



WORLD TRADE  
ORGANIZATION

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

**EXTRACT FROM MINUTES OF  
MEETING OF THE  
COUNCIL FOR TRADE-RELATED ASPECTS OF  
INTELLECTUAL PROPERTY RIGHTS**

HELD ON 10-11 OCTOBER 2013

**ITEM 12 and 13 CONTRIBUTION OF INTELLECTUAL PROPERTY TO FACILITATE  
THE TRANSFER OF ENVIRONMENTALLY RATIONAL TECHNOLOGY**

EXTRACTED FROM DOCUMENT IP/C/M/74/Add.1

## AGENDA ITEM 12: CONTRIBUTION OF INTELLECTUAL PROPERTY TO FACILITATE THE TRANSFER OF ENVIRONMENTALLY RATIONAL TECHNOLOGY

### 12.1 Ecuador

166. Ecuador would like to reiterate to the Council the importance it attaches to the transfer of environmentally rational technology, which is why we requested that this item be included on the agenda. We are very grateful to the Secretariat for this.

167. At the TRIPS Council meeting held on 11 June 2013, Ecuador introduced document IP/C/W/585/Rev.1 entitled "Contribution of Intellectual Property to Facilitating the Transfer of Environmentally Rational Technology", based on the preamble to the TRIPS Agreement, which refers to the promotion of technology transfer to developing countries. This is furthermore underpinned by the provisions of Articles 7 ("Objectives") and 8 ("Principles"), the ultimate aim of which is to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the transfer of technology.

168. Ecuador's proposal was also based on the first paragraph of the preamble to the Marrakesh Agreement Establishing the World Trade Organization, in which the principles and objectives governing the multilateral trading system specifically refer to sustainable development and the protection and preservation of the environment. These provisions form the basis for paragraphs 6, 31 and 33 of the 2001 Doha Ministerial Declaration, which set out commitments to ensure proper coordination between trade agreements covered by the WTO and multilateral environmental agreements, and which also recognize the importance of technical assistance and capacity building in the field of trade and the environment for developing countries.

169. My delegation wishes to thank the delegations of Cuba, China (which has reserved its right to respond to Ecuador's specific proposals), Bangladesh, Bolivia, Brazil, India, Indonesia, Nepal, Rwanda and the Dominican Republic for endorsing the paper submitted.

170. I would add that an "early and timely" technology transfer programme for the developing countries is an essential element in the fight against climate change and adaptation to and mitigation of its harmful effects. These countries will find their own efforts constrained and will have little chance of joining the efforts undertaken by the international community to combat these problems, if they do not have the appropriate tools which can only be obtained through the international transfer of technology.

171. The aforementioned information shows that the issue of IPRs and the debate on cooperation in the transfer of technology are becoming essential to finding the best way to combat the harmful effects of climate change, above all for the developing countries. Factors such as lack of information and excessive protection, inappropriate enforcement and abuse of IPRs, and particularly patents, will undoubtedly jeopardize social and economic well-being and the balance of rights and obligations between producers and users, which will be detrimental to the developing countries and their access to cutting-edge technology.

172. In view of the foregoing, Ecuador considers that it is appropriate to include the issue of IPRs and mechanisms for the transfer of environmentally sound technology in the discussions held by this Council, in order to combat the harmful effects of climate change in the context of the multilateral trading system.

173. The paper submitted by Ecuador presents some ideas on options that could be considered with regard to IPRs and climate change in the context of the multilateral trading system, such as the automatic granting of rights through voluntary licensing, use of the TRIPS flexibilities, and regulation of licensing costs, *inter alia*. The main aim of the paper is to prevent IPRs from becoming a barrier for the transfer of technology to the developing countries.

174. Lastly, Ecuador's paper proposed that Members consider adopting, at the Bali Ministerial Conference, a "declaration" in which they would enshrine the principle that "*nothing in the TRIPS Agreement can minimize or impair the flexibilities provided for in that Agreement, nor prevent or limit Members taking measures they consider necessary to protect their population from the effects of climate change and to make use of environmentally sound technologies*".

175. In conclusion, my delegation would also like to suggest that this item on the TRIPS Council agenda be addressed next year, as we consider that the issue has not been exhausted and that it deserves to be discussed.

## **12.2 Plurinational State of Bolivia**

176. Firstly, I would like to thank Ecuador for the introduction to its proposal. Bolivia shares the concerns and ideas expressed by the delegation of Ecuador in communication IP/C/W/585. As many of you already know, in 2011, Bolivia, together with Venezuela, presented a similar proposal in the Trade and Environment Committee in special session.

177. Patents limit the possibility for developing countries to adopt environmentally sound technologies, since patent holders, mainly concentrated in developed countries, are able to raise the costs of access or deny it altogether. Given the unprecedented mobilization of environmental technologies required to address the environmental crisis, existing flexibilities in relation to patents and other intellectual property rights must be reinforced and further expanded in order to ensure that the environmental technology needs of developing countries are met, enabling sustainable development while helping to curb the environmental crisis. As the IPCC warned in its most recent assessment report, we cannot continue business as usual in the face of an environmental and climate crisis of such magnitude that it endangers the very future of mankind. We need to adapt the rules of the game to this special situation. By amending the TRIPS Agreement to facilitate the transfer of environmental technologies to developing countries, the WTO would be making a decisive contribution to resolving climate and environmental crises.

178. Such a contribution by the WTO would also be in line with the sustainable development principles adopted multilaterally in the Rio Declaration on Environment and Development, which has just been reaffirmed by our Heads of State at Rio+20, in particular Principle 7, which affirms that "in view of the different contributions to environmental degradation, States have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command". This is a critical principle which guides international community action in the field of sustainable development and which should also guide WTO negotiations in this area. It is important to remember that the Rio Declaration forms part of the treaty context which served as the basis for formulating the reference to the objective of sustainable development in the first paragraph of the preamble of the Marrakesh Agreement Establishing the World Trade Organization, and is therefore more than relevant in our context.

179. In this light, we welcome the proposal made by Ecuador in document IP/C/W/585, which suggests that environmental technologies be declared public goods and that the world community be urged to take full advantage of the flexibilities envisaged in the TRIPS Agreement so that countries can adopt the measures needed to address the current environmental crisis. This should be part of the WTO's contribution to countering the effects of climate change.

## **12.3 Indonesia**

180. Indonesia welcomes the inclusion of this agenda item and is open for more discussions to explore further feasible elements of the proposal submitted by Ecuador. Indonesia is of the view that flexibilities which potentially can be obtained by developing Members from this proposal would help them mitigate and adapt to the effects of climate change.

181. Intellectual property rights must not become a barrier for transfer of technology to developing countries in this area. We hope that discussions in the Council for TRIPS on this matter will be able to identify the most appropriate mechanisms for effectively promoting and facilitating access by developing countries to technologies applicable for combating climate change and environmental harm.

## **12.4 Cuba**

182. Cuba thanks Ecuador for bringing this matter before the Council once again. It is important to continue the debate on the transfer of environmentally sound technologies (ESTs) from the

perspective of intellectual property, with a view to proposing solutions, based on the WTO rules and without interfering in the mandates on climate change of other international agencies, that can help provide access to ESTs.

183. It should be recalled that, since 1992, the United Nations Framework Convention on Climate Change has undertaken, on behalf of the developed countries, to take all practicable steps to promote, facilitate and finance the transfer of environmentally sound technologies and know-how.

184. As regards patented ESTs, the developing and least developed countries need to make use of all the flexibilities available in the TRIPS Agreement, without restrictions. One particularly advisable option would be to use compulsory licensing. Compulsory licensing cannot be an exceptional policy in the event of a country facing a health emergency.

185. Other flexibilities related to access to ESTs might be the exhaustion regime which allows for parallel imports, exclusions from patentability, exceptions to rights conferred and measures to counteract anti-competitive practices. However, we recognize that in many circumstances, Members are prevented from making full use of these flexibilities, even for issues as sensitive as access to medicines.

186. In conclusion, we would like to point out that Cuba is in favour of discussing the matter in more depth at upcoming formal Council meetings.

## **12.5 China**

187. China welcomes Ecuador's proposal to discuss this issue at this Council. Climate change has a profound impact on the existence and development of mankind, and is a major challenge that all Members face now. It is the common interests of all to fight against climate change. The principle of common but differentiated responsibilities has been established as the basis for closer international cooperation in this regard. Due to their low development level and shortage of capital and technology, developing countries face more challenges in combating climate change.

188. Technology plays an important role in combating climate change and should better serve the common interest of human beings. In order to enable the developing countries to have access to climate-friendly technologies, a better environment and policy space for the transfer and dissemination of environmentally rational technologies from developed countries to developing countries should be fostered.

189. IPR is an important element concerning the development and utilization of the environmentally rational technologies as provided in Article 7 and other provisions of the TRIPS Agreement. In our view, nothing in the TRIPS Agreement prevents its existing general flexibilities from application to environmentally rational technologies.

190. With respect to the new flexibilities proposed in the communication, without prejudice to China's final position on the points in the communication, China would like to engage in the further evaluation and discussion on these topics among Members of the TRIPS Council.

## **12.6 United States**

191. The United States again welcomes this agenda item. As we explained in our intervention in the June 2013 TRIPS Council meeting, IPR is an indispensable catalyst for driving innovation addressing greenhouse gas emissions and climate change adaptation and mitigation efforts. In support of our position, we presented a significant body of research, economic analysis and other data, which demonstrates that green technology innovation is happening – including in developing countries – that voluntary technology transfer is occurring, and that IPR plays a significant and positive role in promoting both activities, without substantially raising costs.

192. For this reason, among many others, we continue to have serious concerns regarding the premise of the discussion paper submitted in advance of our June meeting, and the lack of research supporting that paper. We maintain our view that the recommendations included in that

paper would undermine rather than advance the intended objectives of promoting green technology innovation and technology transfer. We have heard no concrete data to the contrary.

#### *UNFCCC Technology Needs Assessments*

193. In our intervention today, we want to focus on a different body of data – and that is what developing and least developed countries have themselves identified as barriers to – and enabling environments for – green technology innovation and transfer.

194. As part of the United Nations Framework Convention on Climate Change (UNFCCC), many developing and LDC parties have prepared Technology Needs Assessments. In its TNA, an UNFCCC party identifies its priority climate change technologies for mitigation and adaptation. TNAs are developed through consultations with stakeholders to identify the barriers to technology transfer and measures to address these barriers through sectoral analyses. In the process, the TNA may also identify regulatory structures and policy options, coupled with financial incentives and required capacity building that could facilitate access to these priority technologies for mitigation and adaptation.

195. Succinctly put, the purpose of a TNA is to assist in identifying and analysing priority technology needs, which can be the basis for a portfolio of environmentally sustainable technology projects and programmes, which can facilitate the transfer of, and access to, such technologies and know-how in the implementation of programmatic responses to the challenge of climate change. Under the current global TNA project supported by the Global Environment Facility, 36 developing countries were provided targeted financial and technical assistance for developing or updating their TNAs and in preparing their Technology Action Plans.

196. According to the most recent report of the UNFCCC Technology Executive Committee or TEC, by 31/07/2013, 31 of these countries had submitted their TNA reports. These countries included 11 African countries, nine Asian countries, three Eastern European countries and eight countries from Latin America and the Caribbean.<sup>1</sup> These recently completed TNAs contain a wealth of contemporary information that is particularly relevant to this discussion.

197. In broad terms, these TNAs reflect two important conclusions. First, the developing and LDC countries that submitted these reports identified a long and wide-ranging list of green technology innovation and transfer barriers and enabling environments. Second, very few of those TNAs even mentioned intellectual property rights. And when IPR was mentioned in a few select cases, IPR was not identified among the priority issues to be addressed.

198. Rather than raising IPR, the TNAs focus on critical barriers that hinder climate change mitigation and adaptation responses. For the most prioritized mitigation sector – **the energy sector** – economic and financial barriers were identified by all Parties.

199. Within this barrier classification, the most commonly identified barriers were: (1) the existence of inappropriate financial incentives and disincentives; and (2) a lack of or inadequate access to financial resources. Both of these financial barriers were identified by more than 80% of Parties.

200. The main non-financial barrier, also identified by all Parties, was an insufficient legal and regulatory framework within the barrier classification of policy, legal and regulatory framework barriers.

201. The most commonly identified enablers to address these barriers – which were identified by 80% of respondents – were to provide or expand financial incentives, and to strengthen the regulatory framework for the technology, both to attract investors to the market. I will turn to the role of IPR in attracting investment momentarily.

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<sup>1</sup> UNFCCC Technology Executive Committee, "Executive Summary of the Third Synthesis Report on Technology Needs Identified by Parties not Included in Annex I of the Convention", TEC/2013/7/15, 30 August 2013.

202. For the most prioritized adaptation sector to climate change – **the agriculture sector** – the most commonly identified barriers were similar to those in the energy sector: (1) the lack or inadequate access to financial resources; and (2) an insufficient legal and regulatory framework. Both were identified by 96% of Parties.

203. Within the classification of financial and economic barriers, the barrier of lack of adequate access to financial resources was the most commonly identified barrier, at 89%. The most commonly identified enablers to address these barriers in the agricultural sector were the creation of national financial mechanisms or policies – at 65% – and the creation of an allowance in the national budget for this technology, including promotion of R&D, which was at 50% of all respondents. I will also return to the positive role of IPR in promoting R & D shortly.

204. Yet, despite this extensive self-analysis by a diverse array of countries regarding their green technology needs and the barriers they face to meeting those needs, IPR is virtually absent.

205. In fact, in its own TNAs on mitigation and adaptation, Ecuador did not mention IPR as a barrier to technology transfer. Instead it recognized the role IP plays to enable technology transfer by noting the importance of the Ecuadorian Intellectual Property Institute having the capacity to facilitate technology transfer.

206. It is also important to note that the UNFCCC Technology Executive Committee Report synthesizing all of the TNAs was silent on IPR as well. In contrast, the top 12 non-financial barriers raised in the TEC synthesis report are:

- Insufficient legal and regulatory frameworks;
- insufficient enforcement;
- policy intermittency and uncertainty;
- institutional and administrative barriers;
- clash of interests;
- highly-controlled energy sector;
- red tape (bureaucracy);
- rent-seeking behaviour and fraud;
- market barriers;
- infrastructure barriers;
- lack of awareness and skilled personnel; and
- public acceptance and environmental barriers.

207. Nor is IPR included on the list of financial barriers, which includes the following seven obstacles to technology innovation and transfer:

- The existence of inappropriate financial incentives and disincentives;
- lack of or inadequate access to financial resources;
- high cost of capital;
- financial non viability;
- high transaction costs;
- uncertain macro-economic environment, and
- uncertain financial environment.

So, of the nearly 20 barriers identified in the TEC synthesis report, IPR did not make the list.

Why is that? Was this simply an oversight? We don't believe so.

208. In fact, we have done further research in addition to what we identified in our intervention in June to support the conclusion drawn by more than 30 Technology Needs Assessments submitted to the UNFCCC.

209. We have identified three key areas where the economic and other literature elaborates on the areas we discussed in our last meeting in terms of the positive contributions of IPR to the global climate change challenge. These are:

- The high degree of correlation between developing country innovation and IPR;
- that IPR helps to promote green technology transfer through foreign direct investment and R&D; and
- that licensing is a catalyst for such transfers.

*High Degree of Correlation between Developing Country Innovation and IPR*

210. The data shows that in recent years, the world has witnessed a rapid growth in renewable energy investments (REIs) made by developing nations. In 2011, for example, 35% of global REIs were made by emerging economies.<sup>2</sup> In 2012, investments in these economies topped \$112 billion, versus \$132 billion in developed countries.<sup>3</sup> This increase has been met with a concurrent increase in global patenting of environmental technology. In 2012, 2623 Patent Cooperation Treaty (PCT) applications were filed for environmental technologies, a six per cent increase from 2011.<sup>4</sup>

211. And the gap between patent prosecution in developed and developing nations is rapidly closing. In 1998, one in 20 patents for environment technologies were protected in developing countries; in 2008, the numbers were one in five.<sup>5</sup>

212. These numbers are more than just a coincidence. According to the International Renewable Energy Agency (IRENA), the high patent growth rates have resulted in a very significant increase in the deployment of renewable energy technologies<sup>6</sup>

*Promotes Technology Transfer through FDI in R&D*

213. Part of the reason why IPR protection is one of the many factors promoting innovation in developing countries is that it helps to advance technology transfer. Such protection makes a country more attractive for cross-border investments, incentivizing multinationals to invest in R&D, which thereby raises demand for skilled domestic labour and strengthens the wages of the domestic work force.<sup>7</sup>

214. For instance, as Branstetter, Fisman and Foley have found, US multinationals specifically respond to changes in IPR regimes abroad by significantly increasing technology transfer to countries which improve their IPR environments.<sup>8</sup>

*IPR, Licensing and Technology Transfer*

215. One key aspect of technology transfer is licensing.

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<sup>2</sup> UN Environment Programme Frankfurt School, "Global Trends in Renewable Energy Investment 2012," Bloomberg New Energy Finance, 2012.

<sup>3</sup> UN Environment Programme Frankfurt School, "Global Trends in Renewable Energy Investment 2012," Bloomberg New Energy Finance, 2012.

<sup>4</sup> Copenhagen Economics, "Are IPR a Barrier to the Transfer of Climate Change Technology?" January 2009, p. 4.

<sup>5</sup> Copenhagen Economics, "Are IPR a Barrier to the Transfer of Climate Change Technology?" January 2009, p. 4.

<sup>6</sup> International Renewable Energy Agency (IRENA), "The Role of Patents in Renewable Energy Technology Innovation," June 2013, p. 16.

<sup>7</sup> Branstetter, Lee and Kamal, Saggi, "Intellectual Property Rights, Foreign Direct Investment, and Industrial Development", Working Paper 15393, National Bureau of Economic Research Working Paper Series, October 2009, p. 4-5.

<sup>8</sup> Branstetter, L. G., Fisman, R., Foley, C. F., (2006). "Do Stronger Intellectual Property Rights Increase International Technology Transfer? Empirical Evidence from U.S. Firm-Level Panel Data". Quarterly Journal of Economics 121(1): 321–349 (abstract).

216. Protection of IP in the recipient country is of high importance to potential investors when considering whether to enter into licensing agreements. Data on US multinationals show that the likelihood of entering into licensing agreements increases as countries increase their protection of IPR.<sup>9</sup>

217. In a survey study conducted in 2005, IPR protection is considered an important factor by 82% of the organizations surveyed, with 54% reporting that it was either a "significantly attractive condition or a compelling reason for an agreement."<sup>10</sup>

### *Conclusion*

218. In conclusion, the economic literature supports, what the Technology Needs Assessments make abundantly clear, which is that IPR is not a barrier to green technology innovation and transfer. In fact, the literature is abundant, convincing, and as yet, un-refuted in this Council. IPR is one among many critical keys to unlocking the global climate change imperative.

219. For these reasons, we continue to have serious reservations regarding the paper's proposals, and are not in a position to support its recommendations, including any TRIPS Council or other decisions or Declarations.

220. We continue to view strong IPR protection as an environmental as well as an economic imperative, providing critical developmental benefits for developing and least developed countries in particular. Such protection is essential to facilitate access to, and transfer of, today's technologies and to promote tomorrow's innovation.

## **12.7 European Union**

221. The European Union fosters transfer of technology in many sectors, including a large number that can be considered "environmentally rational". All of this technology is protected by IP rights and is shared or transferred in various ways, in accordance with the development level of the destination country. I would like to quote a few examples of ongoing projects and programmes:

222. I would like to inform you about some projects financed (and sometimes administered) by the European Commission, such as:

Water Infrastructure and Management Support in Puntland, Somalia This project promotes the economic development and good governance of water utilities to improve the sustainability of water resources in the area. The type of technology transferred includes:

- ICT technology: Administrative, managerial and financial knowledge;
- technical engineering knowledge for the maintenance and operations of an urban water supply network; and
- Hydrogeological knowledge for groundwater resource management.

Somalia benefits from another project entitled "Water and Land Information Management" with the objective of improved preparedness for, and effective response to, food and agricultural threats and emergencies. The type of technology transferred is:

- ICT training in GIS, remote sensing, data management;
- Provision of equipment including manual and automatic weather stations and borehole monitoring equipment including data loggers and piezometers:

This project will increase Somalia's authorities' capacity to monitor surface and ground water resources and land degradation.

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<sup>9</sup> Fritz Foley with Pol Antràs and Mihir Desai. "Multinational Firms, FDI Flows and Imperfect Capital Markets." Quarterly Journal of Economics, 124 no. 3 (August 2009): 1171-1219.

<sup>10</sup> "Patents and clean energy: bridging the gap between evidence and policy," Final report, UNEP, 2010, p. 58.

223. The EU Development Cooperation Instrument financed between 2011-2012 (with 30m€) the Asia investment facility to promote additional investments and key infrastructure with a priority focus on climate change relevant and "green" technology in the environment and energy sectors.

224. The EU 7<sup>th</sup> Framework Programme funded the research project, AFRICAB, (4.11m€) is a framework for enhancing the Earth Observation capacity for agriculture and forest management in Africa. AGRICAB aims to build on open data sharing, connecting the available satellite and other data with predictive models in order to facilitate integration in agriculture and forestry planning and management processes.

225. In this context I would also like to mention some activities carried out by some EU member States:

## **FRANCE**

### ***A programme, sponsored by the French Ministry of Agriculture, Food and Forests (MAAF)***

which carries out actions that transfer know-how and technology in the following sectors: irrigation, certification and/or normalization of crops, veterinary services, geographical indications, product quality, sustainable agriculture and forestry management. The types of technology transferred are varied and include:

- Training of veterinary inspectors;
- technical training (crop growing, milk transformation, etc.);
- assistance in the setting up of control laboratories (sanitary, phyto-sanitary, fraud, etc.);
- standardization /certification of fruit, vegetables and seeds;
- sustainable forestry management, and
- development of geographical indications

226. The MAAF (Education and Research Department) also helps in the setting up rural trainings in agronomy (in the wide sense): rearing of cows, sheep, goats, aquaculture, crops, farming water management, etc.).

A wide range of technology is transferred such as:

- - water management for agriculture;
- - development of aquaculture;
- - training the trainers;
- - establishing technical agricultural trainings;
- - local development carried out by professional organizations;
- - environmental protection;
- - diversification techniques for agricultural products;
- - development of rural tourism;
- - transformation and conservation of food products; and
- - veterinary sciences and tropical zoology (parasitology, optimization of fodder, species selection and adaptation to local environment):

## **SLOVAKIA**

**Title of project/programme:** St. Peter Claver Training Centre in Rumbek II, South Sudan. Technology is transferred to facilitate practical training in the area of electric and solar technologies, safe water resources and ecological water management.

**Type of technology transferred:** Irrigation scheme, water tanks, pumps, rainwater harvesting system, solar panels

## SWEDEN

**Name of the programme:** Wind Power Development and Use, Energy Efficiency, and ICT for Pedagogical Development International Training Programmes. Its aim is to improve access to available techniques and industrial processes, training in the state of the art, technology management and production methods.

**Type of technology transferred:** Knowledge of various methods of central importance in developing wind power plants such as wind measurement, localization and design, demands on the infrastructure and the electric grid, environmental impact analysis, management, organization and economy of wind power plants, etc.

Knowledge of energy efficiency and its benefits for sustainable development and poverty reduction, as well as increased knowledge of methods and tools for energy efficiency.

250 participants have completed a full programme while 225 are currently taking the programmes. 65 to 80% of the participants come from least developed countries.

**Name of the programme: DemoEnvironment:** The programme is run by the Swedish Agency for Economic and Regional Growth commissioned by the Swedish International Development Cooperation Agency. The objective is to support environmental technology efforts to achieve sustainable urban development and renewable energy in developing countries.

**Type of technology transferred:** modern, environment-friendly technology and technology solutions never used in the host country before. Some of the countries which are part of this programme are China, India, Viet Nam, South African, Namibia, Botswana and Indonesia.

## UNITED KINGDOM

**Name of programme: Africa Enterprise Challenge Fund:** A \$180m fund which supports businesses operating in the agri-business sector in sub-Saharan Africa with a focus on renewable energy and climate adaptation for small farmers.

**Type of technology transferred:**

- Agricultural technology;
- financial services;
- media and other information services directly related to agribusiness and rural financial services; and
- renewable energy and climate adaptation technology.

227. The AECF is in its fourth year of operation. Since June 2008, 88 business initiatives in 18 countries have been approved for funding with a total investment of \$66m. A further \$160m has been committed to these 88 initiatives.

228. Without IP, there would be little new technology to improve our lives. IP is not a barrier to the protection or adaptation to the environment, rather it helps man's positive reaction to providing the best environment possible for future generations. The private sector in the EU is very instrumental in assisting other countries to benefit from state of the art technology, as you can see from the examples above and in the EU's annual reporting to the WTO in the context of Article 66.2 TRIPS.

229. On a more general note, however, I would like to reiterate that IP in itself is not a barrier to new technology nor to technology transfer. There are many other parts of the puzzle that need to be in place before industry (or research institutions) are willing or able to transfer or develop technology in a certain country.

230. Some of these other potential problems are the general investment climate in the destination country – a stable governance, working public authorities, a fair tax system, efficient protection and enforcement of IPR. In this context, one can also refer to the cost to business to register and protect its technology – where the tariffs are too high or the procedures slow and unpredictable, then industry and investors will be less inclined to invest.

231. Since Ecuador is instrumental in the subject of transfer of technology being discussed here on the TRIPS Council agenda, it may be useful to remind WTO Members of the new, extremely

high tariffs Ecuador has installed for the registration and maintenance of patents and plant variety rights. Not only are the tariffs, in our understanding, the highest in the world, but a system of allowing up to 90% discounts for companies to produce locally, would appear to be discriminatory against foreign businesses and investors.

232. This kind of attitude which enormously impacts on the price of protecting IP is an example of how counterproductive this can be in the long term and will remove incentives from abroad for assistance and investment between countries.

## **12.8 India**

233. India thanks Ecuador for the proposal and we support the proposal. In fact we have already spelt out our views in the last TRIPS Council meeting and I do not intend to repeat that statement in this meeting. But we do believe that IP does create monopolies, which result in high prices for green technologies and they act as a barrier to their diffusion in developing countries.

## **12.9 Japan**

234. This delegation welcomes the opportunity to discuss again at this Council the topic of intellectual property in terms of how it facilitates the transfer of environmentally rational technology.

235. As intervened at the last Council, this delegation does not think that the existing intellectual property protection system constitutes a barrier to technology transfer. Rather, we firmly believe that adequate intellectual property protection forms a solid and stable foundation that induces direct investment and technology transfer. This is, in turn, expected to lead to the development and dissemination of environmentally sound technology.

236. Some developing countries have expressed their concerns that environmentally sound or rational technologies are not sufficiently being transferred to them. However, we believe that careful consideration should be given in seeking ways and means for implementing the transfer thereof.

237. Ecuador's proposal document (IP/C/W/585) includes initiatives and assertions that would undermine the current intellectual property protection system, as we pointed out at the last meeting. Therefore, we cannot support such initiatives and assertions that might deter the development, dissemination and transfer of technology, including environmentally sound technology, because these initiatives would end up lowering any incentives for innovation.

238. This delegation is also not in a position to support adopting the proposed declaration at the Bali Ministerial Conference, as mentioned in paragraph 23 in the proposal made by Ecuador.

239. Taking this opportunity, this delegation would like to briefly touch upon an industry-driven initiative, namely "WIPO Green" in which Japanese industry is actively involved. This is an initiative designed to offer opportunities both for "technology providers" and for "technology seekers" to find partners through a free, online database that enables them to transfer ESTs. The online database includes information not only on patented technologies but also on the knowledge and technical expertise that the technology providers might want to transfer. On the other hand, technology seekers can register their specific EST needs in the WIPO Green Database. Based on this, WIPO aims to achieve effective technology transfers.

240. This delegation considers it important to create an environment that encourages industry to contribute to addressing the global environmental issues on a voluntary basis. From this perspective, Japan has been supporting this initiative.

## **12.10 Canada**

241. Canada thanks Ecuador for its recent communication on the contribution of intellectual property to facilitating the transfer of environmental technology.

242. It is important to note from the outset two points with respect to intellectual property: (1) certain intellectual property rights are necessary in order to support continuing innovation and development of new technologies critical to ensuring a sustainable environment; and (2) the patent regime is effective in sharing information and contributes to the dissemination of technology.

243. In discussing climate change matters, it is important to recognize that there are many factors affecting climate change that are outside the purview of IPRs. IPRs should not be cast as a barrier to promoting clean and efficient technology; but, rather form an important incentive for innovation and to promote environmental technology. The commercialization of environmental technology not only rewards the inventors and those who bring the technology to market, but it also delivers associated benefits to our economies through innovation, employment, and investment gains. We must maintain an effective incentive regime with a long-term view that enables environmental technologies to be developed to support ongoing innovation and the deployment of these technologies into the future.

244. We must acknowledge the important role that the private sector has on the development and deployment of climate change technology. The private sector continues to develop innovative solutions to deal with climate change-associated problems while still respecting IPRs. For example, Hydrostor, a new Canadian clean-tech company, has developed a low-cost underwater compressed air energy storage technology that offers the capacity of large-centralized systems, while providing the flexibility and scalability of small decentralized systems. Clean technology businesses utilize existing intellectual property regimes. They conduct their businesses based upon licensing agreements and rely on intellectual property protections in order to help finance their investments in research and development.

245. We note that patents also have an important role to play in the dissemination of technology. Apart from financial gains for businesses, patent disclosures help contribute to the wider knowledge base surrounding environmental technology, leading to further innovations in this area. In return for patent protection, Canada publishes the details of patent applications so they are freely available to the public. In doing so, other researchers and inventors are able to further analyse the patents with a view to improving and further developing environmental technologies.

246. We point to ongoing initiatives outside of the TRIPS Council that more appropriately address climate change without limiting intellectual property rights. For example, Parties to the United Nations Framework Convention on Climate Change are taking action to reduce greenhouse gas emissions and to adapt to the effects of climate change. Within this framework is the Climate Technology Centre and Network, an implementation body that will provide tailored advice and technical assistance to developing countries to support the implementation of technology actions for mitigation or adaptation objectives.

247. Furthermore, we point to other available means to encourage the development of environmental technologies and stimulate investment. For example, climate investment funds, in particular ones relating to clean technology funds, can help developing countries pilot low-emissions and climate-resilient development. In addition, Canada has developed frameworks for international collaboration via science and technology agreements with a number of our international partners, including China, India and Brazil. These treaty-level agreements serve as the guidelines for Canadians to effectively work with partner countries to increase international science and technology capacity, including the research and development of clean energy technologies. All of these activities contribute to building knowledge, know-how, skills, and climate change technology while still maximizing the incentives found within the intellectual property regime.

248. IPRs, as they affect climate change and promote environmental technology, do not operate in isolation as a single contributing factor here and that is why it is inappropriate to impair IPRs without a greater understanding of the impediments to climate change and the implications of reducing the incentives behind intellectual property policy. We can help to provide solutions for climate change by creating an enabling environment that fosters the development of innovative environmental technology in the first place. It must be recognized that access to technology is also heavily dependent on other external factors outside of the IP realm, including but not limited to a skilled workforce, adequate infrastructure, and favourable market conditions.

249. Canada looks forward to hearing from other Members on this issue and more discussion on this issue should take place before a formal work programme is agreed to.

#### **12.11 New Zealand**

250. New Zealand joins others in welcoming the opportunity to engage in a robust policy discussion on this important issue.

251. We note the concerns raised previously by Ecuador that the current IP framework as established by TRIPS can hinder the ability of vulnerable and least developed countries to access certain environmentally sound technologies (EST) for purposes of climate change mitigation and adaptation.

252. However, in the area of ESTs, most patents do not provide their owners with exclusive market power due to the presence in the market of close substitutes, many of which may be off-patent. Even where an EST is a "breakthrough" invention with no close substitutes, there will likely still be alternative technologies available.

253. New Zealand considers that intellectual property rights can play an important role in fostering innovation, including in relation to incentivising the development of new environmentally sound technologies. Likewise, however, the TRIPS Agreement already contains a number of important flexibilities that can be used by Members in appropriate circumstances to address potential abuses of IP rights.

254. Existing mechanisms consistent with the TRIPS Agreement are likely to be sufficient to deal with any problems arising from the abuse of patent rights. For example, a failure to supply an invention on reasonable terms and conditions within a reasonable time period, or outright abuses of patent rights, could be remedied by the issue of a compulsory licence, as permitted by Article 31 of TRIPS.

#### **12.12 Chile**

255. I would like to extend my thanks to Ecuador for the proposal made. We believe that it is very important to promote access to technologies to mitigate climate change, particularly in developing countries. We also agree with the need to use the flexibility contained within TRIPS with the aim of incentivizing access to this type of technology.

256. As was mentioned by New Zealand, we believe that the TRIPS Agreement already contains the appropriate flexibility in order to alleviate the problems for access to clean technologies, which might bear on intellectual property. Furthermore, the TRIPS Agreement has the ability to alleviate this in a very neutral way, which means it can avoid differentiated treatment, which might lead to a discriminatory regime between various areas or between various technologies or industries. Although we think that access to clean technology is extremely relevant, we believe that as it stands the proposal could also diminish the incentives to use environmentally sound technologies.

257. We agree with Ecuador that this is an important issue without prejudice to our reservation on what is contained in the proposal. We believe that there is still room to discuss this within the Council.

#### **12.13 Australia**

258. We welcome the opportunity to talk about IP and green technology and we thank Ecuador for its paper.

259. We are encouraged that Ecuador has utilized the TRIPS Council to express its views on the nexus between climate change and intellectual property as an appropriate forum, alongside WIPO, to discuss these issues. Nevertheless we question some of the assumptions underlying the paper. We think TRIPS has got the balance right. We do not think that weakening IP rights will result in an increased transfer of green technology to the world's poorest nations; and we are concerned that diminishing the prospect of reward from research and development initiatives, could discourage investment in green technology development in the first place.

260. We do not consider that the issues of climate change and access to medicines under the TRIPS Protocol are analogous, or that compulsory licence and export of green technologies is necessarily the solution to improving dissemination of green technologies.

261. In contrast to a defined list of pharmaceutical products which can be compulsorily licensed and exported under the TRIPS Protocol, it is difficult to define green technologies which describe the function rather than the technological subject matter.

262. Sufficient access to patented technologies for technology transfer can currently be achieved through existing TRIPS flexibilities.

263. Technology transfer requires more than access to patented technologies and associated information, affected countries require the services and infrastructure capacity associated with implementing and using the technology.

264. These sorts of measures might deter the entry of international firms that would otherwise transfer technology to local partners.

265. However, we acknowledge that, under the current global framework, intellectual property can play a role in encouraging technology transfer:

- for example we have seen very significant transfers of climate change positive technology to developing countries for use in projects financed under the Clean Development Mechanism (under the Kyoto Protocol); and
- as I said at our meeting in June, we would be willing to work with Members in this forum or WIPO, on concrete, practical suggestions, which could contribute to the dissemination of green technologies without distorting the IP system,
- for example, Australia would be open to further discussions on the role of IP in voluntary licencing of technologies associated with adaptation to and mitigation of climate change, with a particular focus on the needs of the most vulnerable developing countries.

#### **12.14 Switzerland**

266. Switzerland, at the TRIPS Council meeting in June 2013 set out its view on the key role of innovation and the importance of intellectual property in general, and patents in particular, for the development of and access to environmentally safe technology to more effectively address the many challenges that climate change poses. My delegation fully associates itself with the statement made earlier by the US delegation under this agenda item.

267. At the last TRIPS Council meeting, my delegation posed a number of questions to Ecuador on some of the premises in its proposal in IP/C/W/585. We look forward to receiving responses to these questions by Ecuador at the next TRIPS Council meeting.

#### **12.15 Brazil**

268. I would like to thank Ecuador for raising once again the important issue of climate change and technology transfer. Brazil welcomes the debate and would like to present some considerations on the relationship between climate change and the TRIPS Agreement.

269. The TRIPS Agreement is the result of negotiations that have struck a delicate balance between the stimulus of innovation and the promotion of public interest in sectors of vital importance to socio-economic and technological development of Members. One principle of the Agreement is that intellectual property contributes not only to technological innovation but also to technology transfer and technology dissemination to the mutual advantage of producers and users of knowledge in a way conducive to social and economic welfare. In this sense, the use of TRIPS flexibilities ensures that these objectives, socio-economic and technological development, will be reached. This flexibility must be applied bearing in mind the simultaneous objective of providing the necessary stimulus to innovation while at the same time providing adequate access to goods.

270. The issue of quality designation of patents is also relevant to this matter since low quality examination hinders innovation and generates unnecessary costs to users of the patent system. Low quality patents are especially burdensome in the case of environmentally sound technologies since low quality patents can stop the dissemination of technology in environmentally sound practice. The strengthening of policies of mitigation adaptation could also be fostered by the wide use of financial mechanisms in technology mechanisms of the UNFCCC, specially the Green Climate Fund (GCF) and the Adaptation Fund of the Kyoto Protocol.

271. In a nutshell, Brazil understands Member States are entitled to make full use of TRIPS flexibilities in order to cope with the possible impact of climate change.

#### **12.16 Ecuador**

272. My delegation is pleased because we have achieved one of our objectives of stimulating debate on this topic. We would like therefore to thank all of the Members that have taken the floor, both those who supported the proposal and those who had different points of view, such as the United States and the European Union, and others that have voiced opinions that run counter to Ecuador's proposal. Desiring to improve the proposal, I would invite the United States and all those other Members to join forces to help to improve Ecuador's proposal. We have heard reference to studies on technology transfer of environmentally sound technology and we would be very grateful if on the basis of their experience they could help us to improve the proposal.

273. What my country feels and the reason for which it is tabling this proposal is that efficient tools do exist to combat climate change through transfer of this type of technology. I invite all countries to become involved in this. This is something of interest to all and therefore I am very grateful to all concerned for their comments and I trust that the debate can continue in future meetings. My delegation also takes note of the fact that this is not the right time to make a formal presentation on this topic and I would follow on from what was said by various delegations earlier on and would request that this topic be put on the agenda for the work programme for this Council for the next year.

#### **12.17 United States**

274. If Ecuador would wish to add this item on the agenda of the next Council meeting, I think we would not oppose that. However, we are not in a position to support a permanent agenda item at this time.

#### **12.18 Chairman**

275. I have taken note of Ecuador's request for this matter to be included on the agenda for the next Council meeting. The United States has just clarified its position that they do not want to see this becoming a standing agenda item. Nonetheless, Ecuador and other delegations could request the inclusion of this item on the agenda of the next meeting.

#### **12.19 Ecuador**

276. It seems that there is no opposition to the topic being dealt with at the next Council meeting. I agree with the US that this cannot be a standing item but I think it ought to be made clear that this should be an item for the next Council meeting.

#### **12.20 United States**

277. We would be happy to have a conversation at our next TRIPS Council meeting on this issue.

#### **12.21 Venezuela**

278. I simply wanted by way of clarification to say that in previous discussions I recall a discussion where there was opposition between the United States and China and it was made clear by the Secretariat and it is in the rules of this Council that any issue proposed for discussion by a Member must be discussed. Therefore there is no prior factor or rule preventing the matter from being discussed in due time. So I think that a priori we cannot say whether this item is going to be

standing or otherwise. I think Ecuador has brought this topic to the fore for discussion and I think it ought to be discussed on that basis. This should not spark off a discussion at this stage but I simply wanted to make clear that given that we have Members seeking to discuss things, however odd they may seem, for example, IP and Sport, we have discussed it. This should be the case for Ecuador also. If Ecuador feels that the discussion has not been exhausted, then it could be included again on the future agenda for the Council after. Ecuador is fully within its rights as a sovereign delegation to table matters for discussion in this forum as it deems appropriate.

## **AGENDA ITEM 13: INTELLECTUAL PROPERTY AND SPORTS**

### **13.1 European Union**

279. IP and sport are intricately linked, and increasingly so in the media and interconnected world we share. There are many positive aspects to this relationship: personal, social, cultural, economic, technical...

280. Most IP rights are involved in the sports sector:

- trademarks on sports equipment and clothing;
- patents on the technology developed for training apparatus, specialised apparel, competition accessories and equipment, etc;
- designs for the external appearance of the above;
- copyright on artwork and audio-visual creations either on the products or around the services and
- broadcasting rights on the transmitting of sporting events and documentaries to the ever increasing audiences.

281. Sport attracts a lot of interest from most parts of populations in the world and provides a huge amount of entertainment either through participation, spectatorship at live events or watching sport on the television or mobile devices. Sports reporting also provides content to most newspapers and many specialised magazines. This size of audience has boosted sponsorship from businesses that want to publicise their trademarks and brands but without these businesses with trademarks to advertise, a lot of the sport mentioned above would not exist.

282. As the International Olympic Committee President, Jacques Rogge stated, "We have to protect the sponsors because ... without sponsorship there are no Games."<sup>11</sup> Sponsorship represents up to 45% of the total revenue generated from the programmes managed by the International Olympic Committee and the Organising Committee of the Olympic Games within the four-year Olympic cycle.

283. Innovation is at the heart of the sports content industry. Sports rights owners actively innovate to ensure that market demand is met by allowing their licensees to use new and emerging technologies. Sport content has been a stimulus to new audio-visual and broadcasting technology for some time. The London Olympics saw Super HD and 3D television events and live streaming of over 5000 hours of sport on the internet and digital broadcast channels. This is the equivalent to over 200 days of live sport content.

284. In the European Union, sport accounts for 3.7 of EU GDP and employs around 15 million people.<sup>12</sup> Gross value added of sport in the EU economy is 1.76% and the share of sport in employment amounts to 2.12% (comparable to agriculture, forestry and fishing combined)<sup>13</sup>.

285. The European Union has recognised the increasing importance of sport by providing the EU with new competence aimed at developing the European dimension in sport including it in Article 165 of the Treaty on the Functioning of the European Union (the Lisbon Treaty) which entered into force on 1/12/2009. The Treaty text calls on the EU to promote European sporting issues, notably by taking account of sport's specific nature, its structures based on voluntary

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<sup>11</sup> "In the spirit of fair play: a primer on IP and the Olympics", Daria Kim, for IP Watch, 2 August 2012.

<sup>12</sup> COM(2007) 391 final, 11 July 2007, p.10

<sup>13</sup> European Commission, Sport statistics. [http://ec.europa.eu/sport/what-we-do/sport-statistics\\_en.htm](http://ec.europa.eu/sport/what-we-do/sport-statistics_en.htm)

activity and its social and educational functions. The Treaty allows for the adoption of incentive measures and of Council recommendations. In order to prepare future action in this domain, the Commission has outsourced a study on the contribution of sport to the European economy. The study should be finished by the beginning of 2014.

286. The European Commission Communication from 2011, entitled "Developing the European Dimension in Sport" recognises the close link between sport and IPR:

*"Exploitation of intellectual property rights in the area of sport, such as licensing of re-transmission of sport events or merchandising, represents important sources of income for professional sports. **Revenue derived from these sources is often partly redistributed to lower levels of the sports chain.**"*

287. The Expert Group on Sustainable Financing of Sport<sup>14</sup> recognises that the discussion around sports rights at the EU and national levels is very much "underdeveloped". The expert group goes on to say that more needs to be done to understand what assets sport organisations have and how they can best be used and protected. They list a set of examples of the property rights concerns: sponsorship, advertising, trademarks, copyright (including recorded sport, images of events and players, rules books, fixtures, logos and brandings, etc...), branding and event management, licensing and franchising, selling of TV rights, selling of internet rights, selling of audio rights, designs and visual appearance and personality rights.

288. Moreover, in order to have a comprehensive overview, the Commission has launched a study entitled "IPR in sport" which will be available by the end of 2013. The Expert Group on Sustainable Financing of Sport made a Recommendation (n° 27) to ensure that any recommendations to protect sport's commercial property rights following the EU study on IPR are taken forwards:

***"The collective selling of media rights is a good example of financial solidarity and redistribution mechanisms within sports."***<sup>15</sup>

289. This quote, from the 2011 Commission Communication mentioned above, emphasises also the social aspect of sport and IPR. Indeed, part of the revenues from sports events and media coverage are used to provide finance for grassroots initiatives, setting up of sports activities for children and the under privileged, funding of local sports clubs and helping with problems of societal integration as well as talent development.

290. Sporting events are largely self-financed and do not therefore use public funds that are very necessary for other worthy expenditures on infrastructure, health, education etc. Athletes who benefit from funding via IP often earn more in sponsorship of brands than actual sporting prize money.

291. One major problem faced by trademark owners in the sports sphere is counterfeit products. Sporting goods, apparel and clothing are one of the most copied sets of items and always figure very high up the ladder of statistics of customs seizures and are found massively in shops and markets.

292. Live sporting events have a specific problem in that the value lifespan is very short. One of their big problems is the interception of the broadcast signals which are then made available across the internet almost instantaneously. Major sporting events are very attractive to viewers making them particularly vulnerable to IPR infringements, especially online. All sports have seen an increase in the amount of pirate sites on line and the number of viewers illegally watching events. The most pirated sport globally is cricket which is illegally shown by over 1,000 websites. Many of them are funded by advertisement and over 200 of the websites even operate as subscription channels with the pirate being directly remunerated. This is not part of any "open access philosophy" and exploits sports content to create personal profit without contributing to sports development, job creation or tax revenues.

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<sup>14</sup> <http://ec.europa.eu/sport/library/documents/b24/xq-fin-201211-deliverable.pdf>.

<sup>15</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: "Developing the European Dimension in Sport". 18.1.2011, COM(2011) 12 final.

293. Because of the important role of IPR in sports, it is essential to protect the IP rights that provide such a solid basis for sport to take place and provide the benefit and entertainment we sometimes take for granted.

## 13.2 Mexico

294. Intellectual property enables individuals to be recognized and rewarded for their creativity for a set amount of time, by granting them exclusive rights. Sports are also affected by certain intellectual property rights, such as trademarks, patents, industrial designs, copyright (image of athletes) and related rights (broadcasting).

295. Trademarks are the main link between sport and industrial property as promoters of economic development. In order to understand this more clearly, it is worth referring to the International Classification of Goods and Services for the Purposes of the Registration of Marks, better known as the Nice Classification, which was established by an agreement concluded at the Nice Diplomatic Conference on 15 June 1957, reviewed in Stockholm in 1967 and in Geneva in 1977, and amended in 1979. Currently over 80 countries, including Mexico, are part of the Nice Agreement and use this classification to register trademarks in their countries.

296. Sports goods, including toys, fall under Class 28 of the Nice Classification, while sports and training services are part of Class 41. Sports brands are used to distinguish between products and services from different teams, leagues and associations within the same sport and/or between different sports. This applies not only to banners and players' uniforms but also to collectable albums and stickers featuring world athletes, in addition to team-related toys and hats.

297. According to WIPO, innovation and creativity are key drivers in the world of sport. In all sports, teams of inventors and creators work to promote their teams, athletes, products and services in the best way possible. For this reason, protection of industrial property rights is not limited to just trademarks. It also covers patents and industrial designs, which protect new equipment and sports technology. Examples of sports-related industrial designs include skis, sailing boats and surf boards. These items need to be designed in a particular way in order to better perform their function of enabling athletes to achieve victory in competitions.

298. With regard to patents, we could mention the examples of "smart balls" containing microchips that send signals to the referee the moment they cross the goal line,<sup>16</sup> and prostheses for disabled athletes.<sup>17</sup> This latest technology is driving forwards the Paralympic Games. For example, Shruti Grover, Benedict Copping, Idrees Rassouli and Jason Cheah have invented a personal training device called "*Ghost*", that is worn on the wrist and elbow and uses sounds and vibrations to tell swimmers when they are performing a particular movement correctly.

299. In terms of inventions, we can also mention the advances made in existing technology such as the *Endura* prosthetic limbs developed by Millie Clive-Smith, Sebastiaan Wolzak and Seitaro Taniguchi, which provide users with improved ventilation and a more comfortable fit.

300. According to WIPO estimates, the global revenue of the sports industry, including sponsorship and merchandising, reached US\$133 billion this year. Only four years ago, it was estimated at US\$114 billion, which means that annual growth during this period amounted to almost US\$5 billion per year. Soccer is one of the sports with the highest global revenue. According to Legal Counsel of the Union of European Football Associations (UEFA), François Gindrat, over one billion people tuned into the UEFA European Football Championships in 2008, with an average of 150 million viewers per match.<sup>18</sup>

301. Intellectual property licensing can vary from one country and from one sport to another. For example, in the National Football League (NFL) in the United States of America, the league or association owns the intellectual property assets rather than each team individually. However, in

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<sup>16</sup> WIPO Magazine. "*FIFA 2006 World Cup – What was the IP Score?*" [http://www.wipo.int/wipo\\_magazine/en/2006/04/article\\_0005.html](http://www.wipo.int/wipo_magazine/en/2006/04/article_0005.html).

<sup>17</sup> JEWELL, Catherine, "*A glimpse into the future of paralympic sports*". WIPO Magazine, August 2012, [http://www.wipo.int/wipo\\_magazine/en/2012/04/article\\_0007.html](http://www.wipo.int/wipo_magazine/en/2012/04/article_0007.html).

<sup>18</sup> GINDRAT, François, "*UEFA's Battle for its Brand*", WIPO Magazine. June 2012: [http://www.wipo.int/wipo\\_magazine/en/2012/02/article\\_0008.html](http://www.wipo.int/wipo_magazine/en/2012/02/article_0008.html).

Mexico's soccer league, each team or institution holds the rights to its own intellectual property assets. Under the NFL, a central office negotiates and licenses the intellectual property assets of one or several teams, without needing their consent. Yet, in Mexico's soccer league, each team is free to negotiate its own intellectual property assets without prior consent from the Mexican Football Federation.<sup>19</sup>

302. The examples above demonstrate how important industrial property rights are for sports brands. However, although profits are high, unfortunately there are also risks and losses involved. As in other sectors, the greatest threat to intellectual property rights in the sporting world is piracy. According to François Gindrat, UEFA recently dealt with over 400 cases of intellectual property infringement relating to the UEFA Euro 2012 Championship.<sup>20</sup>

303. Similarly, Legal Counsel of Six Nations Rugby Limited (SNRL), Bird & Bird LLP, Jonathan Taylor<sup>21</sup>, has warned of the growing risk of digital piracy, which allows for audio-visual content from matches and sporting competitions to be delivered online without authorization from the broadcasting rights holders. Non-authorized websites also attract audiences and can generate revenue from brand advertisements for other products, in the same way as the authorized licence holders. However, these sites do not pay the athletes. They do not comply with the authorization given by athletes to fix, reproduce or communicate their appearances and performances, and to use their image. Neither do they pay the organizers of sporting events for the use of their trademarks, images and other intellectual property assets. With regard to copyright-related rights, it should be noted that they generate the revenues needed for broadcasters to invest in the organizational and technical undertaking of broadcasting sports events to viewers all over the world. These intellectual property rights are the subject of merchandising and licensing agreements which in turn support the development of the sporting industry.

304. Mexico considers that it is important for Members of this Organization to continue their efforts to strengthen not only their legal frameworks on intellectual property but also the exercise and protection of these rights in practice. This primarily involves continuing to fight against both the most common and the new forms of piracy.

### 13.3 Jamaica

305. Jamaica is pleased to join the European Union, Mexico, the United States, and Trinidad and Tobago in sponsoring the agenda item on IP and sports. As a small developing country Jamaica is fortunate to be a significant player in international sports. Jamaica is seeking to advance its work in IP, which, along with sports, are vital pillars of the country's national development agenda.

306. In the last 30 years, sport has become one of the fastest growing global industries. The magnitude of the sports industry can be measured by the revenue generated by sports and the earning power of top international athletes. It is estimated that the global sporting industry is valued at over USD400 billion. At the individual level, international athletes such as Tiger Woods, Roger Federer, Kobe Bryant and our very own Usain Bolt, earn millions of dollars in endorsements. Sports is, therefore, no longer just an enjoyable activity, it is big business.

#### *Jamaica and Sports*

307. Jamaica is now ranked among the top sporting nations of the world. From our sterling achievements at the 1948 Olympics Games to the historic and awe inspiring performances by our teams at the last two Olympic Games and World Championships, Jamaica has demonstrated its outstanding athletic prowess on the international arena. In the wake of Jamaica's dominance on the tracks, several books have been written and published about track and field and the country has also hosted several seminars on sport. Sport has therefore significantly enhanced "Brand Jamaica" in diverse spheres.

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<sup>19</sup> BCB Becerril, Coca & Becerril, "La propiedad intelectual en los deportes" (Intellectual property in sport) *El Diario Judío. El Diario de la Vida Judía en México y el Mundo*. (The Jewish daily. The daily newspaper on Jewish life in Mexico and the world) February 2012. "<http://diariojudio.com/opinion/la-propiedad-intelectual-en-los-deportes/21953>".

<sup>20</sup> GINDRAT, François, "UEFA's Battle for its Brand", WIPO Magazine. June 2012: [http://www.wipo.int/wipo\\_magazine/en/2012/02/article\\_0008.html](http://www.wipo.int/wipo_magazine/en/2012/02/article_0008.html).

<sup>21</sup> TAYLOR, Jonathan, "Rugby, Rights and Revenues", WIPO Magazine. February 2012.

### *JIPO and IP and Sports*

308. The Jamaica Intellectual Property Office (JIPO) is the official agency that is responsible for legislation pertaining to the protection and administration of IPRs in Jamaica. It has seen the critical need for our sporting professionals to become aware of any potential IP opportunities from early in their careers. This is particularly important for those who evolve into elite athletes, achieving significant international recognition.

309. As the saying goes, "to be forewarned is to be forearmed". Therefore, having a good support team, knowing how best to protect one's interests and being able to seize various business opportunities during the short career lifespan of an athlete is not only a prudent aspect of retirement planning, but a vital defence against unfair exploitation of their celebrity appeal.

310. An illustration of not having this foreknowledge is the sad experience of Jamaica's first bobsled team. Many people around the world were enamoured with the movie "Cool Runnings" and were in awe at the feats of the Jamaican Winter Olympics team, given that one snowflake is yet to fall on our warm and beautiful island. Sadly, however, the members of the team received little benefit from the proceeds accruing to the movie. Various factors including insufficient knowledge of their IP and other rights, contributed to this unfortunate turn of events. Sports persons at every level of development are therefore strongly encouraged to arm themselves with information in order to protect their IPRs.

311. Jamaica's Usain Bolt is undoubtedly one of the most famous personalities in the world of sports. Regrettably, some entities have sought to cash in on his name without permission. Although Bolt's management team has trademarked his name, we've seen several trademark infringement cases. Recently we were asked to respond to a trademark application in a certain country seeking to register a silhouette of Usain doing his famous lightning pose. We have also received several reports of persons trying to register Usain's name or image on products for example the Bolt Energy Drink.

### *Seminars/Workshops/Outreach*

312. As part of its strategic operational plan, JIPO actively encourages all sports industry members, especially well-known national and international athletes, to register their names, pseudonyms, nicknames, images, brands, poses, or other insignia for which they are well-known, as trademarks and domain names.

313. In April 2011, Jamaica took the lead in hosting the first ever Conference on IP and Sports, organised by WIPO and JIPO, in association with a local law firm. It was held over two days in Kingston. The aim of the seminar was to sensitise Jamaican sports practitioners, both upcoming and current athletes, as well as sports administrators, media and other sports-related business, on how to benefit and earn from the proper protection and management of IP rights in the sports industry. In particular it sought to demonstrate how IP rights can assist athletes to earn more from their careers both before and after retirement. Speakers included WIPO Deputy Director General Mr. Geoffrey Onyeama as well as professionals in the sports industry both locally and internationally.

### *Continuing Research*

314. JIPO's activism in the area of IP & Sports includes conducting public education initiatives with various stakeholders on the importance of IP protection to the commercial viability of the sports industry. Jamaica is currently implementing a voluntary copyright registration system which will also facilitate the registration of images, photographs and other sports-related copyright works. JIPO has also been involved in raising awareness about the impropriety of businesses publishing congratulatory advertisements to athletes using the athletes' images without consent.

315. On a related subject, JIPO has also been doing research on personality rights and the desirability of personality rights legislation in Jamaica. In September 2013 JIPO hosted a forum on Image and Personality Rights, looking at the 2011 Image Rights legislation in Guernsey, United Kingdom, and the potential application of similar legislation in Jamaica. This was aimed at providing increased levels of protection for our sporting personalities, alongside the existing

common law principles applicable to misappropriation of personality. Very recently also there have been discussions on the need for Policy Guidelines to regulate how the country engages with foreign interests who want to exploit the country's brand and reputation in sports.

316. Like most companies which are founded with a name and an idea, great athletes are developed by a combination of natural ability, effective training and competition and strong promotion in the form of compelling names or brands. The nexus between IP and sports is a dynamic and exciting enterprise and Jamaica fully intends to be at the forefront of initiatives in this area, in the years ahead.

#### **13.4 Trinidad and Tobago**

317. It is indeed a pleasure for my delegation to cosponsor this agenda item on IP and sports alongside the delegations of the EU, Jamaica, Mexico and the United States. In totally concurring with the cosponsors who spoke before us, my delegation will just like to deliver a few remarks on our own experience with intellectual property and sport and the importance of the subject matter to us.

318. Athletes from Trinidad and Tobago have shared in a number of successes in the past five years. We have seen the triumphs internationally in cricket, but it with our regional West Indies cricket team or in professional league cricket such as the Indian Premier league. We have seen successes at the 2008 Beijing Olympics along with other Caribbean countries and in regional games from track and field to swimming to team sports. We have also noted the relatively short commercial life spans of active athletes and the commercial opportunities the more business-savvy have access to. In the midst of the business of sport is the inevitable trade and valuation of the intellectual property of individual athletes and their respective teams and team brands. However, many athletes, in dedication to their profession, are largely unaware of the business propelled by their success and fame. Not only were athletes unaware but many local businesses and state agencies were also unaware of the IP and commercial opportunities that could be afforded through strategic sponsorship of individuals and teams.

319. In attempting to bridge that awareness commercial gap, the Minister of Legal Affairs established a Committee in 2010 to advise on the Commercialisation of sports-related IP. The potential of the initiative was further strengthened by the successes of our athletes again in the 2012 Summer Olympics in London which brought in even more medals and a long sought after gold medal by our Keshorn Walcott in the javelin event.

320. The Committee was established to make recommendations for the development and implementation of an intellectual property management capacity within the sports industry to enable the industry to leverage its intellectual property, intangible assets and image assets for the benefit of the athletes themselves and for the growth and development of this aspect of the sports industry.

321. The Committee, which was chaired by former West Indies cricketer Dinnanth Ramnarine, was mandated to make recommendations, present proposals and a budget to achieve, in particular, the following:

1. To raise awareness of intellectual property among stakeholders, athletes, managers and sporting bodies; to enable an understanding and appreciation of the ownership and commercial value of achievements, image and personal brands and the opportunities available to commercialize such intangible assets;
2. To raise awareness of the processes involved in obtaining intellectual property rights (IPRs), eligibility, conditions for grant and refusal and the scope and limitations of such rights;
3. A proposal for undertaking an audit and review of existing contracts with a view to negotiating more optimal conditions regarding ownership and use of IP;
4. A mechanism for developing best practices in successful IP licensing agreements and how to recognise breaches and abuse of agreements, infringement and piracy;
5. Proposals for building capacity to manage IPRs in the sporting industry, advocacy, licenses and product development incorporating PRs in the sporting industry;

6. Recommendations for implementing an effective alternative dispute resolution mechanism for disputes involving IP usage in the sport industry.

322. It is anticipated that the findings will contribute to more IP and business-savvy athletes, teams with more commercial foresight and the inclusion of the sports industry in the wider knowledge economy.

### 13.5 United States

323. We too join the European Union, Jamaica, Mexico and Trinidad and Tobago in co-sponsoring this agenda item. We are looking forward to addressing this new topic in the TRIPS Council, particularly in light of the numerous and diverse sporting events we are all looking forward to in the near future.

324. Today, the United States will focus on three main topics: (1) the importance of IP to the sports industry; (2) the negative impact of infringement on that industry; and (3) responses to combating infringement in such industries.

#### *Importance of IP to Sports*

325. Innovation and creativity are present in all areas of the global economy, but are especially present in the sport sector.

326. In recent years, for example, the fitness industry has remained relatively strong despite the global economic challenges. A recent study<sup>22</sup> of the industry projects that global sports market revenues will rise at the compound annual growth rate of 3.7% from US\$121.4 billion in 2010 to US\$145.3 billion in 2015.

327. The strength of the sports industry extends beyond sports, as Mexico said yesterday. The protection of sports by IPR helps to create many jobs in other sectors of the economy: jobs to build sports facilities, to make high-tech sports equipment, and for the tourism associated with sporting events.

328. Tickets are a significant portion of this revenue, but three components that rely upon IP: sponsorship, media rights and merchandising are also important contributors towards this revenue. According to a 2011 PWC report<sup>23</sup> of the sports industry, North American gate revenues are currently the largest source of revenue. However, sponsorships, merchandising and media rights are all increasing as the second, third and fourth largest sources of revenue for this sector. Sponsorship, for example, appears to be on track to meet or exceed gate revenue by 2020.

329. Like in other sectors, IP is a critical asset that the industry can monetize to further promote the sport. In fact, part of the allure of sports is that they can be both local and global. Our favorite local player can score the winning goal or win the race for the national team in the Olympics or World Cup. We have all played sports and likely have dared to dream that we are that champion. What gold medal have you dreamed of? How about your kids?

330. And IP has a big role to play. For example, rugby is played in over 100 countries, and the Rugby Union not only organizes international matches, but also sells broadcasting and sponsorship rights to the events. What about soccer? What about cricket and other global sports?

331. Likewise, baseball which is often described as a quintessential American pastime is supported by each major area of intellectual property – especially copyright and trademark.

332. And of course, part of the revenue from licensing these IP rights is reinvested in the sport to provide facilities and coaching, both at the professional and amateur level.

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<sup>22</sup> [http://www.pwc.com/en\\_GX/gx/hospitality-leisure/pdf/changing-the-game-outlook-for-the-global-sports-market-to-2015.pdf](http://www.pwc.com/en_GX/gx/hospitality-leisure/pdf/changing-the-game-outlook-for-the-global-sports-market-to-2015.pdf)

<sup>23</sup> [http://www.pwc.com/en\\_GX/gx/hospitality-leisure/pdf/changing-the-game-outlook-for-the-global-sports-market-to-2015.pdf](http://www.pwc.com/en_GX/gx/hospitality-leisure/pdf/changing-the-game-outlook-for-the-global-sports-market-to-2015.pdf)

333. Copyright is important to the sports industry in multiple ways. Indirectly, copyright serves as a key driver behind the popularity and public interest in sports by providing important incentives for authors to create a broad range of creative works celebrating sports, including books, music, films, photographs and other works of visual art. "Take Me Out to the Ball-Game," perhaps the most popular baseball song ever written, is an excellent example of sports-related creative expression that is eligible for copyright protection.

334. These copyrighted works engage public attention in sports and further support the vibrancy of the industry.

335. And the protection of broadcasts of sporting events is among copyright's most economically significant contribution to supporting sports. From the first radio broadcast of a baseball game in the United States (1921), to the first television broadcast (1939), copyright, including the public performance/communication to the public right, has played an ever more important role in bringing sporting events to local and global audiences.

336. Today the programming produced by US professional and college sports associations, for example, generates billions of dollars of revenue each year for sports leagues, creates thousands jobs in the US media sector, and contributes significant tax revenues at the state and local level, not to mention contributing significantly to American public educational institutions.

337. More than half of this revenue is generated from exclusive licensing agreements between the sports leagues and broadcasters, retransmissions by cable operators and satellite carriers, pay per view sales, and licensed Internet distribution. But the economic foundation of all of these transactions is the value of the contemporaneous broadcasts of the live sports events.

338. Turning to trademarks, in the United States there are 3,505 live registration for baseball clothing, bats, gloves, and batting helmets; 729 live registrations for baseball game services; and 112 live registrations for baseball camp services.

339. According to Forbes, sales of collegiate-related items, which rely upon these trademarks, were \$4.62 billion in 2012, second only to Major League Baseball in revenue. Income from college sports supports the educational mission of the schools as well as their athletic programs.

340. The inclusion of community-based initiatives in a sports team's commercial strategy means that teams have international clubs and retail outlets. These clubs and outlets create awareness far from where matches are played. For example, there are now 15 million Chelsea fans in South Korea! When discussing trademarks and sports, sponsorship is also a critical dimension. When a company pays to advertise its goods or services in conjunction with an event or team, this allows greater revenue to be derived from the event. Overall, sponsorship is the second largest revenue source in the sporting industry.<sup>24</sup> For those events that do not have ticket sales or broadcasting rights, sponsorships can be a critical factor in whether the event is held.

341. In some countries, such as China, more revenue is derived from sponsorship than from sales of tickets to the game, thus further emphasizing the importance of IP to sports.<sup>25</sup>

342. Industrial designs and patents are a prominent feature of the sports landscape. Industrial designs and patents support sports by providing an incentive to create new equipment, score boards, baseball plates. Since 1980, in the United States, the number of sports-related patents has tripled. Interestingly, sporting goods companies with patents tend to do better financially than those which do not.

343. In the interventions yesterday, Mexico gave examples of "smart balls," swimming devices and prosthetic limbs. Patents play an important role in sports safety – such as a system to aid in the prevention, detection and management of traumatic brain injury, and helmets to reduce injuries.

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<sup>24</sup> [http://www.pwc.com/en\\_GX/gx/hospitality-leisure/pdf/changing-the-game-outlook-for-the-global-sports-market-to-2015.pdf](http://www.pwc.com/en_GX/gx/hospitality-leisure/pdf/changing-the-game-outlook-for-the-global-sports-market-to-2015.pdf) page 18

<sup>25</sup> [http://www.pwc.com/en\\_GX/gx/hospitality-leisure/pdf/changing-the-game-outlook-for-the-global-sports-market-to-2015.pdf](http://www.pwc.com/en_GX/gx/hospitality-leisure/pdf/changing-the-game-outlook-for-the-global-sports-market-to-2015.pdf), page 19

344. Just look at golf, which will make its return to the Olympics in Brazil, having last been a part of the Olympic program in 1904. At least 30 countries are expected to be represented in both the men's and women's competitions, from all continents represented in the Olympic Games. Golf is intensively innovative. In fact, golf-related products are among the most IP-intensive sports products, with approximately 1,300 US patents granted. In the US, there are also significant numbers of baseball related patents (almost 3000), as well as patents related to surfing (800) and football (also about 800).

345. Finally, trade secrets also support sports. A trade secret could include the formula of a sports drink, the shape of a yacht or a race car, sports strategies, and the statistical method use to analyze players.

346. Without these forms of intellectual property, the incentive to innovate is reduced, resulting in less revenue derived from sports, which would result in less money to be invested in sports.

#### *Negative Impact of Infringement on Sports: The Challenge of Sports Piracy*

347. Moving from the importance of IP to sports to the negative impact of infringement, it is clear that infringement is a significant problem with major implications for the sports we love to play and watch.

348. The adoption of ultra-fast broadband technologies, the popularity of user-generated websites, the widespread availability of inexpensive devices to upload television signals, and the global nature of the Internet all present significant challenges to the business model of live sports programming.

349. Using such technologies, individuals or piratical organizations are able to misappropriate legitimate streams of sports programming, repackage them on their own websites, and sell advertising space to ad placement services.

350. As a result, the entire live sports environment is under stress.

351. Sports leagues are required to invest significant amounts in combating sports piracy, diminishing revenues available for new investments. Broadcasters are harmed because they lose control over content and advertising. Sports consumers pay for piracy as well.

#### *International Sporting Events*

352. The negative impact of infringement can have particular relevance for major sporting events, their hosts and their sponsors. As events like the World Cup and Olympics rely on international sponsors, these companies in turn depend on the host country's ability to protect their IP. The gravitational pull of such events to attract partners, sponsors and other contributors increases when such protections are present, and the quality of the events increases, for athletes and spectators alike.

353. You only have to look at the global sports associations like the IOC, regional associations like the NHL, KHL and UEFA, national teams, and major international corporate brands like Budweiser and Nike to understand the critical need in sports to protect IP.

354. This is true in part because the sharp rise in imports of trademark- and copyright-protected goods and services will also see a dramatic rise in counterfeit, pirated and other infringing products during such events.

355. Likewise, the significant increase in spectators also means a significant increase in consumers, who will be confronted by an array of knock-off products trying to seize on these games at the expense of both brand-owners and consumers.

#### *Responses to Combat Infringement, and especially Piracy, in Sports*

356. Where, as we believe, IP is important to sports and infringement is detrimental, what should be the response. At the national level, the U.S. Congress has held hearings on sports piracy, for

example.<sup>26</sup> At these hearings, sports rights holders and other copyright owners have stressed the need for appropriate criminal penalties for the unauthorized public performance of live and recorded content. Both the U.S. Patent and Trademark Office and the US Copyright Office are also closely monitoring the problem.<sup>27</sup>

357. At the international level, the United States, together with many other WIPO Members, has been actively engaged for more than a decade in the deliberations of the WIPO Standing Committee on Copyright and Related Rights (SCCR) on a draft treaty to protect broadcasting organizations in the global broadcast marketplace, including possible protection for live sports broadcasts.

358. Within these discussions, the United States expressed a particular concern about the growing problem of unauthorized retransmission of broadcast signals over the Internet and through other distribution systems. To address this concern, the US recently proposed a simple approach based on establishing a right to prevent the unauthorized retransmission of the broadcast signal to the public over any medium.

359. We believe that the protection of broadcasting organizations will help sports organizations in the United States, as well as those in all countries.

#### *Counterfeiting*

360. The availability of counterfeit sports and fitness equipment (including footwear) is also significant problem for intellectual property rights owners in the sports industry.

361. Counterfeit products, such as counterfeit golf balls, may not work as expected, and counterfeit helmets, bicycle components, and athletic shoes may result in injury. In addition to physical harm, such counterfeiting causes economic harm, and reduces the funds that the industry has to support athletes.

362. As we have mentioned in other TRIPS Council meetings, the US Customs Service works hard to curb shipments of counterfeit products. In addition, the US Intellectual Property Rights center investigates websites selling fakes and helps to seize domain names that are found to be selling counterfeits.

#### *Conclusion*

363. Sports are not merely entertainment; they also promote exercise, competition, and teamwork and thereby can improve public health. Even beyond these benefits, sports are a passion, for individuals, for nations and for the international community.

364. With intellectual property, sports teams and organizations can raise revenue to develop teams, improve, catalyze the creation of new sports equipment, and support and inspire the next generation of athletes. With improved sporting goods, sporting venues, training and nutrition, athletes can reach their full potential, inspiring new generations in the enjoyment of sports.

### **13.6 Switzerland**

365. Switzerland thanks the delegations of EU, Jamaica, Trinidad and Tobago and the US for having proposed this agenda item.

366. It has been said that necessity is the mother of invention. This saying is also true in the sports arena. Athletes dedicate themselves to rigorous training over many years in order to be in top physical condition during competition. Due to their dedication, they demand the very best

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<sup>26</sup> See Piracy of Live Sports Broadcasting over the Internet. Hearing before the Committee on the Judiciary, House of Representatives, 111th Cong., 1st Sess., December 16, 2009, Serial No. 111-94, <http://www.gpo.gov/fdsys/pkg/CHRG-111hhrg54075/html/CHRG-111hhrg54075.htm>

<sup>27</sup> See Statement of Maria A. Pallante Register of Copyrights before the Subcommittee on Intellectual Property, Competition, and the Internet Committee on the Judiciary, Promoting Investment and Protecting Commerce Online: The ART Act, the NET Act and Illegal Streaming, 112th Cong., 1st Sess., June 1, 2011 <http://www.copyright.gov/docs/regstat060111.html>

equipment and newest technologies in order to give them a competitive edge. The nature of sport therefore leads to, not only a physical but, an intellectual competition as well. Athletes, both professional and amateur, along with their coaches, are always on the lookout for better and more reliable equipment.

367. The nature of innovation is such that, what is developed for one purpose, can in many instances be applied to others. In that sense, sport has become one of the many catalysts that lead to new inventions and innovations. Many of these new products find uses outside of the sports arena and into our daily lives. The IP system, particularly patents, can play an important role in helping to make these inventions go from the athletic field and come into our daily lives.

368. Patents are available to inventions that are new, involve an inventive step and are capable of industrial application. In exchange for being granted exclusive rights over a patented item, the inventor must disclose the invention so that others can gain new technical knowledge and build upon it. In essence patents provide two advantages, one to the inventor and the other to the public. The inventor is incentivized by having exclusive rights to an invention which he or she can profit from by either selling the patent or granting licenses for its use. The public on the other hand, gains access to the new knowledge associated with the patent and benefits from the technological progress in everyday life. Individuals or companies can license out rights from the inventor for their own business or build upon the new technology and innovate new state of the art.

369. I would like to illustrate this by two examples. The first is an invention that was created for athletic equipment but with a wider application that is still relevant to this day: It is called the "Schrader valve". During early 1840's, Mr August Schrader emigrated from Germany to New York and by 1844 he had opened a machine shop in Manhattan. Following his interest in diving, Mr Schrader proceeded to design and manufacture air pumps and diving helmets. However, in 1890, Schrader and his son George began to develop a new valve for use in the pneumatic tires that were being used by bicyclist at the time. The result of their efforts is the Schrader valve. By October 1892, George Schrader had been issued a patent for this invention (Patent No. 484,509). That invention turned out to be so successful that not only are Schrader valves still being used in many bicycles to this day, but their use has expanded into the automobile industry. The tires of modern day cars use this same valve. Both car and bicycle tires can use the same pump in just about any gas refilling station because of this invention.

370. A more modern example of an athletic requirement coming into our daily lives with the assistance of the patent system is Gatorade. This beverage was developed due to a request from the University of Florida's football team in which they asked for assistance to stave off the effects of dehydration and heatstroke. Dr James Robert Cade and his team then took on the challenge to find a solution to an athletes' dehydration. The solution turned out to be Gatorade. Not only does this invention continue to rehydrate athletes (both professional and amateur) today, but the IP system sees to it that the University of Florida continues to receive royalties that can be used in the creation of more inventions in their research departments.

371. The need for innovation, new inventions and different ways of thinking can be found in just about any discipline, sport is no exception. Switzerland looks forward to continuing this dialogue in the Council on IP and innovation.

### **13.7 Australia**

372. Australia would like to thank the EU, US, Jamaica, Trinidad and Tobago, and Mexico for placing this item on the agenda. Australians are serious about sport (though not sure if we are as serious as Jamaicans). We love to play sport - Australia is one of only two nations to have competed in every modern Summer Olympic Games. We love to watch or listen to broadcasts of sporting events - every November the whole nation stops to watch a three minute horse race – the Melbourne Cup.

373. Others here today have already mentioned the importance of IP in the world of sport:

- patents and designs support the innovation of products that improve performance by our athletes; and

- trade marks provide an opportunity for our sporting clubs and personalities to generate income from their brand; and
- copyright in broadcasts makes it commercially viable for broadcasters to record and disseminate sporting events for our enjoyment.

374. I'd like to give an Australian example of the link between IP and sport – and how the patent system continues to support innovation

- patent registration not only enables an innovator to monetise their invention, it also leads to information being captured and stored which can be later drawn on by other inventors

375. Swimming is a big part of the Australian way of life – in summer Australians spend long days outside at the beach or in the pool. Australia's professional swimmers are always on the lookout for innovations that could improve performance. Today many of our athletes wear swimwear made with patented hi-tech fabric designed to imitate the sleek skin of a shark.

376. But the road to this hi-tech innovation is paved with decades of innovative products. In the 1920s when Speedo was a small Australian hosiery company it pioneered the controversial 'racerback' swimsuit for women - in the 'racerback' style, which is commonly worn today, the top-back of the swimsuit is not covered in order to provide flexibility and movement of the arms during swimming. In 1932, 16-year old Australian Clare Dennis won the Women's 200 Meter Breaststroke at the Los Angeles Olympic Games. After nearly being disqualified for "showing too much shoulder" in her regulation silk Speedo brand swimsuit, she went on to set a world record time.

377. This is just one example of the innovation and creativity that goes hand in hand with sports, as efforts by athletes all over the world to maximise the human potential continue.

### **13.8 Canada**

378. Canada welcomes this discussion in the TRIPS Council in order to highlight the linkages between IP and innovation relating to sport.

379. As part of the applications the Canadian Intellectual Property Office receives, there are many trademarks, industrial designs, and patents in relation to sports. The intellectual property rights being sought are often the start of a business venture, which in turn can spur many other benefits, especially when the idea is truly innovative.

380. Canadian trademark registrations have gone on to become household names around the world in part to intellectual property protections in Canada and abroad. For example, Louis Garneau Sports, Lululemon Athletica, Bauer Hockey, and CCM have trademarks on the Canadian register and abroad. These trademarks serve to establish the reputation that these companies rely upon in developing their business and help inform consumers of the quality of their products. Also relevant here are linkages to industrial designs given the fact that many of these companies have also registered the innovative designs of their athletic equipment, such as hockey sticks and hockey helmets.

381. The registered trademarks of Canadian team names and logos help contribute to the identity of sporting teams fostering national pride and international recognition. For example, teams in the National Hockey League have numerous trademarks that are licensed for use in Canada and abroad. Such licenses provide the teams (or licensors) with a revenue stream to help facilitate their continued operation and promotion, while also creating new business opportunities for licensees and to promote the sport.

382. Patents have also had a positive effect on the development of innovative sporting equipment enabling a wider range of people to enjoy sports to a greater extent than before. The patent regime helps encourage innovation by providing incentives to inventors, and publishing the patent inventions also help promote the dissemination of information to others while encouraging subsequent inventions. One such example is snowmobiling, now considered a sport in many countries around the world. A Canadian company, Bombardier, played a pivotal role in bringing this to market. Snowmobiles have utilized many patents over the years and the technology is constantly evolving leading to increased enjoyment for snowmobilers.

383. The enjoyment of sport can also be seen through television, and one can look to the number of viewers around the world for any given sporting event, especially the Olympics. Copyright and related rights help enable these fans to enjoy sporting events that are taking place around the world. Broadcasting such events globally can be a capital intensive industry and requires the revenue and benefits of protection under such copyright and related rights. Not only are sporting fans now able to enjoy more of their favorite sports locally, broadcasting global sporting events also unites fans from around the world, forging common bonds amongst us.

384. In conclusion, intellectual property plays a key role in fostering and promoting sport across a broad spectrum and helps to ensure that innovative ideas can be commercialized to the credit of the innovators. In turn, this helps bring value added goods and services to athletes and sporting fans around the globe.

### 13.9 Japan

385. This delegation would like to express its deep gratitude to the EU, Jamaica, Mexico, Trinidad and Tobago, and the US for their efforts in proposing "Intellectual Property and Sports" as an agenda item. Japan appreciates this opportunity and wishes to share its view and experiences in this field with other Members.

386. This delegation is of the view that it is quite beneficial for all Members to deepen our understanding on how the IP system is actually linked to innovation in the field of sports. Therefore, this delegation is willing to make active contribution to this agenda item.

387. This delegation is fully aware of the crucial roles IP can play in promoting innovation in terms of sports. The linkage between IP and sports can be illustrated through the following example.

388. A local socks manufacturer in Japan produced a new style of pairs of socks. These pairs of socks have a unique feature in that the right and left socks are asymmetrical. In other words, the manufacturer hit upon the simple idea that our feet are asymmetric in shape and so turned this idea into a product reflecting this very idea. The manufacturer developed socks, one designed specifically for one's left foot and one designed for one's right foot. Since such perfectly fitting socks can reduce fatigue in the feet and improve the legs' ability to exercise, the company won plaudits from top athletes.

389. Behind this success was the fact that this manufacturer focused on the development of their original products by taking full advantage of their technological capabilities, bearing in mind that they were at a disadvantage compared to established companies in price competition. While manufacturing socks for established companies, they kept on listening to customers' feedback in order to improve their original socks.

390. In this story, special attention needs to be given to how successful this manufacturer was in making use of IP to expand its business and promote innovation, notwithstanding the small number of its employees. The company has been developing their asymmetric socks into various products that more closely fit the shape of each area of a foot such as the heel and arch. In doing so, the company has been attaching great importance to protecting these improvements by utilizing IP rights. The company worked to obtain patents, design rights, and trademarks for its products, which successfully gave them an edge over their competitors and allowed them to further innovate.

391. What is noteworthy in this case is that the company also has been seeking IP protection abroad, in anticipation of expanding their businesses in the future. As a matter of fact, they have obtained patents in Asia, Europe and the United States and already licensed their inventions outside Japan. Their IP-focused business is expected to help them gain a foothold in the global market.

392. As indicated in the aforementioned case, in the field of sports, even SMEs with insufficient capabilities are able to link their own technologies and designs to fantastic business opportunities and expand their businesses by properly protecting them with IP rights. We wish to emphasize that the IP system is, therefore, an important tool to support innovation, not only for developed countries but also, and especially nowadays, for developing countries. It would give this delegation

great pleasure if Japan's views and experiences can bring about positive results for all Members in terms of the connection between IP and sports, and contribute to constructive discussions in the TRIPS Council.

### **13.10 Brazil**

393. Brazil would like to welcome the debate on IP and sports proposed by the delegations of European Union, Jamaica, Mexico, Trinidad and Tobago and the United States. We would like to contribute to this debate with some remarks on our experience in sport events.

394. Brazil will host, in 2014, one of the biggest sport events, the World Cup. Having this in mind, our country is putting in place tangible initiatives to ensure protection to intellectual property related to sports. Among them, I would like to highlight legislative measures as well as public policies directed towards building respect for intellectual property.

395. On legislative measures, the Brazilian Government approved in June 2012 the General Law of the World Cup. This event-specific law refers to the protection and use of trade rights during the World Cup. Its norms provide enhanced protection to official symbols owned by FIFA when compared to the Industrial Property Law, recognizing these symbols as highly reputed trademarks.

396. The general law also introduced in the Brazilian normative a new type of infringement to trademark rights known as "ambush marketing". This new provision is aimed at fighting the unfair use of products and services associated to FIFA or World Cup sponsors trademarks during the event.

397. On copyright, the new normative ensures to FIFA exclusive rights over images and sounds related to the event.

398. Regarding public policies, the National Council to Fight Piracy and other infringements to Intellectual Property (CNCP) has set as an objective the strengthening of protection to IP rights during big sport events such as the World Cup in 2014 and the Rio Olympics in 2016. The Third National Plan to Fight Piracy and other IP infringements, released last May, includes among the initiatives to reach this goal, the enhanced cooperation with local government authorities in host cities. Until today, CNCP has signed cooperation agreements with local authorities of São Paulo, Curitiba, Brasília, Belo Horizonte, Rio de Janeiro and Salvador.

399. In addition, in 2012, CNCP signed a cooperation agreement with FIFA to enhance effective mechanisms to fight IP rights violations related to the World Cup, as well as disseminate the respect for intellectual property in the Brazilian Society.

400. The fourth National Plan to Fight Piracy and other IP infringements, set to be released in the second semester of 2014 will include specific measures to enhance enforcement of IP rights during the Olympics in 2016. This initiative may be complemented by legislative measures that can also be put in place to reach this goal.

### **13.11 Venezuela**

401. We consider that there are already international agreements that address the issues mentioned in the proposal: the Paris Convention to begin with, and the agreements on trademarks, patents, etc., so we think that behind this proposal is the protection of broadcasting.

402. My country believes that it is an error to place the rights of broadcasting companies, which are legal persons, on the same footing as the rights of creators of works that are products of the intellect - a right which is recognized under Article 27 of the Universal Declaration of Human Rights - since broadcasting entities only serve as a platform for broadcasting works that are products of the human intellect, and are not actually holders of the works.

403. We also believe that this Council should devote itself to topics of greater interest to humanity, such as food security, climate change, health, and the protection of traditional knowledge.

404. Finally, it should be stressed that the WIPO Committee on Copyright is tackling this subject, and in the latest series of meetings of the WIPO assemblies that recently came to an end, certain delegations raised the possibility of holding a diplomatic conference on the subject, so that in order to avoid duplication, we think that the discussions should take place in that forum.

### 13.12 Korea

405. I would like to thank the cosponsors for presenting your agenda item. As technology, the Internet and broadcasting have developed, the media market has also expanded. In sports, a variety of economic profits is being created by IP relating to sports. The protection of IP in the area of sports can help to expand investments in sports, and will lead to the development of a sports industry. In Korea, the copyright of broadcasting our sports events and publicity of sports stars are related to sports IP, so Korea already has in place the legal system. We hope that these discussions will bear good fruit.

### 13.13 China

406. China thanks the proponents for proposing this topic and presenting their views both yesterday and today. China understands this item is not a standing item on the agenda of the TRIPS Council meetings. Actually, we feel quite confused what the objective outcome to achieve under this item is. As sport is only one of the industries, we do not recognize the particular reason to discuss this issue at the TRIPS Council at this moment. In our view, the introduction and discussion of any new issue should in no way divert Members' attention and focus from longstanding issues on the Council's agenda. Although some of the proposals from our side, such as having seminars on certain important issues, have been objected without convincing explanations, and despite not having received any documentation other than a flyer for a side event during the lunch break, we still want to show a constructive gesture and briefly illustrate how IP protection is being applied to the sports-related sectors.

407. China has established the legal system on IP protection and the enforcement mechanisms, and they apply to all the industries including sports. Thus, the IP rights, such as patents, trademarks and broadcasting rights, can be effectively protected under China law and enforcement system. In addition, China also promulgated particular regulations on IP protection relating to games. For example, *the Regulations on the Protection of Olympic Symbols* was promulgated by the State Council in 2002, *the Rules of Shenzhen on the Intellectual Property Protection for the 26<sup>th</sup> Summer Universiade* and *the Regulations on the Protection of the Special Signs of Shenzhen 26th Summer Universiade* was promulgated by the Shenzhen Municipal People's Government in 2007, *the Rules on the Protection of Asian Games Symbols* was promulgated by the State Administration for Commerce & Industry in 2010, and *the Measures of Tianjin Municipality for the Protection of Intellectual Property Rights of the Sixth East Asian Games* was promulgated by the Tianjin Municipal People's Government in 2012. These are some of the examples that I have collected both at the central and sub-central level in legislation in the protection of sports-related sectors.

### 13.14 India

408. My delegation would like to thank the delegations of the EU, the US, Jamaica and Mexico for tabling an agenda item on IP and sports, which we understand is a stand-alone item. We also thank the proponents for highlighting different innovations in sports and for organising the side event. While this agenda item may be of interest to a few IP holders in the field of sports, we do not comprehend the purpose of this agenda in the discussions in this Council. We have observed that instead of discussing the long-pending agenda items which are of high priority to a majority of the Membership of this Organisation, the proponents seem to be focused on new issues. Sustained efforts on the part of few Members to overburden the already long agenda will not only affect the seriousness of the discussions on other agenda items but would affect the credibility of this Organization.

409. The TRIPS Agreement is a very comprehensive IP treaty that has maintained a delicate balance between the interests of the right holders and the public interest. The Agreement has provided flexibilities so that the Members can frame their national IP policies according to their level of development. Thus the Agreement, based on minimum standards for the protection of all IPRs, recognises that "one size fits all" is not an appropriate IP policy. Further, over the last few

years we have seen attempts being made by some interested parties to push the TRIPS plus agenda which would not only affect the development priorities of the developing countries but would create barriers in accessing health, education, technology transfer and other public goods. In this context we feel that the agenda item connecting IP with sports may be an attempt to create higher international standards for IP protection to favour interested commercial entities.

410. We fail to understand the relevance of this issue to the mandate of the TRIPS Council and, after listening to the interventions from the proponents, we feel that there is no need to discuss the issue further. We are convinced that the discussions are more relevant in WIPO

### **13.15 Plurinational State of Bolivia**

411. I also want to offer my thanks to the proponents of this issue for having shared with us their experiences with regards to the relationship between IP and sport. Nevertheless, as other delegations, we do not fully understand the relevance or the objective of placing this on the agenda of this Council, because there are many other important pending issues, such as access to medicines, elimination of bio-piracy and work relating to the protection of genetic resources and traditional knowledge. We believe that many of the elements that have been mentioned in the statements made by colleagues who have spoken on this issue are already covered by current IP mechanisms, e.g., patents or trademarks, or indeed protection of Olympic symbols. We already have trademarks for all of this and we ought to have frameworks for these too. I think all that remains in this context is perhaps the broadcasting issue, and we, as expressed by Venezuela, do not believe that it falls under the remit of this Council, and we do not think that broadcasting necessarily is an appropriate issue here. That issue has been sufficiently discussed in WIPO for years now, and we think that it might be better for the this Council not to dedicate too much time to issues that are being dealt with in greater depth at WIPO and which clearly distract from the work of our house here, and we don't want to duplicate work.

### **13.16 Cuba**

412. We thank the proponents for introducing this item. However, we do not see how the topics of intellectual property and sport are related. Yet we are not surprised to see another enforcement issue on the table, which we believe should remain outside Council debates. We emphasize that the TRIPS Agreement contains sufficient civil and criminal enforcement measures, which should have been implemented by Members. Matters such as preventing the registration of trademarks that infringe personality rights or that may mislead the public are resolved by implementing prohibitions on registration that are laid out in most trademark laws, some of which date back to the Paris Convention of 1883. Cuban law provides for such prohibitions and does not allow the registration of trademarks that infringe registration bans. WIPO has an Advisory Committee on Enforcement and some of the issues raised on copyright and related rights are also discussed in another of this organization's committees, so duplication of efforts should be avoided. Enforcement issues such as these should always be examined in the light of Recommendation 45 of the Development Agenda. Lastly, like the issue of access to technology, enforcement of intellectual property rights does not fall exclusively within the domain of intellectual property. It is a complex matter that cannot be approached from one angle alone.

### **13.17 Ecuador**

413. Ecuador would like to support the statements made by the delegations of Venezuela, China, India, Bolivia and Cuba.

### **13.18 Paraguay**

414. We would like to thank the cosponsors for the presentations on IP and sport. We would like to refer to an additional issue, namely dispute settlement mechanisms for sport, which have implications on intellectual property. For example, in the WIPO dispute settlement mechanism, there are issues related to the Cup of Americas, and in FIFA there is a famous decree which deals with what happened in 2002. Various delegations have mentioned national examples, which regulate patents, trademarks, copyright and which do have implications for intellectual property rights. We believe that these mechanisms can form very useful case studies, if this Council decides to continue with these discussions.

### **13.19 European Union**

415. I would like to thank all the delegations for what we thought was a very interesting and factual debate. I would like to briefly mention the reasons why the European Union has co-sponsored this proposal. We believe that this theme illustrates what is the real contribution of intellectual property in one area where it produces positive social results, economic results, even cultural results. Sports are appreciated around the world and as we have seen from this discussion, intellectual property helps the sports exist in big countries, small countries, rich countries and poor countries. That for us was the main achievement of this debate, and in that sense we believe that we did good work here. It is also for us a pleasure, and not a burden, to discuss these concrete issues of intellectual property in the TRIPS Council. It was not our intention to ask for extending rights or introducing new rights, rather our purpose was to show how the existing rights allow for very good work to be achieved for athletes to be sponsored, for young people to have access to sport, and for millions of people to be entertained. To conclude, I would like to remind that this will be followed by the views of the civil society and by people who use these rights in their daily lives in the side event that will be organised here today.

### **13.20 Nepal (for the LDC Group)**

416. My delegation would also like to thank the proponents of this proposal and, after listening to all of you, it seems that it is an interesting area. I think the proper discussion might be interesting, but as an LDC, my delegation is not clear how much economic and social benefit the LDCs can draw through endorsing this kind of proposal and this kind of agenda. So my delegation associates itself with the statements made by India, China, Bolivia and other developing countries that we need more intensive and further deliberations before finalising this proposal.