



WORLD TRADE
ORGANIZATION

**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**

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

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activities organized by WTO and WIPO which leads to a more coherent approach of the three agencies. I would like to highlight the

- Regional Seminar for certain African Countries on the Implementation and Use of Several Patent-Related Flexibilities that was organized by WIPO in cooperation with the Department of Trade and Industry of South Africa in Durban, South Africa in January 2013.
- WTO in close collaboration with WHO, WIPO and the Secretariat of the East-African Community organized a joint training programme on intellectual property and public health for English-speaking African countries in Arusha, Tanzania, from 29-31 May 2013.
- National workshop in South Africa on IP and public health in August 2013 again organized by WTO in close collaboration with WHO, WIPO and the South African Department of Trade and Industry.

164. In the recent past, a number of WHO Member States have been subject to lawsuits and arbitration procedures under bilateral investment agreements with respect to tobacco control measures, including the introduction of plain packaging requirements. This resulted in the need for specific training and capacity building on questions related to international trade rules and tobacco control measures. WHO has organized a number of such regional consultations involving Ministries of Trade and Ministries of Health of about 70 countries throughout 2012 and 2013.

165. More ample information on technical cooperation activities under the WHO programme on public health and intellectual property can be found in document IP/C/W/591/Add.2. We would be glad to answer any questions delegations might have regarding these activities.

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.¹ These recently completed TNAs contain a wealth of contemporary information that is particularly relevant to this discussion.

¹ 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.

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.

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.² In 2012, investments in these economies topped \$112 billion, versus \$132 billion in developed countries.³ 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 2011.⁴

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.⁵

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 technologies⁶

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

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

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

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

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.⁷

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.⁸

IPR, Licensing and Technology Transfer

215. One key aspect of technology transfer is licensing.

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.⁹

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."¹⁰

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:

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

⁷ 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.

⁸ 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).

⁹ 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.

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

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.

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 7th 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.