1/CAN/21, respectively, and will be circulated following the meeting.

42. Canada will be pleased to present both notifications in further detail at the next TRIPS Council meeting in Fall 2019, and thanks the Secretariat for accommodating Canada's submission of both notifications prior to the meeting.

2.7 United States of America

43. The United States of America has thanked the EU for notifying these two regulations on geographical indications.

44. The US understand that these two specific regulations have also been notified to the TBT Committee and there are active discussions in that forum.

45. The US look forward discussing these regulations in a bilateral during the current week.

2.8 WTO Secretariat

46. The Secretariat takes this opportunity to provide a further regular update to the TRIPS Council on the e-TRIPS project. Delegates will recall that e-TRIPS aims at streamlining and updating the information services the Secretariat provides for Members, within the framework established by the TRIPS Agreement itself and the decisions of this Council. It comprises two separated but integrated online tools – first, the e-TRIPS Submission System, which is a means for submitting TRIPS notification and review material; and second, the e-TRIPS Gateway, which provides a wide range of opportunities for delegates to access and make use of TRIPS information.

47. Now, let me provide a quick update on the state of play of these two online tools.

e-TRIPS Submission System

48. The e-TRIPS Submission System is an online tool for submitting:

- **TRIPS notifications**, such as newly passed laws and regulations relevant to TRIPS;
- **TRIPS review materials**, such as responses to the questionnaires established by the TRIPS Council; and
- **TRIPS-related Reports**, such as regular reports on technical assistance and measures for technology transfer filed by some Members and some international intergovernmental organizations.

49. As announced at the last TRIPS Council meeting in February and mentioned in our email of 8 March 2019 to TRIPS Council delegates, the e-TRIPS Submission System is now open and ready for your use.

50. As delegates will recall, the initial version released in March was only available in English. Since then, the translation in French and Spanish has been completed and the e-TRIPS Submission System is now fully available in the three official WTO languages.

51. Please note that the e-TRIPS Submission System requires log-in credentials and is for Members' use only. To date, over 35 Members have already requested their log-in credentials. If your delegation would like to use the e-TRIPS Submission System and has not already requested log-in credentials, please contact us at e-TRIPS@wto.org.

52. Our immediate emphasis is on supporting delegates and capital-based officials to become familiar with this tool and to assist them in its practical use. In this context, and as mentioned in our previous message to TRIPS Council delegates earlier this week, we are holding an informal training session on the e-TRIPS Submission System on the day of the meeting in Room E from 13:45-14:45. We will provide you with access to the testing environment during the session, and therefore we would encourage you to bring your own laptop. Simultaneous interpretation will be provided into French and Spanish.

e-TRIPS Gateway

53. Let me now turn to the broader e-TRIPS Gateway – in other words, the online information portal that will allow you to search and extract the full range of TRIPS information managed by the Secretariat. In the coming weeks, the Secretariat will release a Beta version of the e-TRIPS Gateway. The so-called Beta version is a trial version for testing by Delegations. We hope that you – and your colleagues – will test and explore the e-TRIPS Gateway and subsequently offer any feedback or suggestions you might have on how the Gateway might be improved.

54. It is envisioned that, upon completion of the e-TRIPS Gateway, it will be integrated with the WTO website, and be open to the general public as well. We note that the data which is available in the e-TRIPS Gateway is the same as what is currently publicly available on the WTO Docs Online database and other relevant WTO webpages. The e-TRIPS Gateway will simply make it easier for you to quickly research, retrieve and analyse TRIPS-related data.

Next steps

55. Regarding next steps, we will reach out to you in the coming weeks with instructions on how to access the Beta version of the e-TRIPS Gateway. As ever, we are most grateful for your invaluable input and look forward to your continued guidance.

2.9 Mexico

56. On this occasion Mexico did not submit any notification of laws or regulations in accordance with the provisions of the TRIPS Agreement. However, it would like to share its experience with the use of the new electronic document submission system which the WTO Secretariat has been developing.

57. Mexico recently presented its responses to two questionnaires in accordance with Article 27.3(b) of the TRIPS Agreement via the e TRIPS platform. Through this portal all types of intellectual-property related notifications, reports and responses to questionnaires can be sent and processed, subject to the provisions of the TRIPS Agreement. The system is user friendly and, although it is still under review, it can replace the previous system if all Members are ready to use it.

58. Mexico would like to thank the WTO Secretariat for all the years of work dedicated to developing this platform and for the related clarifications provided to Members at different meetings.

59. Although the platform is in English, it is possible to submit documents in the other official languages. Mexico would soon like to see it available in French and Spanish too.

2.10 Australia

60. Australia thanks the Secretariat for the work done in putting together these online tools. Australia has successfully used the system to submit the recent notifications.

3 REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

61. No statements were made under this agenda item.

4 REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B)

5 RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CONVENTION ON BIOLOGICAL DIVERSITY

6 PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE

6.1 Mexico

62. Although Items 4, 5 and 6 of the agenda, are dealt with collectively in ordinary meetings, Mexico would like to raise an issue relating to the first of these three items.

63. Mexico has responded in detail to the two questionnaires related to the Review of the Provisions of Article 27.3(b) of the TRIPS Agreement, contained in documents IP/C/W/122 and IP/C/W/126, with a view to providing a useful perspective on its patent laws. Mexico's responses were circulated by the WTO Secretariat in document IP/C/W/125/Add.25.

64. In our system of intellectual property, we do not grant patents to plant varieties, except for micro-organisms. However, we do have a sui generis system for the protection of plant varieties that is compatible with UPOV 78. Thank you for your interest and attention.

6.2 Benin, on behalf of the LDC Group

65. Benin is making this statement on behalf of the Group of least developed countries.

66. Discussions are underway within the Council for TRIPS, and have been for several years, regarding the three items: Review of the provisions of Article 27.3(b), the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), and the protection of traditional knowledge and folklore. The Group of LDCs wishes to reiterate its position on this matter.

67. The Group of LDCs is of the view that the TRIPS Agreement and the CBD should be implemented so as to be mutually reinforcing. To that end, the Group wishes to propose that the TRIPS Agreement be amended to include the mandatory disclosure requirement of the origin of genetic resources and traditional knowledge into patent applications.

68. This mandatory disclosure requirement would be crucial for those LDCs that are rich in genetic resources and traditional knowledge and who often fall victim to bio piracy. Therefore, the inclusion of such a requirement in the TRIPS Agreement would help combat piracy and facilitate the sharing

of profits generated by the exploitation of genetic resources and traditional knowledge as stipulated in the CBD.

69. Along the same lines, the Group of LDCs is also of the view that traditional knowledge and folklore must enjoy adequate international legal protection so as to allow their owners to benefit from the profits that result from their exploitation.

70. The Group of LDCs calls on the Council to continue to examine these three issues, including in forums outside the WTO.

71. In conclusion, the Group of LDCs supports Ecuador's request to update the factual notes on review of the provisions of Article 27.3(b); the relationship between the TRIPS Agreement and the CBD; and the protection of traditional knowledge and folklore.

6.3 Switzerland

72. The outstanding implementation issues treated under agenda items 4, 5 and 6 have been on the Council's agenda for a long time. They have been on the agenda of both WTO and WIPO. A big number of Members consider them important topics.

73. In terms of the relationship between the TRIPS Agreement and the CBD, Switzerland has repeatedly stressed the importance of the transparency inherent to the patent system. A requirement for the disclosure of the source of genetic resources (GR) and traditional knowledge (TK), in case an invention is directly based on such GR or TK, further enhances transparency. Introducing such a requirement would be a major step to address some Members' concerns.

74. Switzerland recognizes that those are significant concerns, especially for biodiversity rich countries. A Member of both the CBD and the TRIPS Agreement, Switzerland continues supporting the exploration of ways that further enhance the mutual supportiveness of both international agreements.

75. We hold the firm view that the solution of a disclosure requirement will serve the advancement and promotion of the patent system, in particular in relation to inventions in the field of biotechnology.

76. The issue of TRIPS/CBD is one of the three topics, next to the GI extension and the GI Register, which are tabled in document TN/C/W/52. The document contains modalities proposals for such a disclosure requirement in patent applications, as well as for enhanced protection of geographical indications, thus combining working proposals on these two outstanding implementation issues.

6.4 Bolivia, Plurinational State of

77. Bolivia's position on these agenda items is widely known, and it maintains firmly and invariably its position in accordance with document IP/C/W/545 of 26 February 2010.

78. Review of the provisions of Article 27.3 (b) is an outstanding issue for this Council and responds to the mandate of the Doha Development Agenda by virtue of paragraph 19 of the Ministerial Declaration of 2001. As such, it should have been a topic of discussion four years after the entry into force of the WTO Agreement.

79. The patenting of life forms and parts thereof is a cause for grave concern for many cultures and peoples of the world who consider that life and parts thereof are sacred and therefore should not be patentable.

80. Consequently, we reiterate the need to prohibit the patenting of all forms of life, including plants and animals and parts thereof, gene sequences, micro-organisms, as well as all processes including biological, microbiological and non-biological processes for the production of life forms and parts thereof.

81. Patenting of life forms promotes an imbalance in the current intellectual property system. The TRIPS Agreement, while granting monopoly rights to private parties, does not explicitly recognize

the collective rights of indigenous peoples and local communities over their biological resources and traditional knowledge, farmers' rights or the sovereign rights of Members. Nor does it require ensuring that the provisions of the Convention on Biological Diversity (CBD), including those relating to prior informed consent and benefit sharing, are respected.

82. Against this backdrop, Bolivia supports any and all initiatives and efforts aimed at finding a balance between the CBD and the TRIPS.

83. We consider that the absence of a balanced international framework that protects genetic resources, traditional knowledge and traditional cultural expressions has enabled the proliferation of practices such as bio piracy, leaving developing countries above all without appropriate mechanisms to provide adequate protection, and that is why this topic should remain on the Council's agenda.

6.5 Nigeria

84. Allow me to stress the need for the mutual supportiveness of the TRIPS Agreement and the Convention on Biological Diversity. One of the principles of the TRIPS Agreement is to enhance cooperation of the TRIPS Agreement with other relevant international organizations and international instruments.

85. Biodiversity has evolved from an environmental issue to substantially a trade issue. Developing countries are home over 80% of earth's biodiversity and yet do not own many patents. In order to develop a sound and viable technological base in developing countries, any utilization of genetic resources from developing countries must involve the sustainable use in order to conserve biological diversity, as well as show evidence of a fair and equitable sharing of benefits as are the principles of the CBD.

86. Sovereigns have a right to their own biological resources. Therefore, we have to insist on traceability and a prior informed consent from the source in respect of any product made from the utilization of genetic resources or traditional knowledge and folklore.

87. My delegation is of the view that Article 29 of the TRIPS Agreement is not sufficient as it is. We are therefore, in favour of full disclosure of the origin and source of any genetic resources or associated traditional knowledge. Therefore, we encourage Members to consider past proposals with useful suggestions on the Amendment to the TRIPS Agreement.

6.6 Bangladesh

88. On the agenda items 4, 5, and 6, the position of Bangladesh has not changed. We reiterate our position for the sake of record.

89. On the agenda item 4, on the issue of the review of the provisions of TRIPS Article 27.3 (b), Bangladesh does not support the patenting of life forms comprising plants and animals. We call for a review of this Article in order to protect developing countries and LDCs from the negative effects of this provision on the key sectors that affect their livelihood such as agriculture, health, food, and climate change. This would help ensure, *inter alia*, food security and preserve the integrity of rural and local communities. Patenting of life forms at a multilateral level should be prohibited.

90. On the relationship between the TRIPS Agreement and the CBD, Bangladesh holds that Members have the right and duty to protect their traditional knowledge and genetic resources. There is, therefore, a need to amend the TRIPS Agreement with a view to requiring applicants of patent relating to biological materials to provide information on the source and country of origin of biological resources and traditional knowledge used in the invention.

91. In addition, applicants must show evidence of prior informed consent from, and benefit sharing arrangements with, the authorities and/or persons under the relevant national regime. This disclosure requirement, which is consistent with the transparency principle established in the multilateral trading system, will help reduce the number of erroneous patents and biopiracy.

92. Bangladesh believes that traditional knowledge should receive legal recognition as its protection could as well contribute significantly to the achievement of the sustainable development goals.

6.7 Japan

93. We have discussed this agenda at length during a series of meetings of the TRIPS Council. This delegation, therefore, believes that our position is well-recognized among Members, so we would like to make our intervention brief, highlighting some major points.

94. The delegation of Japan would like to reiterate our position that the Convention on Biological Diversity is by nature not relevant to the intellectual property system. Therefore, we need to seek appropriate ways to deal with the misappropriation of genetic resources. This means that we should bear in mind that any measures taken must not adversely affect the existing intellectual property system or hinder the creation of innovations utilizing genetic resources and associated traditional knowledge.

95. This delegation is firmly convinced that to include the disclosure requirement in the IP system would discourage industries from conducting research and development activities on biological materials. This is the very consequence of the disclosure requirement that Japan has been concerned about. The same holds true for not only developed countries but also emerging and developing countries. Japan believes that the disclosure requirement is not an adequate means for dealing with the misappropriation of genetic resources.

96. In line with the above-mentioned position, we firmly believe that the protection of genetic resources (GRs), traditional knowledge (TK) and folklore should be designed in a manner that both supports creativity and innovation.

97. In addition, this delegation believes the WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) is the most appropriate forum for holding technical discussions on GRs, TK and folklore from IP aspects, and the IGC will be held this month. This delegation has been actively contributing to the discussions at the IGC meetings, making various proposals, and remains willing to contribute to evidence-based discussions on these issues in a constructive and effective manner.

6.8 Brazil

98. As we have been stressing in our previous statements, Brazil favours the inclusion of a requirement in TRIPS for the disclosure of origin of genetic resources in patent applications.

99. We believe that a mandatory multilateral provision on disclosure is the most effective way to address the misappropriation of genetic resources and traditional knowledge protected by the CBD.

100. The ideal scope of disclosure in our view would require patent applicants to disclose the country of origin of a biological resource and provide evidence of compliance with prior informed consent and benefit-sharing.

101. In this Council, we have heard some Members stating that WIPO is already conducting negotiations on genetic resources. We urge those same delegations to engage in the negotiations in order to allow for textual advances in this subject and enable the multilateral IP system to provide a concrete answer to the rights of countries hosting a rich biodiversity.

6.9 Indonesia

102. Indonesia reiterates his position on the importance of negotiation of relationship between TRIPS Agreement and the Convention on Biological Diversity, as well as the protection of traditional knowledge and folklore under the agenda items.

103. Our delegation is of the view that Article 27.3(b) and Article 29 of the TRIPS Agreement do not provide legal obligation to its Members to take all necessary measures for fair and equitable sharing of benefits as required by the CBD and the Nagoya Protocol. Such lacuna provides a room for misappropriation and misuse of genetic resources and traditional knowledge. The lack of such legal norms in TRIPS will defeat the purpose and objective of the CBD and the Nagoya Protocol.

104. We should not delay substantive discussions of these issues in this Council for reasons that it is being negotiated in other fora, such as WIPO. The discussions to take place in this Council should reinforce what has already been agreed at the multilateral level, such as CBD, and should complement discussions in other fora. We believe that parallel discussions will enhance effort and understanding in achieving a fair and balanced trading system with regard to intellectual property. In line with this, Indonesia believes that it is timely for the Council to give simultaneous and adequate attention to address the issue towards a common goal to ensure that genetic resources and traditional knowledge and folklore are protected in an appropriate manner.

6.10 China

105. About TRIPS/CBD, China retains the same position on this issue.

106. The relationship between TRIPS Agreement and CBD is a very important issue in this Council. Over years, Members have conducted a lot of useful discussions on this issue.

107. China attaches great importance to TRIPS and CBD and hopes that Members could be more constructively involved in this discussion.

108. Regarding the substantial issues, China notes that the majority of Members support to amend the TRIPS Agreement so as to ensure the mutual support of TRIPS Agreement, the CBD and its Nagoya Protocol.

109. As to the issue of disclosure, China has provided the detailed suggestions on negotiation modes, improving the transparency on genetic resources utilization, preventing the misappropriation of genetic resources and traditional knowledge, and preventing the grant of erroneous patent in two documents, namely TN/C/W/52 and TN/C/W/59 co-sponsored by China and a number of other Members.

110. We believe that setting up a reasonable system for the prior informed consent and benefit sharing could provide better protection for genetic resources.

111. As regard to procedure, China supports to invite CBD Secretariat to brief on the Nagoya Protocol and hopes that the Secretariat could renew the three factual notes (IP/C/W/368/Rev.1, IP/C/W/369/Rev.1, IP/C/W/370/Rev.1) , which can contribute greatly to our discussion.

112. We have noticed that WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) has made extensive discussion on genetic resources protection, and progress was made. But we still believe that the discussion and negotiation in WIPO IGC could not hinder the Members to find a solution in the WTO.

6.11 India

113. There is no change in India's position on the issues of review of the provisions of Article 27.3(b), Relationship between TRIPS and CBD and Protection of Traditional Knowledge and Folklore. However, India would take this opportunity to highlight some of the important points from our last submission. India is a country rich in traditional knowledge associated with biological resources. This traditional knowledge is both coded, as in the texts of Indian systems of medicine, such as, Ayurveda, Unani and Siddha; and non-coded, which exists in the oral undocumented traditions. India is also amongst top 20 identified mega diverse countries in the world.

114. Countries have adopted various methods to protect traditional knowledge and associated genetic resource at the national level. However, in the absence of an enforceable international regime, such domestic/national regimes on their own cannot address misappropriation of existing knowledge in foreign patent offices and biopiracy.

115. Therefore, it has been one of our long-standing demand that there should be an international enforceable regime that makes patent offices the check point to contain such misappropriation. Patents should not be granted for existing traditional knowledge and associated genetic resources, and where traditional knowledge and associated genetic resources form the basis of scientific development, the patent applications must disclose source or origin of the resource and also disclose

whether the access was on mutually agreed terms. The TRIPS-CBD linkage is, therefore, important for all countries because it seeks to address bio-piracy.

116. India is also of the view that a briefing by the CBD Secretariat on the latest developments in the implementation of the Nagoya Protocol would be very useful for large majority of the Membership of this Council. India also supports updating of three factual briefs by the Secretariat on these issues.

6.12 New Zealand

117. As we have previously stated, New Zealand agrees with the views expressed by many Members about the importance of preventing the misappropriation of genetic resources and associated traditional knowledge.

118. At a broader level, we have a systemic interest in preventing the granting of erroneous patents. Measures that contribute to high quality patent examinations are important to ensuring the health and integrity of the patent system.

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

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

121. As others have mentioned, WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) has been mandated to undertake a detailed consideration of the relationship between intellectual property and genetic resources, as well as traditional knowledge and traditional cultural expressions, and to develop a text of an international instrument or instruments on the protection of these three subject matters.

122. As we have stated previously New Zealand considers that WIPO's IGC is an appropriate forum to discuss in detail issues relating to the protection of traditional knowledge and genetic resources because it is able to look at these issues in a holistic and coordinated way. In this regard, New Zealand looks forward to engaging constructively in this forum in order to contribute to the fulfilment of this mandate.

6.13 South Africa

123. Recalling South Africa's statement delivered at the previous TRIPS Council meeting, South Africa remains committed to upholding its obligations under the Convention on Biological Diversity and the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization. The National Environmental Management: Biodiversity Act [No 10, 2004], includes provisions that relate to access and benefit sharing (ABS). Furthermore, the disclosure of the use of traditional knowledge or biological resource in a patent application is a mandatory requirement in terms of Sections 30 (3a) of the Patents Act No. 37 of 1952 as amended in 2005.

124. South Africa recently conducted a workshop on Indigenous Knowledge Systems and Intellectual Property. The workshop was successfully co-hosted by the Department of Science and Technology and Department of International Relations and Cooperation. Said workshop served as an opportunity for participating African States to present their legislative frameworks on indigenous knowledge, and for South Africa to profile its provincial IKS systems, national recordal system and national IK Management System. However, despite the necessary legislation and systems established by South Africa to protect IK and GR, the unlawful use of biological resources and traditional knowledge continues to be perpetuated through misappropriation and biopiracy. South Africa advances its position that these issues are best addressed and regulated within the ambit of the TRIPS Agreement.

125. In respect of procedural issues, South Africa once again calls on the Secretariat to update the three factual notes contained in documents IP/C/W/368/Rev.1, IP/C/W/369/Rev.1 and

IP/C/W/370/Rev.1. We further reiterate our support for a briefing by the CBD Secretariat on the Nagoya Protocol and subsequent developments.

6.14 Canada

126. With respect to the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), Canada continues to believe that TRIPS and the CBD are complementary, and that there is therefore no need to amend the TRIPS Agreement in this regard.

127. On the protection of traditional knowledge and folklore, Canada welcomes the ongoing work of WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), and looks forward to the upcoming fortieth session of the IGC, to be held in just over a week, from 17 to 21 June 2019, in Geneva. As we have previously noted, Canada continues to view the IGC as the most appropriate forum for discussion on the complex range of issues on this topic. In particular, the IGC has served, and continues to serve, as an important venue that brings together the necessary technical expertise and views, to identify evidence-based, balanced, and mutually-beneficial approaches to these issues. Canada has been, and continues to be, an active and committed participant in the work of the IGC and welcomes the concrete discussions and exchanges of national experiences in that venue, which remain key to considering the issues at hand.

128. Finally, with respect to procedural matters at the TRIPS Council, as Canada has previously noted, and without prejudice to our position on substantive matters, Canada can continue to support a procedural briefing from the CBD Secretariat to the TRIPS Council, should there be sufficient interest from other Members on the matter. Similarly, without prejudice to Canada's national positions on these issues, Canada could also support the compilation of the three factual notes on the TRIPS Agreement and the CBD (documents IP/C/W/368/Rev.1, IP/C/W/369 Rev.1, and IP/C/W/370 Rev.1) by the WTO Secretariat. As it has been previously noted in this committee, Canada remains of the understanding that this would remain an information collating exercise.

6.15 Australia

129. Australia believes that WIPO's IGC is best placed, with appropriate technical expertise, to consider the complex and important issues relating to intellectual property and genetic resources and associated traditional knowledge and cultural expressions.

130. We hope Members will adopt a spirit of compromise when the issue of genetic resources is next considered in WIPO.

131. Australia believes the TRIPS Agreement and Convention on Biological Diversity are fully consistent, and that the TRIPS Agreement therefore does not need to be amended.

132. Australia fully implements our obligations under both agreements, which we view as mutually supportive.

133. In relation to procedural matters, Australia is open to a briefing by the CBD Secretariat on the Nagoya Protocol, and can be flexible in relation to the Secretariat updating the three factual notes.

6.16 Russian Federation

134. The relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) has been for a long time one of sensible topics on the agenda of the TRIPS Council. The Russian Federation recognizes that issues related to the topic are of great importance for many countries that value biodiversity as part of their natural and cultural heritage. Being a party to both TRIPS and the CBD, the Russian Federation remains open to further dialogue on the matter in order to reach a balanced solution. We believe that a briefing by the CBD Secretariat and updated factual notes, as requested by many delegations, would contribute to this goal.

6.17 United States of America

135. The US position is well-known and has not changed. Regarding genetic resources, traditional knowledge and folklore, we continue to believe that WIPO serves as the best forum to address these issues.

136. WIPO's IGC is looking at addressing unresolved issues and working on a common understanding of core issues, using an evidence-based approach and examples of national experiences.

137. The United States will continue to engage in technical discussions at WIPO's IGC and looks forward to hearing more from the *demandeurs* regarding data supporting their positions on this issue.

138. With respect to the various requests made at the meeting, the United States is not in a position to support these requests, but remains open to discussions, including bilaterally with delegations, in between and at the margins of TRIPS Council meetings.

7 NON-VIOLATION AND SITUATION COMPLAINTS

7.1 Benin, on behalf of the LDC Group

139. The Ministerial Decision WT/MIN(17)/66, adopted in Buenos Aires on 13 December 2017 directs Members to continue their examination of the scope and modalities for complaints of the type provided for under subparagraphs 1(b) et 1(c) of Article XXIII of the GATT 1994 and make recommendations to MC12.

140. The LDC Group encourages Members to complete this examination and make recommendations to the Ministers, in accordance with the above-mentioned Ministerial Decision. It thus congratulates all Members who have made proposals.

141. The LDC Group calls on Members to show resolve in reaching a consensual solution.

7.2 South Africa

142. During the Uruguay Round, when WTO Members agreed to incorporate the GATT 1947 into the WTO Agreement, they made non-violation and situation complaints (NVSCs), as contained in Article XXIII:1(b) and (c), available with respect to the agreements "covered" by the DSU. The only current exception is the TRIPS Agreement.

143. In Article 64.2 of the TRIPS Agreement, Members agreed that NVSCs would not apply to the TRIPS Agreement for a period of five-year after the entry into force of the WTO Agreement. In Article 64.3 of the TRIPS Agreement, Members further agreed that during this period the TRIPS Council would examine the scope and modalities for these complaints. This moratorium has been extended eight times, most recently in a Ministerial Decision at the 11th Ministerial Conference in Buenos Aires, Argentina in 2017. According to this Decision, Members agreed to maintain the moratorium and directed the TRIPS Council to continue its examination of the complaints. The TRIPS Council was also directed to make recommendations at the next Ministerial Conference. Over the years, a number of Members have submitted comments to the TRIPS Council containing their views on NVSCs under the TRIPS Agreement. However, no final agreement has been reached.

144. South Africa notes that the non-violation remedy is an "exceptional" remedy. Non-violation complaints have been extremely rare under both the GATT and the WTO. Under the GATT 1947, working parties and panels considered only eight cases involving non-violation complaints. Non-violation complaints succeeded, and the reports were adopted by the GATT Contracting Parties, in only three out of the eight cases. There has been no successful recourse to the non-violation remedy in any of the WTO disputes in which Article XXIII:1(b) has been invoked. In over 70 years of the existence of the multilateral trading system, only three non-violation cases have been successful.

145. We further note that in Japan – Film, the panel said:

"Although the non-violation remedy is an important tool of WTO/GATT dispute settlement and has been on the books for almost 50 years, we note that there have only been eight cases in which panels or working parties have substantially considered Article XXIII:1(b) claims. This suggests that both the GATT contracting parties and WTO Members have approached this remedy with caution and, indeed, have treated it as an exceptional instrument of dispute settlement." (Panel Report, Japan – Film, para. 10.36)

146. Members remain divided on the question of whether NVSCs should apply to the TRIPS Agreement at all or whether the application of these types of complaints should be subject to certain modalities. Irrespective of these different opinions, note should be taken of the valuable contribution that Members have made over the years to understanding the nature NVSCs in the context of discussions in the TRIPS Council. The proponents of the application of non-violation complaints under the TRIPS Agreement have not provided concrete examples of the kind of scenarios under which an otherwise TRIPS-consistent measure would impair or nullify benefits beyond those arising from the obligations set out in the Agreement. Thus, it may be useful to clarify what situations proponent Members wish to avoid by having a non-violation remedy available under the TRIPS Agreement and, on the other hand, to ensure that a non-violation remedy in the TRIPS context would not be so broad as to have the effect of expanding the existing TRIPS obligations.

147. Switzerland in the TRIPS Council meeting of 27 February 2018, IP/C/M/88, IP/C/M/88/Add.1 paras. 138 – 139 opined:

138. At the outset, let me briefly react to a number of earlier interventions that expressed concern that non-violation complaints under the TRIPS Agreement could impinge negatively on the flexibilities foreseen in the Agreement. My delegation has made it repeatedly clear that flexibilities provided in the TRIPS Agreement in fact are part of the rights and obligations in the TRIPS Agreement clearly spelled out and does not actually fall under the scope of non-violation complaints.

139. NVSCs protect the balance of rights and obligations under the WTO Agreements concluded in the Uruguay Round. Protecting this balance includes the flexibility provisions foreseen and confirmed in the TRIPS Agreement. Recourse to such flexibility is a foreseeable measure and is thus not a non-violation situation.

148. This statement is very much in line with Article 31bis paragraph 4 of the TRIPS Agreement. This provision states the following: "Members shall not challenge any measures taken in conformity with the provisions of this Article and the Annex to this Agreement under subparagraph 1(b) and 1(c) of Article XXIII of GATT 1994."

149. The above-mentioned references may already constitute a clarification of the scope of application of NVSCs in the context of the TRIPS Agreement. The use of any TRIPS flexibility is a foreseen measure and consequently not covered by NVSCs. Furthermore, case law has already clarified modalities that apply to the bringing of NVSCs, while the complaining party bears the burden of proof in a claim involving non-violation under Article 26.1 of the DSU for which a detailed justification is required.

150. South Africa is not a proponent for the application of NVSCs to the TRIPS Agreement, however, it is clear enough that useful ideas have been discussed in the TRIPS Council over the years that merit serious consideration by Members, irrespective of the positions they take on the potential application of NVSCs to the TRIPS Agreement.

7.3 Nigeria

151. This meeting offers us yet another opportunity to reflect on our various views on the application of the non-violation and situation complaints (NVSCs) to the TRIPS Agreement.

152. The general views have remained different and till date there has been no convergence of the views. The scope of application of non-violation complaints under article XXIII(b) and (c) of the GATT has still not been decided by Members. However, my delegation is of the view that NVSCs should not be allowed to apply under the TRIPS Agreement.

153. In the meantime, as we are heading for MC12, we suggest to start discussing what to do with the moratorium. We are of the view that the moratorium be extended until we are able to agree on the scope. We continue to encourage the Chair in facilitating these discussions.

7.4 Brazil

154. The debate on the applicability of non-violation and situation complaints (NVSCs) to the TRIPS Agreement has been part of the Council agenda for many years. Brazil supports the South African statement regarding this issue.

155. Having carefully analysed statements made in past sessions of the Council by proponents of allowing NVSCs to TRIPS, we continue to hold the view that the dispute settlement mechanism as currently applied to the TRIPS Agreement is sufficient to guarantee effective and adequate protection of intellectual property rights.

156. Furthermore, Brazil believes that the logic of the TRIPS Agreement is different from the GATT's in the sense that, as determined in TRIPS Article 1.1, Members are free to determine the appropriate method of implementing the provisions of the agreement within their own legal system and practice. The TRIPS Agreement also provides many important flexibilities that shall be preserved. To allow for NVSCs would include an unnecessary element of uncertainty in Member's balance of rights and obligations.

157. In fact, besides the increase in uncertainty as regards the types of claims it would entail, the extension of NVSCs to the TRIPS Agreement would pose an additional and unnecessary burden on the dispute settlement system, already in stress by the situation we now face in the Appellate Body.

158. For these reasons, Brazil continues to believe that the time is not ripe for a change on the question of NVSCs in the TRIPS Agreement.

7.5 United States of America

159. The United States' position on this issue remains unchanged. We reiterate our support for allowing the current moratorium to expire so that Members may bring non-violation nullification and impairment (NVNI) complaints in the future, as appropriate.

160. In the previous TRIPS Council, some Members raised concerns over the application of NVNI complaints to the TRIPS Agreement. We believe that while valid questions have arisen, they are fully and adequately answered by the text of the TRIPS Agreement itself and further clarified through GATT and WTO adjudication, as we have enumerated in our communication to the TRIPS Council, which was circulated to Members as document IP/C/W/599, as well as in our previous interventions.

161. The United States has provided detailed and extensive analysis in each of our statements under this item over the past several years. We have explained the legal basis for such claims in the GATT and TRIPS Agreement texts, the panel and Appellate Body jurisprudence involving NVNI disputes, the extensive safeguards that exist to protect Members rights and obligations under the TRIPS Agreement, and concrete descriptions regarding how such disputes would work in practice.

162. As we have detailed in past interventions, NVNI claims have a long lineage in the WTO and in international trade law generally. The applicability of such claims to the WTO Agreements is the rule; their non-application is the exception. The TRIPS Agreement moratorium is the exception.

163. We continue to believe that WTO Members are being deprived of an important tool to enforce their rights under the TRIPS Agreement, which is why we support the expiration of the current moratorium so that complaints of this type may be applicable to the TRIPS Agreement.

164. While we remain of the view that the text of the WTO Agreements and dispute settlement rulings provide Members with sufficient guidance on the application of NVNI disputes to the TRIPS Agreement, the United States remains open to considering specific proposal from Members wishing to further examine the scope and modalities for complaints of these types.

7.6 Indonesia

165. Indonesia reaffirms its position that applying NVSCs to intellectual property could result in an imbalance between the rights of IP-holders, and IP users, as well as the public interest. The absence of scope and modalities for NVSCs would introduce new obligations and raise the standards for protection beyond what has been agreed upon.

166. This would affect Members' policy space, especially with regards to implementing public health measures. It would then induce the increase of disputes against existing and future measures undertaken by developing countries.

167. Moving forward for the MC12, Indonesia supports a permanent moratorium of NVSC for the TRIPS Agreement.

7.7 Bangladesh

168. The position of Bangladesh on the proposed lifting of the moratorium on non-violation and situation complaints (NVSCs) is well-known. For the sake of record, we would like to reiterate our position in favour of establishing a permanent moratorium.

169. Bangladesh, however, invites the views and ideas of our friends who were proponents of the application of the NVSCs on the scope and modalities of the proceedings as required by Article 64.3 of the TRIPS Agreement. The Council needs to be better informed, and only then it will be in a better position to examine and consider the proposal.

170. The concept appears to be still an unknown territory, and unless the scope and modalities are outlined first we cannot go any further in this discussion. As we perceive it now, if NVSCs are made applicable to TRIPS, any issue under the sun can be brought as 'cases' under this umbrella. Clear delimitations, therefore, need to be conceived and thoroughly examined first.

171. Bangladesh reiterates its readiness to engage on this issue further.

7.8 Switzerland

172. The view of this delegation that non-violation and situation complaints (NVSCs) are, in principle, also applicable under the TRIPS Agreement, is well-known. For further details regarding our position and the supporting language in Article 64 of the TRIPS Agreement, we refer to our interventions made in the past TRIPS Council meetings. Upon expiry of the moratorium, non-violations complaints become applicable under the TRIPS Agreement.

173. The deadline of the moratorium is fast approaching, and we note that no official proposal or submission to further define the scope and modalities for NVSCs under the TRIPS Agreement has been put forward to date. In the absence of specific modalities under the TRIPS Agreement, any non-violation complaint procedure would be governed by the DSU. This delegation continues to consider that the DSU provides sufficient guidance to adjudicate any NVSC case.

174. Having said that, Switzerland welcomes initiatives, specific proposals and informal discussions looking into options of specifying the scope and modalities for NVSCs under the TRIPS Agreement. We commend the delegation of South Africa for its engagement in this matter, look forward to an intensified dialogue, and are ready to participate constructively in such discussions.

7.9 India

175. India's position on the issue of non-violation and situation complaints (NVSCs) under the TRIPS Agreement remains unchanged. Serious concerns remain on the debilitating impact that NVSCs in TRIPS can have on the regulatory policy space of Members, on TRIPS flexibilities as well as increasing the complexity in interpreting the TRIPS provisions. It can not only have a chilling effect on Member's exercise of their IP regimes but also severely restrain ability of Members to achieve other public policy objectives.

176. The absence of NVSCs in the TRIPS context does not in any manner threaten or dilute the enforceability of TRIPS related rights and obligations. Introducing NVSCs into the TRIPS Agreement is unnecessary and inconsistent with the interests of the WTO Members. As such, any benefits arising from the Agreement can be adequately protected by applying the text of the Agreement in accordance with accepted principles of international law, without any need for introducing the legally uncertain notion of NVSCs.

177. India looks forward to working with like-minded Members in making non-violation complaints inapplicable to TRIPS.

7.10 China

178. China's position on this issue is unchanged. We believe that the non-violation and situation complaints should not be applicable under the TRIPS Agreement, which has been elaborated in the document IP/C/W/385/REV.1 proposed by 16 Members including China. We also welcome the discussion on this issue in accordance with the mandate given by MC11.

7.11 Canada

179. Our longstanding position on this issue is well-known and remains unchanged.

180. We recognize that the current moratorium exists thanks to consensus, and we trust that Members can continue to discuss these issues in a collegial manner, especially in view of the high concentration of Members with concerns in this area. Canada also wishes to express its continued interest in participating in any consultations that take place on this issue amongst other interested Members.

8 REVIEW OF THE IMPLEMENTATION OF THE TRIPS AGREEMENT UNDER ARTICLE 71.1

181. No statements were made under this agenda item.

9 REVIEW OF THE APPLICATION OF THE PROVISIONS OF THE SECTION ON GEOGRAPHICAL INDICATIONS UNDER ARTICLE 24.2

182. No statements were made under this agenda item.

10 TECHNICAL COOPERATION AND CAPACITY BUILDING

183. No statements were made under this agenda item.

11 INTELLECTUAL PROPERTY AND INNOVATION: PUBLIC-PRIVATE COLLABORATIONS IN INNOVATION - INNOVATIVE APPROACHES TO ASSISTING IN BRANDING AND PROMOTION AND THE CREATIVE INDUSTRIES

11.1 Japan

184. Firstly, on behalf of the co-sponsors of this item, this delegation would like to briefly introduce the background and some possible discussion points of this agenda item in accordance with the document IP/C/W/653.

185. For this session, Members are invited to reflect on IP and innovation in the context of Branding and Creative Industries, taking into account all various forms of public-private partnerships in IP promotion. At the previous session of the TRIPS Council, we shared our national policies and experiences in R&D, to highlight the importance of strong collaboration and cooperation among different stakeholders.

186. It is widely recognized, but often forgotten, that 'innovation' does not necessarily mean 'invention' alone. Indeed, several international organizations adopt the word 'innovation' by much broader approach. In this context, it is therefore useful to examine the role of creative industries and branding. The 'creative economy' and more generally IP-intensive sectors have been robust,

demonstrating resilience and in many instances growth, indicating that these sectors have considerable potential for current and future investment.

187. It should be emphasized that recognizing and fostering the value of local products through a unique branding and promotion strategy at the national / regional level, as well as developing new creative products and services, could be regarded as important sources of 'innovation' in the creative economy going forward. Particularly in an era of urbanization, it is important to focus on a resilient innovation policy including unique regional and rural branding and promotion strategies. The promotion of rural areas may be achieved by strengthening partnership between public and private sectors, possibly by utilizing intangible assets such as IP rights.

188. In addition, the public sector can also help the private sector to build and promote industries' brands and reputation through various ways, such as consultancy services and assistance in promoting local industries' brands and reputations overseas.

189. It would be beneficial for Members to share their varying experiences on public-private collaborations in helping business grow through branding and promotion strategies so as to learn how the stakeholders and processes intertwine to promote innovation and economic opportunities. The possible guiding questions are included in paragraph 7 in the working document.

190. Furthermore, the creative industries play an important role in enriching cultures and contributing economic value. In these industries, however, there are many SMEs and individuals that may not be familiar with their IP rights, and how they can use their IP to grow their businesses. This is where the public sector can support them in growing their businesses. These effective and established partnerships also advance the shared vision of economic activity to local regions and fostering creativity.

191. The possible issues to be discussed are included in paragraph 9 in the document.

192. From here, this delegation would like to share our thoughts and experiences, by showing a short video about a Japanese industrial group that has been trying to boost the local economy by making use of their regional trademark.

193. This delegation is of the view that collaborations among public and private sectors are very important not only for R&D activities but also for branding strategies designed for local products.

194. In addition, Japan recognizes the importance of promoting rural areas in the continued, extreme concentration of the economy in the Tokyo Metropolitan area. Vitalizing local economies is one of the main policies set by the government of Japan.

195. Based on this, this delegation will now show you a successful case of boosting a local economy through promoting a regional, specialty product.² The product is katsuobushi, which is a large piece of bonito that has been dried into a solid, hard block and used in Japanese cooking. One-way katsuobushi is used to shave it and add it as one of the essential ingredients of fish broth, such as the kind used in miso soup.

196. Previously in Japan, regional trademarks that consisted of just combinations of regional names and the names of common goods or services were not allowed to be registered. However, one of the government's policies for promoting local branding was to revise the Trademark Act and established a system that allows such combinations to be registered as trademarks. This is referred to as the Regional Collective Trademark system that started in 2006.

197. One of the local branch offices of the Ministry of Economy, Trade and Industry supported a local marine industry by enhancing the value of katsuobushi through a unique branding strategy based on a regional collective trademark that was registered in 2010. As you will see in this short video, this is a successful example of branding.

² A short video was projected during the meeting.

198. The Makurazaki area is No.1 in terms of the volume of katsuobushi production in Japan. The way of making katsuobushi has been passed from one generation to the next for over 300-year.

199. Now, in this video you will see the careful process of how katsuobushi is made in this old fishery. Surprisingly, a lot of works are done by hand, in spite of the addition of automation to some of the processes.

200. After defrosting the bonito for one day, they are then cut, boiled, deboned, and shaped. After that they are smoked for about 14 to 20 days. Then they are shaved, formed, and finally sun-dried. It is said that sun-drying them naturally creates their smooth taste and rich aroma.

201. In spite of its 300-year history and careful production processes, katsuobushi was considered to be such a common product that it didn't have much value, so producers were not able to be proud of their products.

202. Actually, katsuobushi is now used in every Michelin-starred Japanese restaurant in Europe. According to this well-known Japanese top chef, there is still more potential for katsuobushi.

203. Recently, the Makurazaki marine product industries cooperative is working on producing katsuobushi in Concarneau, France, in order to promote Japanese cuisine outside Japan. The cooperative transferred their unique manufacturing technology to a director of factories in France. Currently, the katsuobushi made by the factories is available in many Japanese restaurants in France, and well received by French citizens.

204. The cooperative says that its acquiring a regional collective trademark right let each producer be responsible for its own production, and this in turn led to improving hygiene and quality.

205. In addition, not only producers but also local residents became proud of katsuobushi after it became the focus of attention by the media. Furthermore, the strong support by the public sector, for example making an English website to promote the product, enabled a better understanding of its added value.

206. A big project to produce katsuobushi in France might be one of the outcomes brought about by the above-mentioned brand power, which was originally triggered by katsuobushi obtaining a regional collective trademark right.

207. In summary, this delegation would like to emphasize that this example is what is called a "public-private collaboration in innovation", in particular in branding and promotion. In addition, other local innovations in branding can be anticipated, if the media highlights worthwhile activities to the general public, such as by showing video clips.

208. The Japanese government is committed to strongly encourage innovation in the area of branding and promotion, and in creative industries, by strengthening public-private collaborations. Japan will continuously improve its IP systems in conformity with the trends of the times. Finally, this delegation also hopes that the TRIPS Council will continue to be a good forum for the Members to share information on their IP systems, policies, and initiatives, and gain a better understanding of each.

209. This delegation hopes that its information helps other delegations create their own domestic policies. And this delegation is very much looking forward to hearing many experiences from other Members.

11.2 Australia

210. Australia would like to sincerely thank Japan for leading this discussion on innovative approaches to branding and promotion and the creative industries. We were glad to join the discussion paper as a co-sponsor.

211. In an increasingly inter-connected and hyper-competitive global economy, countries need to highlight their unique characteristics and skills, and promote the quality of their goods and services, if they wish to attract foreign buyers and investors.

212. The limited support the Australian government provides for individual private sector brands includes occasional targeted campaigns, such as offering places on foreign trade delegations or tourism promotions. The government's business and export development programmes may indirectly boost firms' brand awareness by supporting their commercial success more broadly. These include Business Growth Grants, which can be used to engage marketing and branding advisors; Export Market Development Grants, which provide financial assistance to Australian businesses looking to develop export markets; and Australian Landing Pads, which offer residencies to start-ups and scale-ups in key overseas markets.

213. At the national level, the public and private sectors can together successfully shape nation-wide branding strategies that benefit businesses of all sizes, and all sectors of the economy.

214. In 2018, the Australian government launched a major initiative to develop an all-encompassing 'Nation Brand' for our country. This followed the publication of the Government's Foreign and Trade Policy White Paper in 2017, which identified the need to develop a stronger "nation brand" to market our commercial, educational and cultural credentials in a competitive global market.

215. Led by industry and coordinated by Austrade on behalf of the Australian government, the initiative is attempting to build a more consistent approach to national branding, to convey to the outside world the message that we are a nation of inventors, actors, engineers, builders, architects, athletes and innovators.

216. Turning to the role intellectual property rights can play in the context of local innovation and public-private collaboration, we firmly believe that an effective and balanced IP environment provides certainty for stakeholders and helps stimulate the commercialisation of innovative ideas. In doing so, it can play a vital role in boosting social and economic wellbeing both at home and abroad.

217. Furthermore, collaboration between research institutions and the business sector is an increasingly critical component of an efficient national innovation system, and central to the acquisition of knowledge and promotion of entrepreneurship.

218. Australia has long recognized the useful role the public sector can play in supporting local artists and creative businesses through both IP protection and promotion strategies.

219. The creative sector makes a significant contribution to Australia's society and economy, contributing AUD 112 billion, or 6.4%, of our GDP.

220. Our experience has been that the public sector can play a lead role in raising the profile of the creative industries among key decision makers, in fostering partnerships, and encouraging the dispersal of creative skills and talents across other industries and within the public sector itself.

221. The public sector can help by putting in place, and maintaining, robust arts funding mechanisms that support both the generation of original creative IP and the strategic promotion of this IP in potentially lucrative markets.

222. The Australian government provides a number of funding initiatives that support Australia's arts and cultural sectors. These include:

- The Australia Council, the Government's arts funding and advisory body, which offers a range of grants to Australian artists and creative businesses;
- Creative Partnerships Australia, a Commonwealth company fostering a culture of private sector support for the arts in Australia and nurturing a vibrant and ambitious cultural sector; and
- Screen Australia, which provides support to Australian film, television, documentary and digital media makers.

223. By enacting legislation such as the *Resale Royalty Right for Visual Artists Act 2009*, the Australian government has demonstrated the importance it attaches to providing Australian visual

artists with an enduring right similar to other creators, such as songwriters or authors, who receive royalty payments from their original work.

- From its launch in June 2010 to the end of April 2019, the Scheme has generated more than AUD 7 million in royalties from 18,760 resales of work by 1787 artists. Of the artists who have received a royalty payment, 63% are Indigenous.

224. Recognizing the importance of maintaining strong Aboriginal and Torres Strait Islander cultures, the Government's Indigenous Visual Arts Industry Support programme contributes to the operations of around 80 Indigenous-owned art centres, as well as a number of service organisations, regional hubs and art fairs, which together enable around 6,000 artists to pursue a professional art practice and connect to the art market.

225. There are also opportunities for the public sector to help the growth of creative business by harnessing the potential of arts, culture and creativity to support outcomes in other areas of public policy, such as cities and liveability, education and tourism. For example, many local governments invest in creative precincts that may assist with urban regeneration and/or increase liveability for residents, but that also create opportunities for artists and creative businesses. Many governments also invest in creative content as a major events drawcard that can attract tourism and generate economic outcomes for local businesses outside the creative sector.

226. I would like to turn now to the question of how the public sector can help the private sector develop expertise in IP management.

227. Australia's IP Office, IP Australia, offers a number of initiatives dedicated to this goal, with a particular focus on start-ups and MSMEs. These include targeted workshops and webinars that provide basic information on IP rights, and highlight the importance of protecting one's brand and ideas as part of a broader business strategy.

228. IP Australia has developed a variety of publicly-available tools ranging from collaboration checklists to model confidentiality agreements.

229. Australia also supports innovation and commercialization by providing public sector patent holders with a platform for highlighting licensing opportunities and promoting their research outcomes. In particular, our 'Source IP' platform, accessible on the IP Australia website, provides a forum for bringing businesses and public research institutions together.

230. In addition, IP Australia works with incubation hubs to spread the word about the importance of IP for start-ups and entrepreneurs. For example, workshops are held at local incubator hubs, co-working spaces and Business Enterprise Centres across Australia focusing on patents and trademarks, tools to foster understanding of the benefits of patent protection, practical skills relating to patent applications, and maximising the value of brands through the use of trademarks.

231. In terms of the lessons we have learned in creating innovative models using our local intellectual property rights, IP Australia has developed a variety of publicly-available tools to help users identify potential pitfalls and ensure the confidentiality of sensitive information. These range from collaboration checklists to model confidentiality agreements.

232. Furthermore, IP Australia provides educational materials to entrepreneurs and SMEs via the agency's website, on topics as diverse as 'Doing business in China' and 'Commercialisation of IP Rights'.

233. To sum up, Australia has long recognized the vital role that IP rights can play in supporting commercial and national brands, and the creative industries.

11.3 United States of America

234. We welcome this opportunity to co-sponsor this agenda item. We thank the other co-sponsors and to Japan for introducing the topic and sharing such a vivid presentation.

235. From the beginning, intellectual property has been an important engine behind America's economic and cultural development.

236. So important was the protection of intellectual property that the framers enshrined it in our Constitution. Article I, Section 8, Clause 8 directs the legislative branch to "promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

237. Under this system of protection, American industry has flourished. New products have been invented, new uses for old ones discovered, and employment opportunities created for millions of Americans. The strength and vitality of the U.S. economy depends directly on effective mechanisms that protect new ideas and investments in innovation and creativity. The continued demand for patents and trademarks underscores the ingenuity of American inventors and entrepreneurs.

238. Our overall goal is to ensure that rights owners, businesses, and the public alike have confidence in, and can rely on, a predictable and well-functioning IP system.

239. This confidence spurs inventors to invent, businesses to develop new branding strategies, creators to create, investors to invest, companies to grow and create new jobs, and science and technology to advance.

240. By providing this IP framework and educating the public on how to use the intellectual property system to protect their inventions, brands, ideas and creativity, we are setting the table so that they can decide the best approach and strategy for protecting their valuable assets.

241. We see public-private collaborations as an effective approach for making creative industries and branding strategies drivers of economic growth in the United States.

242. Already these creative industries and brands make important contributions to the United States economy. In 2017, US copyright industries have added USD 1.3 trillion in value to the US economy and the top five most valuable global brands come from the US and are worth a combined USD 586 billion, up 20% from 2016.

243. Public-Private collaborations play an important role in helping to create enabling environments for effective local and national initiatives that benefit creators and brand owners. The United States will share a few examples of these collaborations.

244. For creative industries in the U.S., public-private partnerships have taken the form of: music cities; entertainment software initiatives for veterans and educators; and university-digital media collaborations.

245. Music Cities is a strategy many municipalities in the U.S. are adopting to develop their vibrant music economies to support professional musicians and local creativity.

246. The Music Policy Forum provides advocacy, strategy and connections for policymakers, advocates, artists, academics, non-profits and industry leaders working at the intersection of music and public policy.

247. The importance of identifying and promoting specific strategies and initiatives that can help artists connect with audiences and monetize their music to sustain careers is the objective of the Music Policy Forum. They do this by undertaking research and developing quantitative studies that document how local artists make money, where they live, where they work and other practical concerns that form a crucial base from which to develop strategies. Cities that have commissioned such local music studies include, Charlotte, North Carolina; Seattle, Washington; and the District of Columbia.

248. IP is an important contributor to monetization strategies, and critical educational and mentoring platforms are provided by the Music Policy Forum, in collaboration with other organizations and copyright attorneys, to ensure local musicians protect their intellectual property rights, as well as understand how to claim digital and other royalties.

249. Partnerships with city leaders and other local officials are key in supporting local music ecosystems through specific strategies. Denver, Colorado; Albuquerque, New Mexico; and Pittsburgh, Pennsylvania have recently commissioned such strategies, involving mentoring, IP rights education, audience development, philanthropic alignment and other means to raise the profile of local artists and increase revenue opportunities.

250. In the area of entertainment software, we are seeing how technology has the potential to empower and educate. Innovative approaches applied to gaming are now helping gamers with disabilities and to educate the young, not to mention creating wonderful partnerships, as a result.

251. For example, in April 2019, Microsoft and the U.S. Department of Veterans Affairs announced a new collaboration to enhance care, rehabilitation and recreation for disabled veterans by introducing the Xbox Adaptive Controller to 22 VA rehabilitation centres across the country.

252. The Xbox Adaptive Controller was created so more people, specifically people with mobility limitations, can enjoy gaming.

253. The controllers and other equipment will also be available for Veterans to use at events hosted by VA's Office of National Veterans Sports Programmes and Special Events, such as the National Veterans Wheelchair Games.

254. Microsoft and the U.S. Department of Veterans Affairs have a long-standing strategic partnership, working together for over 20 years to provide the best possible care and services to Veterans. As part of this new collaboration, VA staff will engage with Veterans using the equipment and share feedback with Microsoft on therapeutic utility and the Veteran experience to better improve the product and the gaming experience.

255. The U.S. Department of Education and the National Science Foundation also see video games' potential and have invested millions accordingly. In addition, the Gates Foundation and the MacArthur Foundation have together committed USD 100 million to educational gaming.

256. Through these initiatives, the US educational community works closely with industry to make sure they are building games that are meeting educational needs, ranging from mathematical problem solving and puzzles, in-game history lessons, learning an instrument or sport, to the health benefits of a dance game. This partnership has created the opportunity to reinvent education in a way that is impactful for students and leads to more creative video games.

257. In the area of audio-visuals, the film and television industry is making a significant local impact in states such as Georgia, Hawaii, Illinois, New York, New Mexico, Ohio, Pennsylvania and California.

258. The Georgia Film Academy, for example, was created by the State of Georgia to help train and grow a local talent pool to feed into the local film industry, partnering with the Georgia State College system and the Georgia Film Office under Georgia's Department of Economic Development.

259. Indeed, the State of Georgia was the number one production destination in the world in 2018. As a side note, all Marvel films are produced there.

260. Georgia's workforce benefited from USD 1.7 billion in direct spending and 79,000 new jobs paying USD 4 billion in wages with salaries averaging USD 84,000, which is 75% higher than the national average. This partnership with the film industry has transformed the state economy of Georgia.

261. In the area of agriculture, the US Foreign Agriculture Service helps build international opportunities for a wide variety of U.S. farm and food products.

262. Through the Market Access Programme (MAP), the US Foreign Agricultural Service (FAS) partners with U.S. agricultural trade associations, referred to as "cooperatives", and state regional trade groups to share the costs of overseas marketing and promotional activities such as consumer advertising, public relations, point-of-sale demonstrations, participation in trade fairs and exhibits, market research and technical assistance.

263. There are over 60 MAP participants for FY 2019, including the California Olive Committee, the California Strawberry Commission, and the Florida Department of Citrus. One of the most recognizable certification marks in the US is "Made with Florida Citrus".

264. The MAP funding for the Florida Department of Citrus is for participation in trade shows, media tours of export markets, hosting of media and trade guests in Florida, and the Department's own trade and public relations representative agencies in Belgium, Japan, the UK, Sweden, the Netherlands, Canada and France. The Florida Citrus industry employs more than 45,000 people and provides an annual economic impact of USD 8.6 billion to the state.

265. A recent independent study found that for every USD 1 invested in US Department of Agriculture export market development programmes like MAP, USD 28 is returned in export revenue.

266. Our public-private partnerships are also geared to support small and rural communities in areas of creativity and innovation and to get businesses to begin exporting or to increase sales in new global markets.

267. The Economic Development Administration (EDA) is a bureau within the Department of Commerce that leads the federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. The EDA's investment policy is designed to establish a foundation for sustainable job growth and the building of durable regional economies throughout the United States.

268. Most recently, the EDA invested USD 1.25 million to the town of Cleveland, Mississippi (pop. 12,000) to build an access road to the new Grammy Museum of Mississippi and upgrade the infrastructure on the campus of Delta State University, which is hosting the museum to attract tourists and bolster the region's economy. Since its opening, the museum has put Cleveland on the music tourism map and brought in over 90,000 visitors from every U.S. state and 37 foreign countries, introducing visitors to the impact of Mississippi's songwriters, producers and musicians on the music landscape.

269. Small companies and creators across the U.S. need support to promote and protect their creative ideas abroad. That is why the International Trade Administration's U.S. Commercial Service is the only U.S. federal export assistance entity with offices in smaller cities like Fargo, North Dakota, Wheeling, West Virginia, and Greenville, South Carolina. The U.S. Commercial Service (CS) has Rural Team members who provide one-on-one export assistance to their local rural companies. Companies can get help with things like conducting market research, finding buyers worldwide and solving export roadblocks.

270. In summary, I am proud to say that United States has a thriving economy, in large part because of the emphasis we place on the success of our innovators, creators and businesses. We do this by stimulating innovation and creativity through protecting intellectual property rights and creating enabling environments for effective local and national initiatives, aided by public-private collaboration. I hope the examples I provided will lead others to consider similar approaches for the benefit of their innovators, creators and businesses.

11.4 Chinese Taipei

271. We would first like to thank Japan for proposing this agenda item and for introducing the discussion paper inviting Members to share their experiences on the topic of "Innovative Approaches to Assisting in the Brand Promotion and the Creative Industries" We fully recognize the value of this theme and we are pleased to co-sponsor this agenda item.

272. I would like to share with you the various ways in which my government is endeavouring to help certain parts of the private sector - especially the small- and medium-sized enterprises in rural areas - to build their products or services on the basis of regional characteristics through an innovative branding and IP strategy at both the national and the regional levels.

273. With the relentless spread of industrialization, not surprisingly many people have migrated from villages to urban areas. As a result, development in rural areas has stalled, and the traditional agricultural villages are gradually losing their distinctive characteristics in terms of life-style and

culture. As a result, the widening gap between urban and rural development has become a big challenge for government.

274. In attempting to address this issue, our government initiated in 2018 a national plan for regional revitalization. Its main objective is to develop regional industry with an emphasis on the special characteristics of the particular region, which is designed to attract re-located residents back to the region and encourage younger people to return home, thus helping to reverse the trend of shrinking populations in rural areas.

275. The plan is based on five main strategies, including tax incentives for people investing in their home-towns, the introduction of new technology, an integrated programme for supporting the eco-system, the establishment of local brands, and adjustments to the regulatory environment.

276. In view of this topic, I will focus on the subject of the promotion of local branding and its benefits to the development of regional economy.

277. First, we feel the importance of making good use of Geographic Indications (GI) for the branding of any local product. Our experience with developing the use of geographical certification marks on local brands of agricultural products shows that GIs do have a positive sustainable effect on local communities and their economies.

278. We have been accepting applications for registering GIs as geographical certification marks since 2003. A total of 77 resident registrations for geographical certification marks and collective trademarks have been approved so far.

279. A geographical certification mark or collective trademark is an invisible property of all stakeholders within a certain geographical area.

280. One very good example that I would like to share with you is our first ever geographical certification mark, named "Chihshang Rice", which was registered by the Chihshang Township Office of Taitung County to identify the origin by the name of the place where the rice is grown under the protection of the certification mark. This registration can be attributed to Chihshang's unique geographical environment and the strict regulations that govern the use of certification marks.

281. However, local farmers' associations in Chihshang are not satisfied defining themselves as only simple rice growers. They reached out to cooperate with the local government and other business community to jointly develop the brand and reputation not only Chihshang rice but the Chihshang township. Through reinterpreting local characteristics and diversified marketing strategies, this very traditional agriculture community has been repositioned today as a township with vibrant culture creative industry.

282. By looking at the various practices and measures applied over the years, we have been able to conclude a number of major benefits produced for this region through public and private cooperation in the context of a strong branding strategy and a supportive IP system. These are as follows:

283. Firstly, the protection of farmers' rights by attacking counterfeiting.

284. The registration of a certification mark or collective trademark establishes the order of market trade and provides a guarantee to consumers, helping the local agricultural producers to create a good strong brand.

285. Secondly, increasing the incomes of farmers.

286. An analysis of farmers' incomes from the Chihshang rice brand shows that, after subtracting costs, their profit has more than doubled.

287. Thirdly, improving the quality of crops.

288. In order to sell their products at a good price, farmers try their best to produce healthier and safer foods that meet the stricter standards of today. The result is that both the quality and the prices of local agricultural products are rising.

289. Fourthly, increasing local revenues.

290. Both the local governments and the local farmers' associations benefit from the branding of products. Since 2005, the Chihshang Township Office has issued 7.1 million labels, which have generated more than 14.2 million NT\$ of revenue for the township.

291. And, fifthly, boosting both the rural economy and tourism.

292. There is a close connection between the promotion of locally branded products and tourism. It opens up a wide array of revenue-generating opportunities such as food processing, leisurely tour experiences and dining. Surveys have shown that many tourists are attracted to visit the township simply because of their high awareness of Chihshang rice.

293. In short, Chishang's success story is one of the best examples of the revitalization of domestic townships.

294. Another important government project aimed at developing local industries has the name, "One Town, One Product" (OTOP). It is undertaken by the Small- and Medium-sized Enterprise Administration to help those local industries with a distinctive cultural and historical image to adopt the concepts of innovation, creativity and branding, and to develop them to their best advantage.

295. A team of experts composed of specialists from the worlds of design, financing and marketing, was formed to research local industries and identify distinctive products in every township. The team has been working alongside local companies to transform simple products into masterpieces.

296. So far, the OTOP has successfully helped to transform over 120 businesses operating in traditional industries. This not only gives a boost to the local economies, but also creates new job opportunities locally.

297. To conclude, it is worth emphasizing once again that collaboration between the public and the private sectors in promoting regional economies through innovative branding and IP strategies is absolutely essential. On the other hand, how the government carries out its strategic planning to assist private sectors in making better use of their own resources for revitalizing rural communities and local industries still remains an important issue.

298. We look forward to hearing about other Members' relevant experiences and the measures.

11.5 Switzerland

299. My delegation wishes to thank Japan for introducing submission IP/C/W/653 for the Council's discussion. Switzerland is pleased to co-sponsor both the agenda item and the written submission.

300. During the last session of the TRIPS Council in February, the Council looked at the role of governments as potential promoters of knowledge transfer, in providing start-ups with expertise or assigning intellectual property rights. In that session, it is proposed to focus on creative industries and *their* methods of utilizing intellectual property. Creative industries combine the creation, production, distribution and dissemination of creative goods and services.

301. In contrast to high-tech industries, where patents play a key role in protecting intellectual property, the creative sector also relies on other intellectual property rights, such as industrial designs, trademarks or copyright.³ The type of IPR that is made use of is influenced by what the supportive and collaborative function of the State may be. In the creative industry, it is primarily private actors that create intellectual property, unlike in technological sectors, where, sometimes,

³ WIPO, 2017: How to Make a Living in the Creative Industries. Geneva: WIPO.
https://www.wipo.int/edocs/pubdocs/en/wipo_pub_cr_2017_1.pdf (accessed April 23, 2019)

the public sector produces basic research and then shares or transfers the rights to its intellectual property with or to the private sector for commercialization purposes.⁴

302. Nevertheless, public-private collaborations can also play an important role in the creative and branding industry. Let me illustrate this with the following example:

303. Inspired by the idea of building a sustainable freeride ski, Hanno Schwab, a Swiss engineer and passionate frees skier, started experimenting with different types of local wood. Guided by his vision, he succeeded in inventing 100% sustainable and regionally produced skis. The skis are able to compete with top brands in terms of quality and driving pleasure. After receiving enthusiastic feedback on his idea of sustainable and handcrafted skis, Hanno Schwab decided to fund his own company in 2014: the Earlybird Skis LLC.

304. At this point, Hanno Schwab had no experience in establishing or managing a company. So, he decided to apply for a coaching programme at the Swiss Creative Hub.⁵ *Creative Hub*, a non-profit organization, was founded by the Federal Office of Culture, the Swiss Arts Council, Pro Helvetia, and Engagement Migros. As part of the government project of design promotion, *Creative Hub* supports Swiss designers in the product commercialization process. This support consists of a one-to-one coaching programme covering matters concerning finance, marketing strategies, market access, licensing and intellectual property rights.

305. The Swiss Creative Hub provides an online platform for the designers' products as well as networking opportunities for creative entrepreneurs. As a result of the Creative Hub's coaching, the young entrepreneur decided to register a combined trademark at the European Union Intellectual Property Office (EUIPO) for the territory of the European Union and Switzerland. Thanks to this trademark protection, Hanno Schwab was able to create his own brand, linking the trademark to his company's products and values. Today, Earlybird Skis LLC is known for its regionally and sustainably handcrafted, high quality skis.

306. Did Mr. Schwab live happily ever after? Well, the brand faced its share of challenges. From 2017 until early the year, Hanno Schwab's company was faced with a trademark dispute at the EUIPO. The company's money went into the litigation process instead of the ski manufacturing. At this point, the emergence of a second public-private collaboration helped Hanno Schwab to continue manufacturing skis while the litigation was ongoing.

307. The Swiss Confederation's cultural promotion institution, Pro Helvetia, supports and disseminates Swiss culture and arts. Pro Helvetia provides grants to young companies, helping them to stay financially independent. However, this support is not given unconditionally. Applicants have to demonstrate that they hold the rights to their project because the agency wants to ensure that only independent entrepreneurs can apply for funding. This is where holding an IP right can help – an applicant could prove their eligibility by, for example, providing evidence that they have registered an IP right in their own name.

308. Ultimately, the legal dispute was resolved. After lengthy negotiations, the parties agreed that Earlybird Skis LLC would purchase the opposing trademark. Now, Hanno Schwab can fully concentrate on using his trademark-protected brand as a central link to his customers and in his marketing efforts. The trademark is key in helping customers to differentiate between Hanno Schwab's skis and other companies' products. This provides a greater effectiveness on the market by preventing confusion, mistakes and deception.

309. Earlybird Skis LLC can safely invest in the reputation of the brand by ensuring its product's quality, regional nature and sustainability. Should a competitor try to free-ride on Hanno Schwab's brand and illegitimately use his trademark, the young entrepreneur can seek redress through the judicial authorities: an effective tool to protect long-term investment in his brand. Furthermore, like other intellectual property rights, trademarks are valuable assets. They can serve young companies

⁴ Rosenzweig, J.; Roche, P.; Chishty, F.; Thompson, A.; Ahmad, F. 2018: How Governments Are Sparking Growth in Creative Industries. Boston: The Boston Consulting Group, Inc. http://image-src.bcg.com/Images/BCG-How-Governments-are-Sparking-Growth-in-Creative-Industries-Mar-2018_tcm9-187340.pdf (accessed 23 April 2019)

⁵ Swiss Creative Hub: <https://archive.creativehub.ch/index.php?seite=sites/layout/engl.php&id=1> (accessed 22 May 2019)

by signaling to investors that they have attractive assets. It can be crucial for the survival of a business, whether start-up or established, to have access to loans in addition to the company's own capital to manage a lean period or an event like a judicial proceeding.

310. Today, the Earlybird Skis LLC is working together with a team of passionate skiers who are promoting the products on social networks. So, this story does have a happy ending, after all. What my delegation takes from this is that many creative companies are not aware of the importance and benefits of safeguarding intellectual property rights for their creative work. In this respect, governments have a responsibility to make this type of information available to the business and creative communities. At the Swiss Federal Institute of Intellectual Property, the IP Office of Switzerland, we take this important point into account and we will increase our efforts to raise innovators' and creators' awareness of intellectual property rights, and how they can be used to promote a business.

11.6 Singapore

311. I would also like to thank Japan for submitting this discussion paper, as a follow-up to February's fruitful discussion on "Public-Private Collaborations in Innovation". Japan's paper, which focuses on "Innovative Approaches to Assisting in Branding and Promotion and the Creative Industries", is timely and relevant. It will help to build on our discussions in February, during which many Members shared success stories of how public-private collaborations in research and development have contributed to improve lives, build resilient communities and create good jobs. Hence, Singapore is pleased to co-sponsor Japan's paper

312. As the paper encourages us to examine both regional and national efforts, let me begin by sharing with you a regional initiative from the Association of Southeast Asian Nations, or more popularly known as ASEAN. In 2015, more than 40 ASEAN women entrepreneurs established a regional product brand and marketing platform named the GREAT Women ASEAN Collection. In case you are wondering, GREAT is the acronym for *Gender Responsive Economic Actions for the Transformation of Women*. With support from the US, which is a Dialogue of Partner of ASEAN, ASEAN Members and the women entrepreneurs designed an innovative approach and brand at the regional level, to enable women entrepreneurs to work collectively to (a) foster fair employment and fair-trade conditions, (b) market their products beyond their national borders, and (c) protect their product designs from being illegally copied and sold.

313. Moving to the national level, allow me to share three key factors that drive Singapore's experience in supporting the development of branding strategies for our local businesses and the intellectual property (IP) management strategies for the creative industries.

314. First, we capitalise on our strengths. Singapore is known as a gourmet paradise, with a strong food culture and a population that prides ourselves on having a very discerning palate. In short, Singaporeans love to eat, and eat good food. Hence, quality food has become an essential dimension of the Singapore brand that our companies can leverage on to grow their businesses in the regional and global markets. One success story is a restaurant called Putien which specialises in Chinese Heng Hwa cuisine. Putien started as a small coffee shop in Singapore in 2000, and through good business practices, expanded rapidly in Singapore. In order to expand beyond the small Singapore market, Putien collaborated with Enterprise Singapore (ESG) to establish its presence in China. Putien now has 13 outlets in Singapore, and more than 40 restaurants across China; Hong Kong, China; Indonesia; Malaysia and Chinese Taipei. It has also received one Michelin star for three consecutive years from 2016 to 2018.

315. Second, we create an enabling environment. Many MSMEs have valuable products or services to share with the world, but lack resources and information to devise a branding strategy. This is where governments can step in to provide the necessary expertise to guide such businesses in the right direction. In this regard, Singapore government agencies have worked hand-in-hand with industry associations and other relevant stakeholders to develop sector-specific information resources. An example is the *Advocate for the Arts: A Legal Handbook for the Creative Industries*, that was launched in January 2018. This was developed and published by the Law Society Pro Bono Services with support from the National Trades Union Congress (NTUC). Besides information on copyright, the handbook provides information on contracts, insurance, trademark essentials, dispute resolution options and sample contractual clauses.

316. Third, we strive to be forward-looking. Given the rapid and relentless digital transformation, the public and private sectors must work closely to scan the horizon for trends and be nimble in responding to new challenges, especially on the intellectual property (IP) front. In this context, the *IP ValueLab*, a subsidiary of the Intellectual Property Office of Singapore (IPOS), provides consultancy services to help local businesses and creative personalities with strategic management of their IP, including brands. Through such government support, a vibrant creative culture has developed in Singapore, and this is reflected in Singapore's ninth placing in the 2015 Global Creativity Index by the Martin Prosperity Institute.

317. Let me close by noting that the possibilities of how the public sector can help businesses and creative personalities grow through branding and IP management are endless, and such exchange of experiences and ideas are helpful in enabling Members to learn from each other and avoid making the same mistakes.

11.7 Canada

318. Canada is pleased to co-sponsor the present meeting's "IP and innovation" theme of "Innovative approaches to assisting in branding and promotion and the creative industries", and the accompanying communication on this topic. We would like to thank Japan in particular for drafting the paper for discussion, under document IP/C/W/653. We would also like to thank the co-sponsors of this discussion, and all Members that have shared their national experiences and insights so far.

319. Canada would first like to take this opportunity to present on a recent initiative involving Canada's creative industries, the "Creative Export Strategy".

320. Canada's creative industries are diverse and world class. In 2017, arts, culture and heritage contributed CAD 53.1 billion (or roughly USD 39.52 billion) to the Canadian economy and accounted for more than 665,000 jobs in sectors such as film and video, broadcasting, music, publishing, archives, performing arts, heritage institutions, festivals and celebrations. The important contributions made by these sectors plays an important role in enhancing our country's prosperity and in demonstrating a positive image of Canada on the international stage.

321. Canada firmly believes that a strong Canada brand that resonates internationally contributes to the innovation and commercialization of our creative sector. For this reason, in June 2018, the Government of Canada launched the Creative Export Strategy, a five-year multifaceted initiative focused on maximizing the export potential of Canadian creative industries and promoting Canadian talent abroad. The investment of CAD 125 million (or roughly USD 93 million) over five-year demonstrates Canada's commitment to ensuring that our creative industries have strong presence in international markets.

322. The Strategy is organized around three pillars: 1) boosting export funding in existing programmes administered by the Department of Canadian Heritage and Telefilm Canada, a Crown corporation that reports to Parliament through the Minister of Canadian Heritage; 2) strengthening the presence of Canadian creative industries abroad by offering direct services to companies through Global Affairs Canada's Trade Commissioner Service; and 3) establishing a new funding programme, and building relationships through trade missions and participation in key international events.

323. The new funding programme, called Creative Export Canada, provides financial support for projects from Canadian entities, including the private sector, that foster innovation and discoverability of Canadian content abroad. One of the programme's first recipients received funding to create an immersive exhibition that will showcase and amplify the international reach of Canada's creative industries through virtual reality, augmented reality and mixed reality content. The results of this programme could provide valuable information on how private-public sectors can collaborate to encourage innovation.

324. As part of the Creative Export Strategy, the Government of Canada is also supporting Canada's participation as the Guest of Honor Country at the Frankfurt Book Fair in 2020. Canada's participation in this international event, a high profile, high visibility global initiative, allows Canada to showcase Canadian cultural content to the world. A key principle guiding our participation to this event is innovation in creative industries.

325. We know that some of the key drivers of favourability toward Canada in the global marketplace are its contribution to innovation, its cutting-edge ideas in the creative sector and Canadian-made products. Fostering innovation and promoting the Canada brand internationally through the incredible artistic and imaginative work of our creators is at the cornerstone of the Creative Export Strategy.

326. Turning to the issue of branding, we would also like to take the opportunity to present on two Canadian branding initiatives, "EduCanada" and the "Canada Brand".

327. In 2016, Canada unveiled its new education brand – the EduCanada brand – as part of Canada's efforts to attract more international students to Canadian schools. The EduCanada brand provides a single, strong and coherent message to promote Canada's educational offerings. The EduCanada logo has been displayed prominently at Canada's Trade Commissioner Service education promotion events, and on branding materials produced by Global Affairs Canada, as well as Canada's provinces and territories, universities, colleges, Collèges d'enseignement général et professionnel (or CEGEPs), language schools, and kindergarten-to-grade 12 institutions. Additionally, to support the effectiveness of the brand, Canada has registered the EduCanada logo as a trademark, both domestically and abroad.

328. As well, in 2006, the "Canada Brand" was introduced as part of Canada's Food and Agriculture Strategy to raise the international profile of Canadian food and agriculture products and help motivate buyers to source from Canada. The introduction of the Canada Brand was based on buyer and consumer research conducted in several key markets, which consistently displayed Canada's reputation abroad. However, this research also revealed that potential customers in international markets had little knowledge about Canadian food and agriculture products.

329. Further to this research, work began on the Canada Brand in 2004, and involved cooperative efforts among Canada's federal, provincial and territorial governments, and industry representatives. The Canada Brand strategy is designed to communicate a specific set of key attributes that the Canadian food and agriculture sector can ideally be known for, such as quality; commitment to food safety and environmental sustainability; and customer focus. The brand also takes a "brand architecture" approach, which layers the attributes at a pan-Canadian food and agriculture sector level. For instance, Canada's environment is leveraged in sector messaging.

330. The Canada Brand was officially launched in 2006, with an application process to enrol Members. Through the Canada Brand, the Department of Agriculture and Agri-Food Canada provides a bank of tools, free of charge, to support industry marketing activities. These include graphics and logos that can be used in company or association marketing materials or on labels. The Canada Brand is aimed at Canadian companies, industry associations, federal, provincial, and territorial governments, academia, or other entities that have a role to play in the marketing and promotion of Canadian food and agriculture products. In support of licensing the brand to Canadian entities that have a role in producing, promoting or supporting Canadian food and agriculture products, Canada obtained protection for the Canada Brand logo under Canada's Trade-marks Act.

331. To conclude, Canada would like to thank the co-sponsors for the discussion on the important issue of innovative approaches to assisting in branding, promotion and the creative industries. We would like to once again thank all Members for sharing their insights, and for the opportunity to present on Canada's national experiences.

11.8 Chile

332. We would like to thank the proponents of this agenda item for giving us a chance to share some joint initiatives we have with the public and private sectors.

333. First of all, we would like to refer to the programme of sectoral trademarks spearheaded by ProChile, the agency entrusted with promoting the exportable supply of Chilean goods and services.⁶

⁶ The PowerPoint presentation is available in Room Document RD/IP/33.

Sectoral trademarks

334. The sectoral trademarks programme is a public private partnership whose aim is to help national productive sectors consolidate their position on the international market through the design and implementation of sectoral trademarks that are representative of the various national productive sectors that help project Chile's image abroad.

335. In this way, sectoral trademarks seek an opening to the world under a brand that unites different companies from the same sector using common strategies and tactics.

336. Among other things, sectoral trademarks help make the distinction while encouraging the association of productive sectors. This promotes economies of scale, which in turn helps to project onto the international arena small and medium sized enterprises that are associated with a sectoral trademark, thus aiding consumers to identify and remember their products and services.

337. Sectoral trademarks benefit throughout the year from their availability throughout the year, the active participation of the entities that represent typical products, co-financing of up to 60%, as well as the design and implementation of campaigns that can last up to 24 months.

The role of intellectual property in sectoral trademarks

338. Through the development of collective trademarks or certification marks, ProChile helps with the production of a user's guide and regulatory guidelines for trademarks and provides advisory services in the registration process.

339. These are some of the sectoral trademarks created as collective marks and certification marks.

340. Similarly, you can see here some of the sectoral trademarks broken down by different productive sectors.

341. Lastly, a demonstration of the sectoral marks and their presence.

Seal of origin

342. Another public private partnership initiative is the Seal of Origin programme led by the National Industrial Property Institute (INAPI) of Chile. The aim of this initiative is to promote, preserve, protect and develop traditional and unique products from Chile.

343. The seal of origin programme uses different intellectual property tools, including geographical indications, designations of origin, and collective and certification marks. The programme already includes 32 products, with another two requests in the pipeline. These include products in different categories such as handicraft, textiles, fruit, fish and salt, among others.

344. Lastly, we would like to leave you with the case of pottery from Quinchamalí.

11.9 European Union

345. The EU and its Members have a long-standing history of using branding and promotion in the creative industries as well as for other IP rights that have a particular attachment to specific regions.

346. With regard to the creative industries, the Creative Europe MEDIA programme plays a crucial role in supporting Europe's audio-visual sector through the development, promotion and distribution of thousands of films/TV series as well as support to training programmes, film festivals, cinema networks or distribution platforms. Since its launch in 1991, the MEDIA programme has supported the continuous transformation of the audio-visual industry and promoted creative collaboration across borders supporting individual regions in Europe. It has invested EUR 2.6 billion in European content, creativity and cultural diversity, helped in the development of thousands of films, their international distribution and promotion. It has forged links between professionals and provided high quality training for thousands of producers, directors and screenwriters. Each year, MEDIA supports around 2,000 European projects in film, television, including series and other audio-visual works, which are distributed in cinemas, on television and through video on demand platforms.

347. The core of the programme is supporting cross-border collaboration in Europe, between the MEDIA countries, but also beyond. The participation to the MEDIA programme is not restricted to the EU, but includes Norway, Iceland, Albania, Bosnia and Herzegovina, Montenegro, the Republic of North Macedonia, Serbia and Tunisia.

348. EU Members have numerous additional programmes, such as the UK's Creative Industries Clusters Programme, which brings together world-class research talent with companies and organisations from across the UK.

349. Furthermore, in the EU the tourism sector is one obvious area where branding and promotion of local products and services has significant importance. The European Commission through the COSME programme co-funds projects on tourism and Cultural and Creative Industries. Two calls for proposals on the synergies between tourism and Cultural and Creative industries were launched in 2017 and 2018. Six projects with 46 beneficiaries from 20 countries were awarded under the first call for proposals to develop and promote transnational tourism products, such as routes, itineraries, tourism offers, specifically related to European cultural heritage, with a particular focus on using Cultural and Creative industries - related technologies in promoting these tourism products and enhancing visitor's experience. In addition, seven projects under the second call for proposals with 54 beneficiaries from 18 countries will create tourism offers capitalising on the creative potential of Cultural and Creative industries and will develop innovative services and products to enhance existing or develop new tourism experiences. The implementation of the selected projects will run until 2021.

350. COSME also provides for specific actions directly aiming at Cultural and Creative Industries. The WORTH partnership project supports collaboration between SMEs or start-ups, creative professionals and tech-providers with the objective to develop new products, services and business models. Through this initiative, the European Union wants to:

- a. Promote design and creativity as innovation-trigger;
- b. Help SMEs and creative professionals to share knowledge & competences;
- c. Support transfer of knowledge & competences across different regions in Europe;
- d. Support European know-how and artisanal skills at local and trans-national level; and
- e. Upgrade and create high value-added products/services.

351. By the end of 2021, the WORTH partnership project will provide 150 partnerships with different kind of support, such as funding (i.e. EUR 10.000 each partnership), legal advice on IPR-related issues, business advice (i.e. market analysis, business planning), coaching (i.e. design-thinking and preparation to trade shows).

352. Finally, recognizing and fostering the value of local products through a unique branding and promotion strategy at the international, national and regional level can also be important for certain IP intensive sectors in rural areas. Development and promotion of special unique IP-protected products or services that are produced or provided only in a specific geographic area, increases tourism and the regions reputation and exports. Ultimately, it boosts the local economy.

353. The EU and its Members therefore have an important agro-food promotion policy that also includes Geographical Indications. Promotion measures aim to increase consumers' awareness of the merits of the Union's agricultural products and production methods and to increase the awareness and recognition of the quality of these local and regional products. In addition to promotion programmes, the EU carries out actions such as presence in international fairs, communication campaigns or the organization of export seminars. Such promotion campaigns create a platform to share information with a very diverse public and above all amount to a 'business card' for European regions in foreign markets.

354. Of course, specific promotion of local and regional products is carried out as well by a large number of EU Members. For example, the administrative body in charge of the management of quality labels in France has done very innovative education campaigns. Local and regional products

are used to promote both the territory from which the product comes from and tourism activities associated with it. In Italy, the government provides financial support to Italian regional consortia that face legal challenges. Also, the UK government in its "Food is GREAT" campaign, together several key private sector partners, promotes regional specialities.

355. IP policy-making should enable local communities at all levels of development to recognize and market their own knowledge production. Economic remuneration from cultural production in this manner will be an important source of revenue and stimulus for development in the Knowledge Age.

356. Products and services with regional links empower local communities to commercialize their products and services by creating markets for local communities' reputable products and services recognizing and reinforcing cultural contributions and reward the creativity of traditional and innovative knowledge holders. They can be part of a successful regional development strategy in countries of all levels of economic development.

11.10 Korea, Republic of

357. As a co-sponsor of the agenda item "IP and Innovation", Korea is pleased to have the opportunity to share some of its experiences of the public sector actually helping creative businesses to thrive through the development and protection of IPs.

358. The Korean government has exerted tremendous efforts to boost creative industries, often referred to as "content industries" in our country. We have done so in an integral way. And such efforts have spanned film, music, and broadcasting.

359. The overall objective of such government support is to help those content industries to fully harness their competitive edge – and fully realize their potential - by building and utilizing IP rights, in particular copyright. Elements in this include the strengthening of IP capacity. They include the protection of IP. And they include also expanding their operations to global markets.

360. Such endeavours are indeed unfolding in these three main pillars. Firstly, the government has assisted in the strengthening of IP capacity of creative businesses, especially small businesses. IP rights are regarded as one of the fundamental stepping stones that can help small content businesses to take great strides forward. The Ministry of Culture, in conjunction with the Korea Copyright Commission, is providing them with specialized consulting services on key features of IP as well as know-how on developing and utilizing IP including branding.

361. Secondly, protecting the IP that those creative industries have established is another important pillar of the activities by the public sector. The Korea Copyright Protection Agency operates a help desk that handles IP infringement of Korean creative industries, both on-line and off-line, and often at the request of those firms. And the help desk also undertakes real-time monitoring of possible cases of infringement.

362. Last but not least, as more and more Korean content industries go global these days, the public sector is facilitating 'creative businesses' access to foreign markets by providing a range of market information including on distribution channels and legal systems. In addition, the Korean government has stepped up its efforts to tackle various forms of copyright infringement abroad in a whole range of content industries. The government has exerted utmost efforts to establish a collaborative system to handle various IP-related issues in close cooperation with the foreign government in the country where the infringement has taken place.

363. I would like to share with you an example of a small enterprise that has, through the development of copyright, truly succeeded in realizing its potential. A small company "Arima Corporation", an animation production company, was able to capitalize on its IP rights with the assistance of consulting services provided by the Korea Copyright Commission. Garnering its competitive edge, this company has expanded its activities to China, exporting its English animation content to numerous agencies, including Broadcasting in China.

364. Drawing on such experiences, our government will continue to work hard in order to boost the creativity and competitive edge of Micro and Small and Medium-sized Enterprises (MSMEs) by building IPs.

11.11 Benin, on behalf of the LDC Group

365. The Group of LDCs wishes to thank the co-authors of document IP/C/W/653/Add.1. It raises a number of major issues.

366. The group is interested in certain aspects of this communication. However, it is not in a position to comment on this communication during this meeting. It will revert to it subsequently and will not fail to formulate action-oriented recommendations.

11.12 Ukraine

367. We would like to thank the co-sponsors for both putting the topic of private-public collaboration in innovation on the agenda of the meeting and the communication circulated earlier, as well as for their insightful presentations.

368. To contribute to this debate, Ukraine would also like to share its experience of private-public cooperation in the sector of creative industries.

369. We believe that protection of intellectual property rights for creative products is one of the strategic goals on the path to development of creative industries in Ukraine. Thus, the Ukrainian government continues to take necessary steps to improve both legal and business environment that would facilitate the growth of the creative industries within the country. As a result, in 2018 Ukraine ranked 43 out of 126 countries on the Global Innovation Index as compared to 56 in 2016.

370. In 2017 the initiative "Creative Ukraine" was launched in order promote better cooperation between the government, civil society and creative businesses. The international forum "Creative Ukraine" is a platform for political and expert discussions on the development of state policy in the field of cultural and creative industries. This forum aims to enhance public-private cooperation in at national and regional levels.

371. The Second Annual International Forum "Creative Ukraine", organized by the Ministry of Culture of Ukraine, was held in November 2018 and gathered international experts and European policymakers in the field of creative economy to discuss the ways of combining the efforts of the Government, private sector and the community in shaping the national policy in the sector of creative industries.

372. The discussions during the Forum in 2019 will be centred around the ways to further facilitate Ukraine's integration into the EU single digital market in the context of intellectual property rights in the field of creative industries.

373. Considering the latest tendencies in the cultural policies, in particular digitalization, decentralization, mobility, urbanization, inclusivity, Ukraine pursues modern technologies as an instrument that provides for an equal access to culture, encourages development of creative forms of self-expression, allows for an internationalization of creative products and simplification of conditions for protection of intellectual property rights.

374. Ukraine is interested in further discussions on the topic and looks forward to learning more about other Members' experiences in this sphere.

11.13 Colombia

375. I would like to present to all Members the Colombian initiative to foster creative industries as an important driver for our economy.

376. In the last 20 years, the conception of cultural and creative industries as a vehicle of economic and social development has been gaining more and more momentum in the country. As a background to this growing interest, it is worthwhile to refer to the pioneering studies carried out by the Ministry of Culture, hand in hand with various public and private sector entities and the academia, within the framework of the economy and culture initiative (for example: "Mapping of creative industries in Bogotá and Soacha", "the economic impact of cultural industries in Colombia, and the "economic and cultural future of the record industry", among others).

377. Similarly, the process of the Internal Agenda for the Culture, Media and Advertising Sector and CONPES 2659 of 2010: National Policy for the Promotion of Cultural Industries in Colombia, allowed the recognition of the main needs of the sector (distribution, financing, human capital, promotion, use of new technologies, local development, among others) and the definition of a public policy for the use of the competitive potential of cultural industries.

378. Another noteworthy factor is the sectoral promotion laws implemented in the country, pioneered by Law 98 of 1993 (Book Law), which is responsible for the good performance of the Colombian publishing sector. Likewise, Laws 814 of 2003 and 1556 of 2012 implemented a parafiscal contribution and a tax incentive for private investment in national films, and developed an adequate legal structure for the production of foreign cinematographic productions in the country. Finally, Law 1493 of 2011 concentrates on the stimulation and formalization of public performing arts shows and the development of their infrastructure.

379. On the other hand, based on the previous achievements, the current Government has been working on the design and implementation of a systemic and articulated approach that allows for the integral strengthening of the cultural and creative industries in the country. A first reference to understand the work that the Government has been developing around creative and cultural activities is Law 1834 of 2017 (better known as the Orange Law/Ley Naranja), which has as its main purpose to protect and promote this type of industries in the country through a work focused on 7 strategic lines (information, institutions, industry, infrastructure, integration, inclusion and inspiration), which respond to the main challenges faced by entrepreneurs and orange economy entrepreneurs.

380. Within the framework of the Orange Law, creative industries are conceived as those sectors that combine creation, production and commercialization of goods and services in intangible contents of a cultural nature, and/or those that generate protection within the framework of copyright. They also include, but are not limited to, the following sectors: publishing, audiovisual, phonographic, visual and performing arts, tourism and tangible and intangible heritage shows, artistic and cultural education, design, advertising, multimedia content, interactive audiovisual content and services software, fashion, news agencies, and information and creative education services.

381. In response to the actions proposed in this law, our Government created the National Council of Orange Economy formed by the Ministry of Culture, Ministry of Internal Affairs, Ministry of Finance and Public Credit, Ministry of Labor, Ministry of Trade, Industry and Tourism, Ministry of National Education, Ministry of Information Technologies and Communications, National Planning Department (DNP), National Administrative Department of Statistics (DANE), National Learning Service (SENA), National Department of Copyright (DNDA) and the Financial Agency for Territorial Development (FINDETER).

382. This Council, under the leadership of the Ministry of Culture, has been laying the foundations of the National Orange Policy, based on the same components and principles set forth in Law 1834 of 2017 (the seven i's). It is important to emphasize that the Policy takes into account the diversity of agents present in the sector (community and non-profit organizations, emerging ventures, consolidated ventures and large companies) and that it is being built through an articulated work between the different governmental entities. At present, this Council has managed to involve more than 30 of them and around 30 organizations from the private sector and the territorial domain.

383. Likewise, for the first time, culture and creativity have a strategic place in the National Development Plan through the Pact for the Protection and Promotion of our Culture and Development of the Orange Economy, which condenses a series of actions aimed at the development and consolidation of creative sectors focused on the generation of information, strengthening the institutional environment, the development of creative industries, the generation of infrastructure, the integration of the orange economy with international markets and other productive sectors, the inclusion of human capital and the promotion of intellectual property as a support for creative inspiration (the seven i's). This Plan, structured under the guidelines of the National Council of Orange Economy, contains ambitious goals for the four-year period 2018-2022, among which the following stand out:

- a. Increase exports in orange economy by USD 1,000 million;
- b. Increase Foreign Direct Investment in orange economy by USD 200 million; and

- c. Implement five Orange Development Areas (ODA). Hubs of economic activity that will promote the identity and creative vocation of the communities in which national and international private investment will converge and will generate a critical mass of industries, creative and innovative people.

384. In the same way, it is worth noting that the action of the National Council of Orange Economy is projected as a long-term policy of "Orange State", which transcends the current government, and which is also aimed at economic development through the strengthening overtime of a comprehensive initiative for the creative and cultural economy.

385. The last initiative that I would like to present is lead by the governmental agency that supports entrepreneurial initiatives -iNNpuls Colombia- in an articulated fashion with the other governmental entities, and it is aimed at advancing in the design of instruments to support entrepreneurship and enterprises of the Orange Economy. Among the main projects for 2019 the following can be highlighted:

- *Aldea Naranja/Orange Village*: Through a series of challenges seeks to build a community where entrepreneurs and innovative orange entrepreneurs have the opportunity to meet and interact with a community of experts and advisors who will help them overcome the most difficult barriers in order to grow. These entrepreneurs will receive access to specialized services, tailored to their needs and within the scope of their business model, and will even have the opportunity to receive support geared towards identifying their financing needs and the most appropriate funding sources.
- *Capital Naranja/Orange Capital*: It is a fund to support Orange Economy entrepreneurs, through the granting of non-refundable resources to finance their growth plan.
- *MEGAi Naranja/MEGAi orange economy*: An instrument aimed at companies in the orange economy sector so that, through corporate entrepreneurship, new business models can be developed that generate new sources of income for the company.
- *Orange Roadmaps/Hojas de ruta naranja*: Instrument for mapping regional productive priorities related to the orange economy and for the identification of business segments in which they must compete.
- *"Start-up-rathon" on Orange Economy/ Emprendetón Naranja*: an instrument to transfer business acceleration tools for the cultural and creative sector in favor of sustained growth.
- *Orange Route/Ruta Naranja*: Provides 12-month guidance to orange ventures and funding at the end of the process for them to grow and accelerate.

386. As a final message, we would like to express our support to continuing sharing experiences in the WTO with the purpose of strengthening public policies related to the Orange Economy.

11.14 Norway

387. Norway would like to thank the sponsors of document IP/C/W/653 and Japan for introducing it.

388. We agree that governments and the public sector have a role to play in supporting the private sector through innovation policies that include branding and promotion strategies. Our national business development agency - Innovation Norway - provides a broad business support system with toolkits for IP protection and promotional services, among other advisory services.

389. I will, however, focus on the creative industries. Since 2017, the Norwegian Government has scaled up its support for the cultural and creative industries. Relevant public agencies like Arts Council Norway, Innovation Norway and Norwegian Arts Abroad carry out specific missions in this regard. These missions aim to increase the awareness of culture as business, strengthen the value chains in all parts of the country, and stimulate investment and procurement of art and cultural goods and services, as well as increased exports.

390. The mission of Arts Council Norway aims to strengthen the enabling environment for creative and performing artists and stimulate projects that can test new methods and models for marketing, efficient revenue models and information to customers, with an emphasis on the digital market.

391. The mission of Innovation Norway focuses on companies within the creative industries with potential for growth, in order to provide better access to finance and competence that enable entrepreneurship. The aim is to increase domestic investment in cultural and creative goods and services, including intellectual property rights. Innovation Norway also provides export promotion programmes for specific cultural sectors like video games, architecture, literature, and music.

392. Finally, let me underscore that the role of IPR for value creation is crucial for the policies I have mentioned. Our government last November issued a white paper on culture to our parliament (The Storting) - titled The Power of Culture. One of the deliverables to come is a national strategy for intellectual property values. The strategy will aim to stimulate increased investment in building, securing and deploying intellectual property rights and values.

11.15 Russian Federation

393. The Russian Federation thanks all co-sponsors for putting the item on the agenda.

394. Our delegation strongly believes that smart regional branding strategies affect positively regional and national economy as well as promote cultural heritage.

395. Regional brands are understood in Russia as specific marks that accompany local products coming from a certain specific region of the Russian Federation. The respective marks indicate a specific territory of origin, which determines defining features and characteristics of the product.

396. More specifically, Appellations of Origin (AOs) are destined to be used in order to attest for the origin of products and to underscore unique features of the product coming from the region. Use of AOs as regional brands improves visibility of the respective regions, promotes their natural and cultural heritage. It ultimately serves to attract investors and tourists and generally improves its economy. Therefore, effective branding may be included as a part of the region's public policy.

397. In practice, however, local products are more often marketed under trademarks (including collective trademarks) registered in the Russian IP Office. Such Trade Marks usually contain certain elements that indicate the respective regions, including those evocative of AOs. This is due to more complicated administrative procedures for registration of AOs as compared to registration of trademarks.

398. In recent years, the Russian Patent Office (Rospatent) has invested significant efforts into outreach activities aimed at a wider use of AOs by regional manufacturers in order to protect traditional local products that possess unique characteristics. In particular, Rospatent organizes in various regions of the Russian Federation workshops dedicated to registration of AOs, develops guidelines and manuals on the said topic and on publishes information on recognized regional brands on its official website on a regular basis.

399. Such activities have already yielded certain positive results. The number of applications for AOs has dramatically increased in 2018 by 78% as compared to 2017. Currently, there are more than 200 AOs registered in the Russian Federation, more than 160 of which correspond to national brands. However, this is still a relatively small number as compared, for instance, with more than three thousand GIs registered in the EU.

400. In future, based on the best practices of many foreign IP Offices Rospatent plans to issue promotional brochures on regional brands containing information on the historical background of the local products.

401. In order to further improve the situation legislative amendments are being drafted to introduce GIs onto the list of IP rights recognized under the Russian laws. As compared to the AOs, GIs would allow for an easier registration procedure, while providing the same level of protection.

402. Despite this, there is no need to exclude AOs from the list of IP rights protected under the Russian laws. AOs are best suited for protection of local crafts products. In addition to that, use of both mechanisms (AOs and GIs) corresponds to the general international tendencies in the IP field. For instance, this trend is reflected in the Geneva Act of the Lisbon Agreement and is also compatible with the TRIPS Agreement.

11.16 Mexico

403. Mexico would like to express appreciation to the proponents of the present agenda item, which provides a great opportunity to exchange experiences and opinions.

404. The delegation of Mexico is pleased with the proposal contained in document IP/C/W/653 because, among other things, it uses the word "innovation" in its broadest sense, thus giving it real scope without limiting it to invention alone. This proposal is inclusive for different sectors of the population and views innovation not only as something of great technical value, but also considers it as a prerequisite for promoting a regional, local and rural focus, applicable to all countries, irrespective of their level of development. It represents a step forward by linking promotion to creativity, fostering regional development as a by-product.

405. On this occasion we would like to share Mexico's experience in the protection of intellectual property rights, which has served as a driver of development for rural communities and the creative industry, making a positive impact on the local economy by marketing products and services.

406. Examples abound in Mexico, but we will limit ourselves to two: the first is a collective trademark that impacts the rural indigenous community composed mainly of women, while the second is a mark that includes different aspects of the film industry.

407. The collective mark, known as "Tenangos Embroidery from Hidalgo", was registered by an association of craftsmen and women from the Theotomí Tepehua region, an indigenous community in the state of Hidalgo, whose Members considered that their creations needed legal protection since their products are gaining increasing international fame.

408. "Tenangos" are multicoloured embroidery work with designs of birds, flowers, fruits, animals and some bucolic scenes worked onto cotton blankets, tablecloths, clothing and accessories.

409. Submitting the request to register a collective trademark was possible with the support of the local government of the state of Hidalgo. The association of craftsmen would design the brand and initiate the process to have it registered.

410. This collective trademark greatly benefited craftsmen and women of Tenangos, while also enabling fair trade, and the preservation of their creations and traditions. It also represents an advantage for consumers, who, when purchasing Tenangos handicraft, have the assurance that those pieces of embroidery work are made by persons from the region and are subject to certain quality standards.

411. The second example is the brand "International Film Festival of Morelia", which covers a film festival of world renown since 2003 in the city of Morelia, capital of the state of Michoacán.

412. This Festival promotes new talent on the domestic film scene and helps to foster cultural activities and tourism in the state of Michoacán. It is organized by a not for profit civil society association that receives funding from public and private institutions. Its main promoters are the Cinépolis cinema chain, the local government of the state of Michoacán and the Ministry of Culture of Mexico, as well as other civil society actors.

413. Every year in October, the city of Morelia is transformed into a major tourist destination that attracts both locals and foreigners, who come to enjoy the city and the Festival, thus promoting the region's culture and economy. For just over 15 years, this Festival has demonstrated the nexus between the promotion of products and services through intellectual property rights and the development of the state of Michoacán.

11.17 China

414. China thanks Australia, Canada, Chile, Europe Union, Japan, Switzerland, Chinese Taipei, United States of America, Singapore and Korea for submitting this document.

415. China emphasizes the important role of innovation and IP protection in promoting new economics and cultivating business-friendly environment.

416. In order to encourage innovation and creativity, Chinese public entities have taken a series of actions to help the innovators to raise the awareness of IPR protection and enhance the ability of IPR management.

417. China National Intellectual Property Administration with related government authorities and agencies enacted 'Enterprise intellectual property management standard' in 2013. As a non-mandatory requirement, the standard provides detailed suggestions on enterprise IP management for enterprises, especially SMEs, to follow. The standard covers almost all related aspects including IP system and institution building, staff training, IPR transfer regime, licensing contract control, risk evaluation of R&D and etc. According to the survey conducted by China National Intellectual Property Administration, in most cases, enterprises that comply with standards possess modernized IP management, create more ideas, and enhance IP protection and utilization capabilities greatly.

418. In order to help agricultural brands to be recognized by the consumers, Ministry of Agriculture and Rural Affairs with related government authorities and agencies produced a series of documentaries named 'Tastes of China'. The documentaries selected agricultural products with Chinese features from the registered argo-product geographical indications. The documentaries not only introduce the food but also tell the geography, ecology and humanities stories behind them. The documentaries broadcast every Friday night in prime time and got very positive feedback. The 'Tastes of China' have a significant role in boosting the local economy.

419. National Copyright Administration continuously increases efforts on promoting local creators to grow their business. During the 9th Beijing International Film Festival, the National Copyright Administration helps establish a copyright trade platform on the event site. The copyright trading platform provides a convenient and quick channel for both parties to make copyright licensing negotiations.

420. In conclude, China values the important role of public-private collaboration in helping business to expand their economic opportunities and will continuously increase efforts on promoting public-private collaboration in IP area.

11.18 Indonesia

421. We thank Japan for the document IP/C/W/653 and also for Members that have shared their success experiences in advancing creative industries.

422. The copyright and creative industries are among the most dynamic sectors in the world economy regarded as an emerging high-growth area. Aside from creating jobs, economic growth, and value addition, creative industries also help establish a stronger national identity.

423. Copyright and creative industries leverage knowledge and information, that in turn triggers innovation, creating social and economic wealth for society and contributing to the achievement of the Sustainable Development Goals.

424. Moreover, Creative economy grows and thrives as a liaison among culture, economy, and technology. Its ecosystem consists of many different industries, sectors, and stakeholders, covering a wide spectrum of economic sectors, from traditional cultural and craft industries that are dominated by MSMEs to new businesses in the digital era, with specific IP needs that often combine different types of IP rights, including copyright, patents, designs and trademarks.

425. Based on these reasons, creative economy has become a sector that the Government of Indonesia has been focusing its attention.

426. Around half of Indonesia's population is below thirty years of age. With strong entrepreneurial and Do-It-Yourself (DIY) cultures, young and tech-savvy Indonesians are starting to unleash the creative potential of the country. Discussions surrounding creative economy have become ubiquitous, leading to the establishment of Indonesia's creative economy agency (BEKRAF) in 2015. This government agency coordinates national policy making and strategies to support the creation and marketing of national cultural goods and services, both domestically and abroad. In 2017,

creative industries contributed to 7.4% of Indonesia GDP and absorbed more than 13 million workers.

427. Indonesia is now drafting a law on the Creative Economy. The draft law defines Creative Economy as the materialization of added values from intellectual property, born of human creativity, based on science, culture and technology.

428. In supporting the development of creative industries, Indonesia has policy to facilitate IP registration for stakeholders to increase. This will ultimately increase the IP protection as well as utilization of its commercialization, through cross-ministerial/institution collaboration, such Directorate General of IP, BEKRAF, Ministry of Industry, Ministry of SMEs, Ministry of Agriculture, Ministry of Research and Technology, and IP Clinic of Universities.

429. In order to improve excellent services as well as to provide legal certainty, Indonesia has also provided e-copyright recordation since 2018.

430. Moreover, Indonesia has formed Collective Management Organizations (CMOs) and the National Organization of Collective Management, with particular emphasis on musicians, writers, and businesses who exploit such works for economic gains. Furthermore, Indonesia has launched an anti-piracy campaign across the country, as well as to close a number of websites that provide an illegal platform for music and film downloads.

431. Indonesia, through the collaboration among Directorate-General of IP, BEKRAF, the Financial Services Authority, the Central Bank of Indonesia, and practitioners, is formulating a national instrument/law to support an IP financing scheme. The financing scheme is aiming to enable the use of IP as a financial guarantee or funding in the development of the creative industry. Last but not least, Indonesia has created a Platform Project called "Portamento" which uses blockchain technology to connect copyright holders, users, and relevant authorities. This project enables the calculation of value with regard to works that are downloaded online.

432. Indonesia believes that a global platform for actors and stakeholders in the creative economy industry is essential for the development of this issue. Toward this end, and to fulfil the demand on partnership and collaboration between countries in identifying and increasing the awareness on the creative industry strategy importance, Indonesia has hosted the first World Conference on Creative Economy in November 2018. The conference gathered all related stakeholders of creative economy, involving collaboration of the creative economy's penta-helix (that is Academics, Businesses, Communities, Government, and Media) in our effort to connect multi-dimensional elements and creative economy's stakeholders.

433. The World Conference on Creative Economy (WCCE) is the first international-level conference on creative economy. The conference was attended by representatives from over 30 countries and more than 1,500 participants and resulted in Bali Agenda for Creative Economy. Out of 21 Agendas, five directly link to the Intellectual Property including, Fostering the development of e-commerce and intellectual property as tools to drive growth, narrow the digital divide, and generate digital solutions for developing and least developed countries (LDCs), as well as supporting an enabling environment that promotes innovation, commercialization and protection of intellectual property.

434. Given the impact of the creative industry for the inclusive economic growth, today and in the future, Indonesia will continue to give special attention to the creative economy. We will readily share the updates on this important issue in the future.

11.19 India

435. India would like to reiterate that while IPRs may provide an incentive to innovate, they are neither a necessary nor a sufficient condition for innovation and could only be effective in certain contexts. It is necessary to strike an appropriate balance between the incentives for innovation and ensuring that their benefits are reaped for the societal benefit in an equitable manner.

436. Though, India realizes importance of innovation and keeping that in view, India has taken many steps to improve the innovation eco system-whether it is through improving the quality of

human resource or the research and development activities or strengthening of academia-industry linkages and availability of capital.

437. We thank the co-sponsors for introducing the item of innovative approaches to assisting in branding and promotion and the creative industries.

438. Innovation has been a central pillar of economic growth and development in India. In the past three years India's rank in the Global Innovation Index has improved from the 81st rank in 2015 to the present 57th rank in GII 2018 report. India maintains the first rank in the Central and South Asia region and remains the top exporter of ICT services according to the report.

439. To reach out to the remotest corners of our country, IP awareness programmes are being conducted using satellite communication. In one such program, 700 colleges were connected online for IP awareness covering over 1,00,000 students. Focus is being given to develop e-content and disseminate content through online channels. India's first IP Mascot – "IP Nani" – has been launched. A series of animated videos on Intellectual Property Rights for school students have been launched in collaboration with European Union Intellectual Property Office (EUIPO).

Helping MSMEs to grow their businesses through the use of IP.

440. CIPAM (Cell for IPR Promotion and Management) in collaboration with Ministry of Micro, Small and Medium Enterprises (MSMEs) organized a five-day intensive IPR training for MSME Officers pan India for Development Institutes (DI) and Branch Development Institutes (BDI). A total of 30 MSME-DIs (formerly SISIs) and 28 Branch MSME-DIs (formerly SISIs) set up in State capitals and other industrial cities all over the country were trained at Hyderabad. Through this training, they have been further enabled to provide IPR related services to MSMEs and change the IPR eco system nationwide.

441. The Indian Performing Right Society Limited ("IPRS"), was granted registration as a Copyright Society by the Government of India in November 2017 under the Copyright Act, 1957. It represents more than 4000 Indian Authors, Composers and major Music Publishers.

Building Brand India through Film Tourism

442. Indian film industry achieved exponential growth of 27% in 2017- both domestic and international. Coupled with increased revenues from sale of satellite and digital rights in recent years, gross realization from the film industry is expected to reach around USD 3.7 billion by 2020.

443. Currently, India is also gaining momentum as a film shooting destination, providing unexplored and mystic locations as well as generating employment and cultural exchange with local communities. After the success of India based movies such as Slumdog Millionaire, several international studios are considering shooting a large portion of their films in India due to availability of talented filmmaking crew and world-class production capabilities at highly competitive costs.

444. Ministry of Tourism, Government of India is supporting a program- Global Film Tourism Conclave with the theme 'Transforming Location into Vacation', being organized by PHD Chamber of Commerce and Industry.

445. Rising incomes, evolving lifestyles, higher penetration and a rapidly growing young population coupled with increased usage of 3G, 4G portable devices would augment demand for creative industry in India.

446. One of such industries driven by high-end innovation is Animation and VFX industry in India which has reached INR 73.90 billion (USD 1.15 billion) in FY18 from INR 62.30 billion (USD 928.60 million) in FY17, growing at a CAGR of 18.60%.

11.20 Brazil

447. Brazil welcomes the document presented by Japan and other proponents as a starting point for further reflection on the role of governments in encouraging branding related to creative industries.

448. In Brazil, the role of government as an incentive for IP-related economic activities has been constantly renewed to increasingly incorporate elements such as transparency and efficiency. In particular, we would like to highlight some recent aspects of this role.

449. Brazil's Ministry of Agriculture, Livestock and Food Supply (MAPA), the National Institute of Industrial Property (INPI) and the Brazilian Micro and Small Business Support Service (SEBRAE) have achieved, for instance, considerable results in recent years in the areas of designation of origin and geographical indications.

450. In 2018, the Ministry of Agriculture has launched the brand "Agro Brazil - Good for Nature", which promotes Brazilian agribusiness while clarifying that agriculture and environmental preservation can go hand in hand.

451. Let me also share with you a successful spinoff case. Akwan Information Technology was founded by a group of university professors from Federal University of Minas Gerais, in Belo Horizonte. Akwan provided search services to companies in Brazil. It also operated the website "todobr.com.br" a search engine that was acquired by Google in 2005. After the acquisition, it became Google's R&D centre for Latin America.

452. In a more systemic perspective, the Brazilian government has strived to broaden the dissemination of Brazilian brands by promoting greater integration between our legal framework and those of our major trading partners. A significant feature of this approach is the recent approval by the National Congress for Brazil to join the Madrid Protocol. Meanwhile, our National Institute of Industrial Property has reduced the trademark analysis process by only nine months as of the filing date.

453. Our discussion could include other horizontal elements, such as the limited resources available in small companies for expenses with legal services for the registration of a trademark. Enforcement measures and the need for surveillance of possible infringements of IP assets are also an issue to be taken into account. Brazil believes that Members would greatly benefit from the exchange of experiences on solutions found for this matter.

454. Additionally, on copyright, Brazil supports placing creators back in the centre of IP rights by means of enhancing transparency in the use and remuneration of copyright protected works. Current discussions in the United States and the European Union on reform of their copyright legislation include the fundamental issue of the fair remuneration of authors in the digital environment.

455. Many formats are debated around the world, but a common point to them is the necessity of providing additional information to right-holders on the value chain related to the use of copyrighted works. The key motivation is to ensure that the fruits of the online environment are fully enjoyed by those who lie at the core of the copyright system, namely, authors and performers.

456. Brazil is deeply committed to encouraging and rewarding innovation to all inventors big and small and its dissemination in the economy and society.

11.21 Peru

457. The delegation of Peru would like to thank the proponents of this proposal.

458. Specifically, this delegation appreciates and views positively the inclusion of the idea to develop the country brand. We have listened to the references made to the success stories in Australia, Canada and Chile as one of the strategies which, combined with the appropriate promotion and development of trademarks in different sectors of the economy, in particular creative industries and those linked to innovation, promote company and business growth. This delegation would thus like to recall that it presented to the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), an initiative aimed at affording protection and international recognition to the country brand.

459. Similarly, I would like to underscore the importance of developing collective trademarks as a tool for protecting rights and promoting creativity, especially in local communities, among rural producers and micro, medium sized and small enterprises. Thanks to the coordination of the National

Intellectual Property Office and various private sector actors, in 2018 close to 850 collective trademarks in different regions of the country were registered, recording a growth of 1,000% compared with the previous year.

460. Lastly, my delegation would like to share in subsequent sessions and with greater detail other significant experiences in this area, as well as discover those in other Members.

12 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

12.1 Dispute Settlement

12.2 Amendment to the TRIPS Agreement

12.2.1 Cuba

461. In the ceremony with the Director-General, Cuba submitted its Instrument of Acceptance of the Protocol of Amendment to the Agreement on Trade-Related Aspects of Intellectual Property Rights.

462. Cuba once again reaffirms its longstanding respect for industrial property rights, which is balanced accordingly with public policies, and in particular supports the international legal framework that provides for a mechanism to ensure access to medicines for the least developed and developing countries.

463. The challenge for these Members is to promote access to medicines and to ensure such access.

12.3 IPR-Related Issues in Trade Policy Reviews

12.3.1 WTO Secretariat

464. As in previous occasions, the Secretariat will provide a brief update of the issues related to intellectual property policy that have come up in the most recent Trade Policy Reviews.

465. Since the last TRIPS Council Meeting in February, the Trade Policy Reviews of Ecuador, the East African Community (comprising Kenya, Tanzania, Uganda, Burundi and Rwanda), Bangladesh, Samoa, Papua New Guinea and Trinidad and Tobago have taken place. During these reviews, developed and developing country Members have continued to actively register their interest in TRIPS-related issues, such as:

- Implementation of the TRIPS Agreement;
- Exhaustion regime;
- Copyright regime, including satellite and technological protection measures;
- Geographical indications regime;
- Protection of traditional knowledge and cultural expressions;
- Protection of plant varieties;
- Enforcement, online and at the border, including coordination between IP Offices and Customs Authorities;
- Notifications to the TRIPS Council;
- Establishment of paperless registration systems;
- Implementation of national intellectual property strategies;
- Graduation from LDC status and implementation of related legislation; and
- Accession to, and implementation of, WIPO instruments.

466. We have also prepared the TRIPS-related section for the mid-year G20 and WTO-wide Director-General's Monitoring Reports, which will be circulated in early July.

467. The section on "Policy Developments in Trade and Intellectual Property" in the monitoring reports highlights the trade-related IP policy initiative undertaken by Myanmar; as well as the information on developments in domestic legislation and administrative issues submitted for the monitoring exercise by Australia, Chile, China, Indonesia and Thailand.

13 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

13.1 South Africa

468. South Africa notes that there are still several pending requests for the granting of observer status to the TRIPS Council. South Africa reiterates its support for observer status to be granted to the ACP Group that can derive great benefit through its progressive integration into the global economy. South Africa further reiterates its previous calls for Members to agree on granting observer status to the South Centre and the Secretariat of the Convention on Biological Diversity (CBD).

13.2 Bangladesh

469. On the issue of observer status, the delegation Bangladesh reiterates its position stated in the earlier meetings. Bangladesh would like to support the South Centre to be granted observer status to this Council.

13.3 Venezuela, Bolivarian Republic of

470. My delegation wishes to underscore the important work carried out by the South Centre in this area and reiterates its support for the Centre to be granted observer status in the Council for TRIPS.

13.4 China

471. China supports that the CBD Secretariat and South Centre should be granted observer status, at least on an *ad hoc* basis.

472. The relationship between TRIPS Agreement and CBD is an important issue in this Council. It is no doubt that the CBD Secretariat has a better understanding of specific rules and the latest developments of the CBD and the Nagoya protocol. We believe that the invitation of the CBD Secretariat as an observer will help Members better understand the CBD, thus promoting discussions on TRIPS/CBD issue.

473. Over the years, the South Centre has conducted multiple researches and analysis oriented on IPRs, technology transfer, and access to knowledge. We believe that the invitation to the South Centre as an observer will help Members have a better understanding of TRIPS Agreement and related issues.

13.5 Bolivia, Plurinational State of

474. Bolivia reiterates its support that the South Centre should be granted observer status.

13.6 India

475. India supports the demand by South Africa and China to grant observer status to South Centre, CBD Secretariat, and ACP Group.

13.7 United States of America

476. The U.S. reiterates its position. The U.S. cannot join the Members seeking to include new requests as observers, either on a permanent or *ad hoc* basis.

477. The United States values the contributions of Members and is satisfied with the current set of *ad hoc* and permanent observers.

478. We do not see a gap that needs filling by adding new observers at this time.

13.8 Brazil

479. Brazil notes its support to the granting of an observer status for the Convention on Biological Diversity.

14 OTHER BUSINESS

14.1 Annual Review of the Special Compulsory Licensing System

480. No statements were made under this agenda sub-item.

14.2 Annual Review under Paragraph 2 of the Decision on the "Implementation of Article 66.2 of the TRIPS Agreement"

481. No statements were made under this agenda sub-item.

14.3 Other Planned Activities for the Benefit of LDCs

14.3.1 Benin, on behalf of the LDC Group

482. In February 2003, the Council for TRIPS instructed the developed Members to present their annual reports on measures they had taken or were intending to take with a view to implementing Article 66.2, which stipulates:

Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country Members in order to enable them to create a sound and viable technological base.

483. The annual reports were thus presented to that end. The Group wishes to thank those Members who have always presented their reports. However, the content of these reports does not always concern implementation of Article 66.2, which deals with the transfer of technology from developed countries towards LDCs and nothing else.

484. Certain reports provide lists of technical cooperation projects without really delving into the technology transfer aspect. This falls under the scope of Article 67 rather than Article 66.2.

485. To avoid such confusion, an outline has been made available to delegations for the submission of their reports. Very few Members have used it. The Group wishes to thank the Members and encourages them to make use of the outline in order to simplify the reports.

486. In addition to the format of the reports, the Group of LDCs has noted that developed Member countries and LDCs did not have the same understanding of Article 66.2 of the TRIPS Agreement. This being the case, it has requested an interpretation by the Council in order to ensure effective application of these provisions.

487. Via communication IP/C/W/640 of 16 February 2018, the Group of LDCs requested that the Council for TRIPS discuss the following matters:

- That the developed WTO Member countries only mention in their reports the incentives offered with a view to technology transfer to LDCs, thus ensuring that the reports are more specific and targeted in content;
- The meaning of "incentives to enterprises and institutions" as provided for in Article 66.2 TRIPS and agreement on the possible ways for developed Member countries to offer

incentives to their enterprises and institutions to ensure that these provisions are applied both in letter and in spirit.

488. It should be noted that the request made by the Group of LDCs has not been acted upon. Some Members have made it known that the Council cannot interpret Article 66.2, which the Group of LDCs disagrees with.

489. During the workshop organized on 11 and 12 February 2019 by the WTO Secretariat on implementation of Article 66.2, the Group of LDCs made specific mention of these priorities in terms of technology transfer based on room document RD/IP/24. Recommendations were formulated for implementation of Article 66.2, including the establishment of focal points in developed Member countries and LDCs.

490. The Group of LDCs encourages developed Member countries to follow up this initiative and to do the needful at its end to make this happen.

491. The Group of LDCs is nevertheless of the view that the focal points must have the same understanding of application of Article 66.2. This is why communication IP/C/W/640 of 16 February 2018 is so relevant.

492. Considering that the above-mentioned communication was never acted upon, and that the mandate contained in Article 66.2 TRIPS was given by the Ministers, the Group of LDCs foresees a ministerial decision at the Twelfth Session of the WTO Ministerial Conference in Nur Sultan (Kazakhstan) in order to clarify these provisions with a view to their effective implementation.

493. To this end, the Group of LDCs will carry out consultations with developed Member countries who are interested in the application of Article 66.2. It is already counting on the collaboration and active partnership of all developed Member countries and calls on them to pursue the effective application of Article 66.2 of the TRIPS Agreement.

14.3.2 Bangladesh

494. The delegation of Bangladesh fully associates itself with the statement made by Benin on behalf of the LDC group. Bangladesh acknowledges that, to create a sound technological base in the LDCs, we need support from the developed partners. Article 66.2 of the TRIPS Agreement point-blank directs us that, and I read from the legal text, "Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country Members in order to enable them to create a sound and viable technological base".

495. We urge upon the Members to note the expression of the modal verb 'shall' which does not indicate an optional action but directs a sense of obligatory requirement. Then, what is the obligatory action required here? Article 66.2 TRIPS clearly answers that the developed country Members are required to provide incentives to enterprises and institutions in their territories. Next, what is the purpose? Article 66.2 TRIPS again unequivocally narrates that the purpose is to promote and encourage technology transfer to least developed country Members in order to enable them to create a sound and viable technological base. In addition, we must be honest to accept that the responsibility to provide incentives clearly falls on the developed country Members and not on the private sector entities and enterprises.

496. The regular annual reports from the developed country Members do not clearly give information on incentives provided to enterprises and institutions in developed countries. Instead, these notifications contain lists of mostly technical assistance programmes and projects aimed to enhance capacities in the LDCs. These programmes, tremendously helpful for the LDCs, generally fulfil the requirements narrated under TRIPS Article 67 on technical cooperation. But does it meet the need of the Article 66.2 TRIPS obligation? This is why, the delegation of Bangladesh, along with the other Members, has been continuously encouraging the TRIPS Council to find out a way to help get the information whether any specific incentives were provided by the developed country Members to enterprises and institutions operating in their territories to fulfil the technology transfer requirement of the TRIPS Article 66.2.

497. We request the Members in the Council, to consider designating focal points from both the developed country and least developed country Members to monitor the implementation status of Article 66.2 of the TRIPS Agreement. Previously the proposal has been tabled on behalf of the LDCs. And the Members candidly discussed the issue during a number of previous meetings of this Council. This has also been recommended in the WTO workshop on implementation of Article 66.2 of the TRIPS Agreement in February 2019. Now, we need to move the monitoring issue forward to acknowledge the genuine contributions that the developed country Members have contributed to the LDCs. Bangladesh stands ready to engage in constructive discussion on the focal point and monitoring issue of Article 66.2 of the TRIPS Agreement.

498. The delegation of Bangladesh also sincerely thanks the developed country Members for their supports in numerous Technical Assistance programmes in the LDCs. Bangladesh also thanks the WTO secretariat for the February 2019 workshop on Article 66.2 of the TRIPS Agreement implementation and hopes that next workshop on the same issue will be a great success.

14.4 Work Programme on E-Commerce

499. No statements were made under this agenda sub-item.

14.5 Date of the Next Meeting

500. No statements were made under this agenda sub-item.

14.5.1 Mexico

501. Mexico would like to draw the attention of WTO Members to an interesting event in another forum that might impact the right to use trademarks. I am referring specifically to the meeting of the CODEX Alimentarius that took place from 13 to 17 May 2019 in Ottawa, Canada. That meeting discussed the draft Review of the Standard for Follow-up Formula (CXS 156-1987). Paragraph 9.6.4 of the draft indicates the following:

9.6.4 Products shall be labelled in such a way as to avoid any risk of confusion between infant formula, follow-up formula for older infants, (name of product) for young children, and formula for special medical purposes, and to enable consumers to make a clear distinction between them, in particular as to the text, images and colours used. Cross promotion between products is not permitted in product labelling.

502. Mexico greatly appreciates the work of the CODEX Alimentarius and makes a positive contribution to its activities. However, on some occasions there are certain aspects of those activities that affect other areas and other forums, and as a result, should be discussed more in-depth. One of these issues is prohibiting cross promotion, which could restrict the right of trademark holders over related products. Mexico considers that a study should be carried out on whether prohibiting cross promotion is compatible with the international trade laws established by the WTO and WIPO.

503. My delegation reserves the right to raise this issue at the next regular meeting of the Council on TRIPS.

14.5.2 European Union

504. The EU would like to inform the TRIPS Council about its initiative to strengthen the ability of regular WTO bodies to effectively address and resolve concerns that Members have with trade-related measures of other Members. While many Members use the possibility to raise such trade concerns in WTO bodies, they often remain on the agendas for a long time without sufficient progress.

505. The EU is currently working, together with several other Members, on developing a proposal for a set of horizontal procedural guidelines that would apply to WTO councils and committees dealing with trade concerns.

506. While the TRIPS Council has already mechanisms and may deal with such trade concerns less frequently than other WTO councils and committees, we believe that the ideas could possibly be beneficial to the work in the TRIPS Council, too.

507. The EU is consulting on these ideas in an open and inclusive manner with a view to presenting a proposal to the General Council in July. We invite all interested Members to approach us for more details.
