



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**

HELD ON 25-26 FEBRUARY 2014

**ITEM 11 CONTRIBUTION OF INTELLECTUAL PROPERTY TO FACILITATE
THE TRANSFER OF ENVIRONMENTALLY RATIONAL TECHNOLOGY**

EXTRACTED FROM DOCUMENT IP/C/M/75/Add.1

candidate vaccines, which if unaddressed will continue to present significant risks of failure at relatively late stages of the development process. The specific challenge for these programmes will therefore be to shift the "risk curve" in order to better select successful vaccine candidates (and discard those with a higher risk of failure) at an earlier stage of the vaccine development process, for preventive as well as therapeutic vaccines.

237. In addition to the above projects, the EU is also co-funding with its Member States *the European and Developing Countries Clinical Trials Partnership (EDCTP)*. The EDCTP aims to accelerate the development of new or improved drugs, vaccines, microbicides and diagnostics against HIV/AIDS, tuberculosis and malaria, with a focus on phase II and III clinical trials in sub-Saharan Africa. The basis of EDCTP is "partnership". It currently unites 14 participating EU Member States plus Norway and Switzerland with sub-Saharan African countries. The partnership ensures synergy and optimal use of resources, and creates a win-win situation for all parties involved. In 2014 the EDCTP II programme under Horizon 2020 commenced.

238. Next to the programmes on medicines development the EU also funds programmes which aim to strengthen health systems and health research capacity. We have the *Consortium for Health Policy and Systems Analysis in Africa (2011-2015)*, which aims to extend sustainable African capacity to produce and use high quality health policy and systems research. There is also the *Poverty related diseases college*. This project aims to reorganize and educate young African and European scientists to perform research, on poverty related and neglected diseases that is relevant to development. A third programme is the REDMAL programme, which intends to develop a malaria transmission blocking vaccine (2010-2014), with partners from Tanzania and India. And a last example is the *More Medicines for Tuberculosis project*, with partners from South Africa and India.

239. These are only a few examples of the type of supporting research programmes funded by the Commission for facilitating access to medicines in developing countries.

AGENDA ITEM 11: CONTRIBUTION OF INTELLECTUAL PROPERTY TO FACILITATE THE TRANSFER OF ENVIRONMENTALLY RATIONAL TECHNOLOGY

11.1 Ecuador

240. Ecuador would like to thank the Members of this Council for dealing with this issue, which it requested to be included in the agenda for two essential reasons: firstly, because it is a very timely and important issue for all Members and, secondly, because no Member of this Council has spoken out against the idea that it is necessary to deal with the harmful effects of climate change, in other words, it is an issue that affects the international community as a whole. What we do not agree with is the way in which it is dealt with.

241. I should like to refer to various concerns raised by some delegations at the Council's meeting in October 2013. Concerning the questions posed by Switzerland, asking for Ecuador's views regarding paragraph 4 of the communication of March 2013 submitted to this Council, more specifically requesting Ecuador to elaborate on its concern about lack of information and to indicate specific cases in which the existing tools and procedures of the IP system, as also provided in the TRIPS Agreement, have actually posed a problem. It should be pointed out with regard to the paragraph mentioned by Switzerland in its question (paragraph 299 of document IP/C/M/73/Add.1 entitled "Minutes of Meeting" held in June 2013), that Ecuador gave further details in the "Justification" part of its proposal, based on the statements made in relevant forums, so this is the general view expressed in some discussions. The lack of information that might represent a barrier, however, cannot be explained in terms of the disclosure or non-disclosure of the information in the patent, but rather the information summarized in the patent application does not permit effective transfer of technology. Put another way, it is clear that patent applications do not include the information needed to work the invention after its validity has expired and a licence been granted, making it difficult for developing countries to have access.

242. Switzerland also asked what Ecuador meant by excessive protection, a view also set out in paragraph 4 of Ecuador's proposal. In this regard, excessive protection means a mechanism for protection that approaches the limit of failure to comply with the objective contained in Article 7 of the Agreement, which indicates that the right protected is the contribution to the promotion of

technological innovation and the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations. To give some examples, in the case of environmentally sound technological products, the more excessive the protection the higher the price and production costs for small, medium-sized and large producers, generating incremental costs for the end products, meaning that they are no longer viable.

243. Another example of excessive protection is when each process for obtaining the end product using a particular type of technology is patented and necessitates large-scale investment so it becomes a barrier when comparing the cost of the investment needed to develop the product.

244. This is why Ecuador stresses that mechanisms are required to facilitate the transfer of ecologically rational technology, including agreement on international cooperation for the transfer of know-how to help to prevent the worst effects caused by climate change and to make the technology more accessible to developing countries.

245. Lastly, the Swiss delegation was not clear what was meant by "inappropriate enforcement". In Ecuador's view, inappropriate enforcement means the fact that the patent system is applied without respecting the objectives that promote IPRs set out in paragraph 7 of the TRIPS Agreement and in its Preamble, which states "Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives."

246. The above represents Ecuador's reaction in response to the questions posed by the Swiss delegation referring, as we have seen, to the "Justification" section in paragraph 4 of Ecuador's document, a section whose objective was to explain the overall background so that, by means of serious studies, Members could have a clear picture of the situation of the transfer and use of green technologies, above all in developing countries.

247. At the Council's previous meeting, several countries such as the United States and the representative of the European Union referred to various studies which, in their view, showed that transfer of technology to developing countries had occurred in connection with the issue before us, based on the important role played by patents as a tool for generating innovation. We have, however, reviewed a large number of these studies and those by other authors such as Levin and Boldrine, who in Chapter 8 of the study "Against Intellectual Monopoly" assert that the patent system and monopolies are not the best way of promoting innovation.

248. Even though reference has been made to various studies, there has been no mention, for example, of the number of clean energy licences granted to developing countries or references to cases in which there has been transfer of technology, or to which Latin American or African producers this type of technology has been transferred. We therefore ask these delegations to furnish figures and statistical data backing up their statements.

249. Authors such as Joseph Stiglitz and Becker state that the incentives afforded by the patent system are not enough.

250. In the statements made by the delegates of the United States, Switzerland, the European Union and other countries, Ecuador was requested to submit studies or further documents in support of the proposal submitted for the Council's consideration. In this regard, I may point out that the proposal submitted by Ecuador on 1 March 2013 contains various textual references, many of them concerning authors supporting Ecuador's proposal.

251. Matthew Littleton, mentioned in the Ecuadorian proposal, considers "Despite numerous international commitments to promote transfer of climate-change related technologies to developing countries, such transfers are not occurring at a sufficient rate to aid these nations in mitigating and adapting to the effects of climate change", a quotation from the article "The TRIPS Agreement and Transfer of Climate-Change Related Technologies to Developing Countries", published in Volume 33 of the Review "A United Nations Sustainable Development". This article, which I invite you to read, also covers the options for improving the transfer of technology by making use of the existing flexibilities on TRIPS and by implementing government and private policies.

252. These are the responses to the concerns raised at the previous meeting. We are willing to respond as far as possible to new concerns that may be raised because we consider that further studies are needed and could be included in our proposals. We are therefore open to receiving further information on the basis of which Ecuador is ready to prepare a revised document. It is important to address the possibility for the Secretariat of this Council to provide new elements to be included in the document, which we offer to prepare for the Council's consideration at its next meeting.

11.2 Cuba

253. Cuba thanks Ecuador for its contribution and supports continuing the debate on document IP/C/W/585. 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 (ESTs) and know-how.

254. It is known that IPRs can be an obstacle to accessing these technologies, thus seriously undermining the balance that must exist between the interests of intellectual property rights holders and public policy interests. It is worth noting that Article 7 of the TRIPS Agreement (Objectives) states that the protection and enforcement of IPRs should contribute to the promotion of technological innovation and to the transfer and dissemination of technology. Therefore, all Members should be committed to the full realization of these objectives, which seek to rectify the imbalance that is inherent in the traditional system of IP protection. It would be helpful if the Members that do not agree to discuss Ecuador's proposal could provide the Council with examples of how IPRs have facilitated the transfer of these ESTs to the developing countries.

255. As regards patented ESTs, the developing 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. We believe that compulsory licensing cannot be an exceptional policy in the event of a country facing a health emergency. Other flexibilities related to access to ESTs might be the exhaustion regime which allows for parallel imports, exclusions from patentability and exceptions to rights conferred.

256. We should stress that there are other aspects of the current patent system that are hindering access to these technologies, such as the increase in applications for and rights conferred by patents, the proliferation of applications for and granting of low-quality patents, and the expansion and strengthening of enforcement measures. This is compounded by problems stemming from insufficient descriptions of inventions, which often prevent a person skilled in the art from being able to carry out an invention, since the description is not sufficiently clear or complete.

257. With respect to accessing ESTs in the public domain, it should be remembered that the developing countries and the least developed countries lack the skills, the know-how and the financial resources to make use of these technologies. Technical skills and investment are necessary to make use of ESTs in the public domain. There are also problems due to the abundance of and access to information in the public domain, an issue that has been addressed by the WIPO Committee on Development and Intellectual Property in light of its importance.

258. In short, these are particularly relevant issues which Cuba believes should be further discussed. It would therefore be very helpful if the WTO Secretariat could contribute to and expand on the document submitted by Ecuador.

11.3 Chile

259. Chile thanks Ecuador once again for taking the initiative of including this topic in the Council's agenda for discussion, because climate change is one of the greatest challenges that Members are currently facing.

260. We agree that it is appropriate to make use of the flexibilities provided in the TRIPS Agreement so that countries adopt the measures needed to address this problem, which, as everyone knows, is on a global scale. Although we consider this topic to be highly relevant, we are

nonetheless of the view that the proposal submitted could potentially undermine incentives for innovation.

261. As a practical example, we would like to mention the case of the Medicines Patent Pool (MPP), a non-profit organization backed by the United Nations, which is public-health driven and geared towards the promotion of effective access to medicines.

262. The MPP uses a business model that seeks to reduce the price of HIV medicines while facilitating the development of better HIV medicines in the developing countries. Licence agreements have been signed under the MPP mechanism for a variety of treatments, and a database on the status of patents has also been launched in order to facilitate access to information on what HIV medicines are patented, and where.

263. It is necessary to be the patent holder or to be in possession of the appropriate licence in order to market, distribute or produce a patented medicinal product. The licence is a contract whereby the IP right holder, in this case the patent holder, grants certain property rights to the licensee so that the latter may, in this particular instance, produce, market and distribute a medicinal product. It is well known that one of the key problems that arises in the case of HIV medicines is that they are excessively costly for the countries which need them most (usually in the southern hemisphere) and which generally lack the technological capabilities to produce them. Through its licensing and sub-licensing system the MPP is providing a solution to the problem by means of voluntary licences negotiated directly with the companies holding the patents.

264. In this connection, we believe that the compulsory licencing system for a specific industry, namely the environmental industry, could prove detrimental in terms of the investment needed to develop new and better environmental technologies. We therefore consider it important to explore other alternatives offered by the IPRs system under which it is possible, as in the case of the MPP, to promote and facilitate the granting of voluntary licences. Lastly, we think it would be useful to examine initiatives such as WIPO GREEN, a programme which is being developed by WIPO.

11.4 El Salvador

265. With respect to the proposal by Ecuador we feel that the purpose is to make a contribution to the discussion of these matters in the Council, particularly because the technology and its transfer is a fundamental part of dealing with climate change and ameliorating the negative effects thereof. Our delegation therefore feels that we should continue to explore the existing flexibilities in the TRIPS Agreement in relation to sound environmental technologies as proposed by Ecuador. For that reason we appreciate the contribution, we value it and we will look at it quite carefully in the hope that the enriched version of the proposal promised by Ecuador will also be helpful.

11.5 European Union

266. The European Union welcomes this debate in the framework of the TRIPS Council. Last time we talked about studies, today I would like to present a concrete example of successful technology transfer in the area of clean technologies.

267. The European Business and Technology Centre, India (EBTC) is a programme co-funded by the European Union and coordinated by Eurochambres (association of chambers of commerce in the EU). It was set up in 2008 and is located in New Delhi, Mumbai, Kolkata and Bengaluru.

268. The EBTC's Flagship Missions are in the four sectors of Energy, Environment, Biotech and Transport. The objective of the EBTC is to assist European companies and researchers to facilitate the transfer of clean technology solutions to the Indian market. It fosters business to business and business to government activities and provides market intelligence.

269. In its five years existence, the EBTC has brought 334 delegates from 24 EU Member States with 26 missions to India. However, several market barriers when transferring technology to India deter European providers. Some of these include varying technical standards; lack of access to finance; cross-cultural business issues; detailed market intelligence; securing pilots and

establishing demonstration projects, and most importantly, adapting technologies to suit the Indian specific requirement.

270. According to the Director of the EBTC, "*It is imperative that EU and India take stronger strides in removing barriers to clean technology collaborations. EBTC has been providing customised services that aid in breaking down some of these barriers by reinforcing itself as an organisation that enables European businesses and researchers to interact seamlessly with Indian counterparts as well as keeping policy makers informed of challenges faced in such collaborations. The fruits of EBTC's efforts can be seen in the fact that 23 cooperation agreements have been facilitated between companies, in a number of cleantech areas, including those of energy efficiency software, floating solar platforms and real-time water quality monitoring. Interest in mutually beneficial technology and solutions continues to gather pace, and EBTC expects to see the still nascent cleantech sector growing at a promising pace.*"

271. In 2013, the EBTC became the lead coordinator of the Enterprise Europe Network India – the largest technology platform opening doors which connect SME's in India and Europe.

272. The EBTC has a "Cleantech database" which Indian companies or researchers can access to discover technology or innovation which can complete their business requirements. Hundreds of new technology profiles are added every week. The EBTC also has a Cleantech incubator which offers individual workstations in the EBTC's office premises.

273. The EBTC also set up a European Technology Experience Centre (in September 2013) which supports sustained knowledge exchange between EU and India to facilitate collaboration in Technology, Science, Research, Innovation and Business. The Centre brings together companies and researchers from the EU and India to generate new business opportunities and technology transfer. Indian businesses, local government representatives, policy makers and experts can also attend the training and capacity building programs on offer and interact with EU experts. The Centre allows for technologies to be demonstrated through various means including the use of computer demonstrations, audio-visuals, live presentation, case study demonstrations. The Centre can also be used to organise or carry out capacity building activities.

274. The EBTC also hosts a Research to Innovation to Business (RIB) initiative which aims to facilitate the process of converting EU research projects into innovative and sustainable business, by promoting links and creating networks between EU and Indian research, business, institutions and entrepreneurs.

275. *The EBTC Water partnership.* Over the past 3 decades, the EU has restored the quality of European waters by significantly reducing the pollution from its urban, industrial and agricultural sectors. The knowledge and technological expertise that has enabled this restoration can be adapted and replicated in the Indian context. EBTC has become a strategic partner of the India Water Development Programme and helps to support the deployment of EU technology and expertise in IWDP's pioneering projects.

276. I would like to mention some concrete examples:

- *Aqua Q* – an early warning system that detects bacteria and parasites in water. A collaboration between a Swedish company and an Indian Partner in Kolkata started in July 2013 and launched a new product on the Indian market. The device is specifically designed for the local conditions. An already existing Indian production line was adapted and local software was integrated into the project. Aqua Q worked with local people who understand the local conditions and needs.
- *Tranquil Aquabion* – Every year, damage caused by limescale and corrosion in pipe lines used in potable, industrial, and waste water, applications, results in a large cost for buildings and industries. Within the Green Building sector this results in concerns over sustainability and high recurring costs. For nearly 25 years, the ION AQUABION group from Dusseldorf (Germany) has been engaged in the field of environmentally friendly, chemical free, water treatment, with more than 100,000 systems implemented globally, and is now entering the Indian market with their innovative solution.

277. *A Memorandum of Understanding* In February 2013, a Memorandum of Understanding (MoU), was signed between Ciel et Terre from France with Klystron Electronics Pvt. Ltd from Kolkata, and facilitated by the European Business and Technology Centre (EBTC). The technology involved is floating solar PV. Floating solar PV is a unique solution to address the combined issue of energy, water conservation and land availability. The Hydrelion system patented by Ciel & Terre is a reliable and eco-friendly way to save valuable land and convert a water area into a profitable large scale solar power plant (from 1 to 50 MW). Water aeration technology can also be fitted with the structure to enable purification of the water. Critical success factors for such a project include building a local supply chain, attaining an appropriate Power Purchase Agreement (PPA), power plant investors and operators. All of which are possible given the abundance of resources and potential in the region.

278. Mr. Ghosh (Executive Director, Klystron Electronics Pvt. Ltd,) emphasized that, "as the name suggests, floating solar technology does not require land for its installation, the Eastern as well as North-Eastern region needs energy and has an abundance of water bodies. With the availability of floating solar, the region can contribute to the compensation of energy requirement to certain extent, especially in the rural areas. Support will be required from all stakeholders for the diffusion of such a useful technology."

279. *A recent proposal for collaborative research.* Saint-Gobain Research India Ltd. (SGRI), an R&D centre of Saint Gobain based in Chennai, in collaboration with the Indo-French Centre For The Promotion Of Advanced Research (Cefipra), an autonomous body for bilateral cooperation in Science and Technology between France and India under its innovation program on "Sustainable habitat for hot and/ or humid climates", launched a joint call for proposals in November 2013. Proposals were invited from the Indian and French scientists/researchers of Indian and French research institutions for research proposed to be done in collaboration with SGRI.

280. Topics:

- Improvement of Energy Performance of Commercial and Residential Buildings in Tropical Climates.
- Measurement, Analysis and Mitigation Strategies for Indoor Air Quality in Air Conditioned Buildings in Tropical Climates.
- Day Lighting in Hot-Humid Climates, with ways to Optimize Illumination along with Optical and Thermal Comfort.
- Cool Roof Technology for Hot-Humid Climates, with Performance Comparison of Various Solutions.
- Comparison of Conventional versus Alternative Building Wall Options in terms of Performance and Multi-comfort.
- Frugal Finishing Solutions for Quick, Standardized and Durable Construction.

The web address is: <http://ebtc.eu/etec.html> and I would invite you to consult the website which sets out in detail all the on-going projects and activities.

281. I would like to add that, for technology transfer to happen, there has to be a local enabling environment to receive that technology. In the case of Ecuador, that sponsors this agenda point, the fact that Ecuador has probably the highest tariffs in the world for the registration and maintenance of patents will not encourage transfer of technology to their country. As we understand it, their tariff stands at €113,000 for registration and 20 years maintenance, as compared to the EU which stands at €30,000 now and with the advent of the Unitary patent will reduce to €4,750.

282. We consider this issue as particularly sensitive since the high fees in Ecuador seem to apply mostly to foreign applicants. I would say that these are examples that do not facilitate the transfer of any technology, be it clean or not.

11.6 India

283. We thank the delegation of Ecuador for including this agenda item. I would also like to thank the delegation of the EU for highlighting their efforts in India through European Business and Technology Centre. Since I am not aware of this initiative, I would not like to comment on this.

284. It is high time that the role of Intellectual Property is addressed in a constructive and balanced manner to address the issue of greenhouse gas emissions and climate change adaptation and mitigation efforts. Since any effort in this direction is dependent on the diffusion of environmentally sound technologies to the developing countries, it is essential that barriers in accessing these technologies are suitably addressed. Currently, a significant portion of R&D relevant to climate change is in the hands of a few private companies. According to WIPO 215,000 "clean energy" patents were filed between 2000 and 2008 worldwide. While this data may be little outdated and taking into account that at least 20% more patents have been added since 2008, it is very clear that the environmentally rational technology is controlled by private monopolies through patents and other IPRs. Further in the six energy technologies (wind, solar, photovoltaic, concentrated solar power, biomass-to-electricity, cleaner coal and carbon capture) it is observed that the US, Japan and Germany are clear leaders in energy innovations. India, China or Brazil do not have any organisations amongst the top positions in this field. Any diffusion of these technologies would thus be controlled by these few OECD companies. In a scenario dominated by a business approach to a planetary problem, IPRs are likely to play a key role in determining access to technologies and the cost of using them.

285. Climate change mitigation and adaptation requires not only a massive effort to develop suitable technologies, but mechanisms to make them readily available. Through the technology transfer unless there is a transfer of skills and know-how to use, operate, maintain as well as to understand the technology hardware so that further independent innovation is possible by recipient, there would not be any real diffusion of technology at affordable cost. The technology transfer could be termed successful only when the recipient enterprises develop expertise to develop technology through imitation or reverse engineering to adapt to the local conditions and eventually design and manufacture original products. While the owners of technology believe that a free market approach would address all the issues, including diffusion into the developing countries, it is a fact that the owners will never transfer their technology willingly for the fear of creating competitors. Further it has been observed that even when there has been some sort of technology transfer, it has normally happened through second or third tier companies and that too at an exorbitant price and with several strings attached. It is not possible that any efficient technology at affordable prices can ever be transferred through a market based approach.

286. Since a global problem can never be addressed comprehensively through a commercial approach, a pro-active role of public policy at national and international level would be critical. It is in this regard we support the approach proposed by Ecuador to facilitate the transfer of environmentally rational technology and support the proposal from Ecuador for further discussion on this subject at the next meeting of the Council.

11.7 Japan

287. This delegation welcomes the opportunity to discuss the topic of contribution of IP at this Council, in terms of how it facilitates the transfer of environmentally rational technology.

288. First of all, this delegation would like to emphasize that the existing IP system does not constitute a barrier to technology transfer. Rather, this delegation firmly believes that the current international frameworks that have been set up to handle IPRs can provide a solid and stable foundation for technology transfer. In the field of environmentally rational technology, this delegation would like to note that the WIPO has successfully put this idea into practice through an industry-driven initiative, WIPO GREEN, in which Japanese industry has been playing a leading role.

289. The WIPO officially launched WIPO GREEN in November 2013 after a pilot phase. This initiative is designed to accelerate both innovation and diffusion of green technologies. WIPO GREEN matches owners of new green technologies with individuals or companies seeking to commercialize green technology. Given that around 1,000 technologies were uploaded onto the database during its pilot phase, WIPO GREEN is expected to further facilitate technology transfer

and consequently support the efforts of countries in addressing climate change. This delegation believes that it is important to create an environment that is conducive to self-efforts being made by industry to address global environmental issues. From this perspective, Japan has been supporting this initiative.

290. Furthermore, this delegation would like to make a brief remark regarding Japan's initiative created to address global warming issues. It is called "Actions for Cool Earth" or ACE for short. ACE specifies various action plans to be taken, through which the utilization and dissemination of Japan's advanced environmental and energy-related technologies is intended to be promoted. Among others, particular note should be taken of the following two action plans in terms of technology transfer. Firstly, Japan properly understands the needs of other countries, and develops and adapts low carbon technologies to satisfy the needs, aiming to make these technologies available in these countries. Secondly, Japan provides support for projects that are involved in transferring low-carbon technologies from Japan to other countries. This delegation is convinced that these actions will bear fruit in the future in the form of a more environmentally improved world.

291. On the other hand, some developing countries have expressed their concerns that environmentally sound/rationale technologies are not sufficiently being transferred to their countries. By the same token, believing that technology transfer is actually being discouraged by the IP system, Ecuador proposes initiatives in its document (IP/C/W/585), which would undermine the current IP system.

292. In addressing the concerns expressed by some developing countries, this delegation feels that, on the contrary, the IP system can provide an important basis for promoting and encouraging technology transfer, and that there are various other factors such as technological capabilities or infrastructure that might also affect the chance of technology transfer. This delegation is of the view that the initiatives proposed by Ecuador would end up lowering incentives for innovation and thus lead to fewer opportunities for technology transfer. Therefore, we need to carefully consider appropriate ways and means for implementing technology transfer by conducting a detailed analysis of the situation in each country.

11.8 Switzerland

293. Switzerland would like to thank Ecuador for its comments on the questions Switzerland had posed to it at past TRIPS Council meetings. We will examine these comments and get back to them at the Council meeting in June, if necessary. For today, and in support of earlier interventions today by other delegations such as Japan, my delegation would like to make and reaffirm a number of points explaining why Switzerland is convinced that effective national and international IP regimes are prerequisites for the transfer of environmentally safe technologies whether to developed or developing countries.

294. IPRs strengthen the functioning of thriving markets for renewable energy technology, thus playing a key supporting role in the fight against climate change. IPRs are fundamental for all parties involved in the process of transfer and dissemination of such technologies:

295. The transfer of state-of-the-art "green" technologies can only take place in a safe legal environment, where the transferor can be confident that his invention is protected in the recipient country, once transferred. Hence, a well-functioning and reliable regulatory framework, including effective protection and enforcement of IPRs, is one vital component of an "enabling environment" which creates transparency, predictability and legal certainty. This in turn provides investors, inventors, licensors and licensees of ESTs with the confidence they need in order to engage in know-how, financial and technological transfer. IPRs manage the respective contractual relationship between the transferor of the technology and the transferee by establishing the legal rights and obligations of the parties, thus putting their relationship on a firm basis and making it accountable.

296. The IP system also fulfils an information function in that inventors, under the obligation of Article 29 of the TRIPS Agreement, as a corollary of its patent application, the patent applicant needs to disclose the invention in a sufficiently clear and complete manner. Through this disclosure requirement, the patent system fosters the diffusion of technology and tech knowledge for the

benefit of the public at large and, more specifically, of interested parties seeking innovative technology that they wish to license in. The recent "UNEP/EPO Report on Patents and Clean Energy Technologies in Africa" of 2013 unequivocally confirmed this principle on p.11 with regard to patents by noting that "[t]he information function of patents, therefore, constitutes a vital mechanism for dissemination of clean energy technologies, also supporting further research and development in the area."

297. The information function of IPRs, especially that of patents, allows to bring together the different stakeholders and potential partners to exploit and build on innovative EST. Powerful search tools are at the disposal of the interested public, such as "EPO's Espacenet public database" with some 88 million published patent documents, "EPO's Patent Translate", the "Green Growth Knowledge Platform" and the "WIPO Green database" launched last November 2013, to name but a few. These databases enable interested parties to gather and identify the information about the technology they wish to procure.

298. It would be misleading to assert that the presence of an IP system or patent protection on their own were the panacea to make the transfer of ESTs happen. A mix of factors need to be present for this to actually happen in practice. The Summary Report of July 1 2013 of the 6th meeting of the Technology Executive Committee (TEC) of the United Nations Framework Convention on Climate Change (UNFCCC) refers on p. 7 to a number of such other key ingredients that are needed for technological development and transfer of that technology, e.g. appropriate economic and financial incentives, a reliable legal and regulatory framework also beyond IP protection, absence of technical barriers, organisational and institutional capacity as well as required human skills in a particular field of technology to name but a few. Having said this, IP protection is certainly part of the solution.

299. Put to the test, claims that due to patents ESTs and their manufacturing are prevalent in developed countries only seem largely unfounded by what we find in real life. On the contrary, a distinctive trend can be observed over the last five to 10 years of major clean tech transfer from developed countries to key developing countries such as Brazil, China, India and others, evidence of a major global diffusion and deployment of clean technologies. Developing countries like China and India have been able to build up very competitive innovative green technology sectors over the last 10 years themselves.¹

300. Finally, as concerns the aspect of better affordability and enhanced access to innovative ESTs, my delegation would like to highlight that in January 2014, a promising initiative was launched in Davos, Switzerland, by a group of 14 WTO-Members with the aim to liberalising and facilitating global free trade in environmental goods and promote their dissemination. The Group, which is open to any WTO-Member State, is determined to eliminate tariffs on environmental goods that are crucial in the combat against climate change and environmental degradation. It is building its work on a list of 54 environmental goods such as wind turbines and solar panels; a list which has been elaborated by the Asia-Pacific Economic Cooperation (APEC) group. The Group surrounding this "Trade in Environmental Goods" initiative eventually seeks the conclusion of an environmental goods agreement on the basis of the Most-Favoured-Nation-Principle that would further strengthen the multilateral trading system for the benefit of all WTO-Members, including developing countries. For this to happen, a critical mass of WTO-Members should agree to join this initiative. We therefore invite any WTO Member to take part in this cooperation initiative which seeks to promote trade in - and thus the transfer of - green technology, bringing us one step closer to the transition to a green economy.

11.9 United States

301. We also thank Ecuador for sponsoring this agenda item and welcome this opportunity to discuss the important and positive relationship between IPRs and climate change adaptation and mitigation efforts. We take up today Ecuador's call this afternoon to identify national and international efforts to promote green technology transfer.

¹ See John H. Barton, *Intellectual Property and Access to Clean Energy Technologies in Developing Countries* (2007), International Centre for Trade and Sustainable Development, Issue paper no. 2, p. XI.

302. As delegations will recall, in June of last year, the United States provided a review of a significant body of economic research and other data that demonstrated that green technology innovation is happening in both developing and developed countries, that voluntary technology transfer is occurring, and that IPR plays a significant and catalytic role in promoting such innovation and transfer. For the delegation that suggested today that voluntary technology transfer is not happening, we would refer that delegation to our intervention in June which refutes that assertion. Chile, the EU, Japan and Switzerland's interventions today further demonstrate, with facts, that voluntary technology transfer is occurring.

303. Despite the wealth of data confirming these findings, some delegations may still say that IPR protection and enforcement is not the only answer to the green technology question. And we agree, that despite the positive contributions of IPR to innovation and technology transfer, many non-IPR barriers continue to stand in the way of innovation and technology transfer.

304. As we discussed at the last meeting of this Council in October, there are numerous non-IPR obstacles standing in the way of our joint goal of promoting innovative solutions to our shared climate imperative.

305. In the context of the UN Framework Convention on Climate Change, 31 developing and least-developed countries submitted Technology Needs Assessments, designed to identify priority climate-related needs as well as barriers, to the transfer of climate adaptation and mitigation technologies. As Switzerland noted, the UNFCCC Technology Executive Committee Synthesis report confirmed that very few of those TNAs even mentioned IPRs. And when IPR was mentioned in a few select cases, IPR was not identified among the priority issues to be addressed. In fact, the UNFCCC Technology Executive Committee Synthesis report was itself silent on IPR.

306. Instead, the 31 TNAs enumerated a series of financial and non-financial barriers to green technology transfer, including:

- Lack of or inadequate access to financial resources;
- The existence of inappropriate financial incentives and disincentives;
- High transaction costs;
- Insufficient legal and regulatory frameworks;
- Rent-seeking behavior and fraud; and
- Market barriers

307. Of the nearly 20 barriers identified in the Technology Executive Committee synthesis report, IPR did not make the list. We would welcome Ecuador's views on why it did not identify IPR as a barrier, and focused on these non-IPR barriers.

308. We agree with Ecuador that it is these non-IPR barriers that are the true villains. They are the enemies of innovation and the adversaries of diffusion that stand in the way of progress, that deny our research potential, and that thwart the promise of tomorrow's green technology solutions.

309. Just last week, I was talking to the University of Botswana about their technology transfer efforts, and they confirmed in stark terms the lesson of the UNFCCC Technology Needs Assessments. The number one challenge the University identified was lack of financing. To respond to this challenge, the University is implementing its research strategy laying out a pathway to becoming a research-intensive university by 2021. And the Government of Botswana responded as well by having revised its IP law in 2010 and creating the Botswana Innovation Hub to attract foreign innovative companies to its market. The Hub is designed not only to mobilize mutually beneficial investment partnerships, but to translate university research into goods and services that benefit the consumers of Botswana.

310. Botswana is not alone – neither in the challenges it faces, nor in the global interest in responding. In fact, we have found a tremendous number of diverse mechanisms that rely on IPR solutions to address environmental needs. These mechanisms target both financial and non-financial barriers to green technology innovation and transfer, and offer the opportunity to

overcome several of the barriers identified in those Technology Needs Assessments. Today, we wanted to highlight a few of those mechanisms.

311. Travelling from Botswana to the United States, we will focus on another university-based mechanism that includes a vibrant climate change component. The US Association of University Technology Managers or AUTM, for example, is a nonprofit organization with an international membership of more than 3,000 technology managers from more than 300 universities, research institutions, teaching hospitals, as well as businesses and government organizations.

312. AUTM's technology managers represent their institutions and are primarily responsible for:

- Identifying new technologies;
- Protecting technologies through patents and copyrights; and
- Forming development and commercialization strategies such as marketing and licensing to existing private sector companies or creating new startup companies based on the technology

313. AUTM operates several cutting-edge programs that match university research with green and other technology needs. For instance, AUTM's Better World Project promotes public understanding of the benefits of academic research and technology transfer around the world, and provides a searchable technology database.

314. While on the Better World Project website, I found numerous climate-related technologies, including the Carbon Explorer developed at the Lawrence Berkeley Lab in California, which is a robotic ocean float that measures carbon concentrations in the ocean. For the first time, this Explorer gives researchers the ability to continuously track the biological processes of oceanic carbon cycles, and has been sent to some of the most remote and extreme ocean environments in the world, gathering data that previously had not been generated.

315. Likewise, AUTM's Global Technology Portal provides a gateway to university technologies available for licensing worldwide. This interactive database not only allows users to freely search by technology area, it also identifies university research capabilities, technologies for licensing and university partnership needs for specific innovative issues, including climate change-related solutions. AUTM also produces a series of annual licensing surveys that provide quantitative data and real-world examples about licensing activities at U.S. and Canadian universities, hospitals and research institutions.

316. The United States government has also committed considerable resources to promoting green technology matchmaking, marrying US technology suppliers with technology demands in foreign markets. This includes sophisticated tools like the Department of Commerce's Environmental Solutions Exporters Portal. This Portal literally connects environmental problems with regulatory and commercial solutions.

317. The Portal contains four drop-down menus on "Environmental Issue", "Regulation", "Solution" and "Solution Provider". In other words, this Toolkit provides a single window for overcoming several of the technology transfer barriers identified in the UNFCCC Technology Needs Assessments.

318. For example, when I clicked on Arsenic Remediation in Drinking Water under "Issue", I could immediately access the Arsenic Rule of the Environmental Protection Agency's Safe Drinking Water Act, which provides a model approach to specific legal and regulatory framework needs.

319. At the same time, with one click I accessed U.S. government economic analysis on this issue, studies on remediation technologies and costs, analytical methods for rule determinations, and arsenic occurrence in public drinking water.

320. Finally, I could view and access information on 24 U.S. "Solution Providers" that have experience and technological expertise in arsenic remediation in drinking water. With no shortage of environmental problems to solve, the Environmental Solutions Exporters Portal tailors solutions in an efficient and multidimensional fashion.

321. Moving from the United States to just up the street here in Geneva, WIPO has developed several innovative platforms to match member states' needs with IP-related resources. These include the WIPO Development Matchmaking Database and WIPO GREEN. The WIPO DMD, for example, provides an extensive searchable database comprised of technology offers, needs and funding sources, and also an option to express interest in either the kind of assistance a WIPO member state needs or the resources that a partner can offer.

322. As for WIPO GREEN, it is an interactive marketplace that promotes innovation and diffusion of green technologies by connecting service providers with those seeking innovative solutions. The WIPO GREEN Network consists of partners, service providers and funding sources. Its partners include, among many others, AUTM, which we referred to earlier, Brazil's FORTEC network of Brazilian technology transfer offices, South Africa's Innovation Hub, and India's Villgro Innovation Foundation, which is a social enterprise incubator.

323. I also wanted to briefly mention a regional initiative under the Asia Development Bank funded by the UNFCCC Global Environment Facility. The ADB has recently issued a call for proposals for a pilot project to establish a low carbon technologies marketplace operator. This innovative project, which is scheduled to commence in May 2014, would rely on an assisted broker model to bring providers and recipients together to facilitate low carbon technology transfer. In speaking with the ADB representative about the pilot project, he expressed optimism for the project, and underscored the objective that it be self-sustaining. And in that discussion, he stressed that one of the key barriers to sustainability is rent seeking, including local content requirements.

324. Before concluding our little tour of existing green technology innovation and transfer mechanisms, we wanted to return to the UNFCCC and the importance of our IPR discussions here in the WTO TRIPS Council.

325. In this Council, our mandate is to discuss IPR issues, whether they are related to green technology, innovation, university partnerships or even to sports. The UNFCCC mandate and expertise is climate change. In conformity with that mandate, the UNFCCC has established a Climate Technology Centre and Network to:

- Enhance cooperation with national, regional and international technology centres and relevant national institutions;
- Facilitate international partnerships among public and private stakeholders to accelerate the innovation and diffusion of environmentally sound technologies to developing country Parties; and
- Identify, disseminate and assist with developing analytical tools, policies and best practices for country-driven planning to support the dissemination of environmentally sound technologies.

326. Like the other mechanism we have identified today, the CTCN offers the promise of overcoming the barriers identified in the UNFCCC Technology Needs Assessments. The CTCN, which was formally launched in December of 2013, can do this through concrete and case-by-case problem-solving, matching technology needs with solution providers, without the distraction of existential and divisive debates.

327. So, in conclusion, we would welcome Ecuador's views on how it has promoted technology transfer. Has Ecuador championed the development UNFCCC Climate Technology Centre and Network? Has it explored AUTM's Better World Project or endeavoured to identify regulatory solutions and proven providers on the Environmental Solutions Exporters Portal? We have heard concerns about steps in the wrong direction, such as patent fees. We also share these concerns.

328. Speaking generally, have WTO delegations promoted an innovation environment within their borders through IPR protection and enforcement, or do financial disincentives and market barriers, such as local content requirements, frustrate green technology innovation and transfer?

329. We end our intervention where we started with the UNFCCC Technology Needs Assessments. Addressing the obstacles identified by 31 countries in those priority needs, including by Ecuador itself, are the conditions precedent to innovation and the antecedents to technology transfer.

330. While IPR is a critical catalyst to green technology innovation and transfer, without addressing these non-IPR barriers, and by not mobilizing existing resources, such as those discussed in our intervention, today's green technologies and tomorrow's innovation will remain equally out of reach.

331. For these reasons, as well as those we have previously identified, we continue to have serious reservations regarding Ecuador's proposals and are not in a position to support its recommendations. That said, we again welcome this opportunity to discuss this critically important issue.

11.10 China

332. China welcomes the proposal of the delegation of Ecuador to discuss this issue again at the TRIPS Council. It is the common interests of the whole world to fight against climate change, and the principle of common but differentiated responsibilities has been established as the basis for closer international cooperation. Due to the developing country Members' low development level and shortage of capital and technology, the developed country Members should support them and enhance the international cooperation in fighting against climate change.

333. IPRs, among all other financial or non-financial elements, are an important element concerning the development and utilization of the environmentally rational technologies. Article 7 of the TRIPS Agreement provides that the protection and enforcement of IPRs should contribute to the promotion of technological innovation and to the transfer and dissemination of the technology. Article 8 also provides that appropriate measures may be needed to prevent the abuse of IPRs by right holders or the resort to practices which adversely affect the international transfer of technology. Thus, IPRs should contribute to, but not become a barrier to, the transfer and dissemination of environmentally rational technologies.

334. Nothing in the TRIPS Agreement prevents its existing general flexibilities from its application to the environmentally rational technologies. We hope the discussions on this matter could further identify the problems and find the most appropriate solution for effectively promoting and facilitating developing country Members' access to the environmentally rational technologies, and provide a better environment and policy space for the transfer and dissemination of environmentally rational technologies from developed countries to developing country Members.

11.11 South Africa

335. South Africa would like to support Ecuador on this important issue. South Africa believes that the objective of IPRs should be to both promote innovation and facilitate the diffusion of technology, balancing legitimate interest in a socially beneficial manner. Article 7 of the TRIPS Agreement reflects the search for a balanced approach to IPR in the societal interest. The IPR regime is expected to contribute not only to the promotion of technological innovation but also to the transfer and dissemination of technology in a way that benefits all stakeholders and that respects a balance of rights and obligations.

336. In addition Article 8 recognizes Members' rights to adopt TRIPS-consistent measures to protect inter alia not only public health and nutrition, but also the public interest in sectors of vital importance to their social economic and technological development. This provision also recognises that Members may need to take appropriate measures provided that they are consistent with the TRIPS Agreement to prevent the abuse of IPRs by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

11.12 Australia

337. Australia is supportive of the work of WIPO and WTO to promote green technology innovation transfers. The WTO has facilitated discussion on IP and green technology through sponsoring workshops and various forums for discussion. In WIPO the Global Challenges Divisions provides information on climate change mitigation and adaptation as well as platforms for the development, transfer and diffusion of technological solutions. WIPO has hosted several conferences on IP and the transfer of environmental rational technology in recent years. As illustrated by country presentations at the two previous TRIPS Council meetings, there is substantial evidence of green technology innovation including in developing countries that voluntary technology transfer is occurring.

338. Australia considers that IP protection is necessary to continue this trend, which rewards research and development initiatives and encourages initial investment in green technology. Australia remains willing to work with Members on concrete practical suggestions which could contribute to the dissemination of green technologies without distorting the IP system. We would be open to further discussions on the role of IP in voluntary licensing of technologies associated with adaptation to, and mitigation of climate change, with a particular focus on the needs of the most vulnerable developing countries.

339. Australia is also committed to making environmental goods more accessible to developing countries. Australia has joined Switzerland and twelve other WTO Members recently in committing to prepare for negotiations to liberalise trade in environmental goods. Eliminating tariffs on environmental goods will lower the costs of these goods and make them more accessible, particularly for those developing countries participating. Members may also wish to Australia's intervention at the previous TRIPS Council meeting which provided a more detailed outline of our position on these issues.

11.13 Brazil

340. 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 TRIPS Agreement.

341. TRIPS Agreement is a result of negotiations that have struck a delicate balance between stimulus to innovation and promotion of public interest in sectors of vital importance to socioeconomic and technological development of Members. One principle of the Agreement is that IP 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;

342. In this sense, the use of TRIPS flexibilities is pivotal to ensure that these objectives, socioeconomic and technological development, will be reached. Taking into account the big number of questions raised by some members on the subject, Brazil could go along with the proposal of Ecuador of updating their proposal with support from the Secretariat.

11.14 Ecuador

343. We welcome the examples cited by several delegations and we undertake to review the information mentioned, although it is necessary to verify which initiatives deal with the transfer of technology protected by IPRs or technologies that are not necessarily protected but are in the public domain, the latter not being relevant to our examination.

344. Notwithstanding the foregoing, we should like to make the following remarks without fear of being mistaken. Before the Doha Declaration and before the main TRIPS guidelines regarding the balance that should exist between private interests derived from the patent system and public interest in peoples' access to health and medicines, there were isolated private initiatives intended to mitigate this lack of access without this signifying the absence of any problems or international determination set out in legal instruments necessary in order to be able to understand, determine and apply the flexibilities in this regard as now perceived and addressed at the international level.

345. Although the initiatives mentioned by some delegations exist, this does not mean that we have an international picture that promotes proper dissemination of environmentally sound technologies (EST) and, in the texts referred to in the footnotes to Ecuador's proposals, the encouragement given for the transfer of environmentally rational technologies of benefit to the community, closely linked to IPRs, is insufficient and this is why we consider it necessary to pursue this discussion on the basis of a revised proposal that incorporates new elements, as well as those that may be put forward by the Secretariat.

346. What is not in doubt is that this issue is also one of public interest so all Members should share responsibility for adapting the TRIPS Agreement and domestic IP legislation with a view to achieving results similar to those obtained in the case of public health. This is why we need firm, measurable and verifiable commitments to ensure the transfer of EST and to set aside the rhetoric of the past and transform this commitment into reality that helps us to think of the future.

347. Ecuador wishes to thank other Members for participating in consideration of the proposal on the "Contribution of intellectual property to facilitate the transfer of environmentally rational technology", addressed at the Council's meetings in June and October 2013, which permitted a frank exchange of views and yielded contributions on a matter of extreme importance for the fight against climate change.

348. Ecuador remains convinced of the need for access to EST by developing countries as one of the principal tools for achieving better adaptation and/or mitigation of the effects of climate change. Such access would permit the construction of models that contribute to sustainable development because the ones that exist today do not allow full utilization of EST.

349. The comments, suggestions and recommendations made at previous meetings of this Council have underlined the urgent need to continue discussing this issue in order to reach a consensus that allows full utilization of EST by developing and least developed countries.

350. This is the framework within which the WTO and WIPO Secretariats can play a key role in providing new elements in response to the appeal from Members. In the discussions that took place, not one single Member spoke out against the latent concern at the harmful effects of climate change. Positions differ as to the way in which the problem should be tackled.

351. As became evident from the discussion on this issue, Ecuador, together with other countries, considers that developed countries control the use of EST so there is vast gap in comparison with developing countries. It is therefore necessary to transfer this technology so that developing countries can effectively engage in the fight against climate change. In addition, developed countries consider that innovation is the way to combat the harmful effects of climate change and that IPRs and patents in particular are the catalyst for such innovation.

352. In the light of these positions, it is paramount to embark upon a constructive discussion analysing new studies and elements that can help Members of this Council to elucidate this problem as effectively as possible and what we all agree on is that it affects the international community as a whole. Ecuador therefore deems it necessary to incorporate into its proposal new elements that may be put forward by the WTO and WIPO Secretariats in implementation of the cooperation agreement between the two organizations, together with the studies and work already undertaken or to be undertaken by other organizations relating to intellectual property and mechanisms for mitigating the effects of climate change.

353. The views expressed by Members in this Council will also be relevant to the task to be undertaken by Ecuador as it is of interest to reinforce the notion and relevance of the fact that the fight against climate change has to include the cooperation provided by the industrialized world to developing countries. Such cooperation basically implies effective facilitation in order to have broad access to EST.

354. Taking into account the foregoing, Ecuador requests all the Members of this Council to agree that the WTO Secretariat should undertake a study of the new elements which could provide ideas and enrich the debate on the transfer of EST to combat the harmful effects of climate change, a task that involves both developing and developed countries.

11.15 Benin

355. This agenda item is as important as the others we have taken up during this session. I would like to underline the importance of the contribution of IP to the promotion of transfer of technology and innovation, and of the link to environmental issues, particularly climate change. For that reason, my delegation, following others who have spoken previously, would like to strongly recommend that the scientific community and researchers in the business world undertake and promote cooperation so as to seek useful approaches for the well-being and the health of the mankind as well as the balance and promotion of sustainable development. The examples that have been shared with us on this and other occasions should be disseminated. For this reason, the proposal that was submitted by the delegation of Ecuador is a useful basis on which we can work.

356. We would also like to indicate that the food for thought and the suggestions for possible solutions could be part of an effort to bring about mitigation adaptation in climate change, a beneficial partnership should be established and we would recommend, like other delegations, in particular Ecuador, that the Council continue to take up this item and that the WTO Secretariat, together with WIPO and the UNDP, work on pulling together the practices and experiences here and there in the international world, so that possible solutions and prospects can be gathered together in a compendium, so that in the near future this can help us to deal on a sustainable basis with this situation.

11.16 United States

357. We would welcome an opportunity to discuss this important issue again if Ecuador decides to put it on the agenda. This is the third meeting where we have had this discussion, and we look forward to the fourth. However, I do not think we are in the position yet for the Secretariat to be reporting or reaching out to other organizations on this issue. Clearly, if WIPO has some views on it, as an observer they are within their mandate to respond. But we cannot support the preparation of a study at this time, or at least we would need to further consider what would be the scope of such Secretariat work, what would be the parameters. We are hearing this proposal for the first time and will need to go back home and to consider, so I think we are going to need further time to consider and are not in a position to support that suggestion today.

11.17 Ecuador

358. Ecuador would like to thank all of the Members for the very high level at which we have dealt with this topic. It is a topic, as has been said, that affects the entire international community and it is our hope that the US delegation will consult with their capital on the relevance of requesting the WTO and WIPO Secretariats, along with others, as referred to by the delegate of Benin, to submit new studies that will help to stimulate further study. We want to bring in new information that will enable us to take correct decisions moving in the correct direction in order to counteract negative effects of climate change. I would request that this item be placed on the agenda of the next meeting, so that there would be no need for Ecuador to send in documentation in order to request the inclusion of this item on that agenda.

11.18 United States

359. As a point of order, I think that what Ecuador is suggesting is suspending the rules of procedure and we cannot support that at this time without further consideration. Delegations may submit a request for an item. I am not quite sure why this is a special item, as some of the Members have said today. This is an agenda item, important as it is, like any other.

11.19 Ecuador

360. This is really a question for the Secretariat. Ecuador has always respected all of the procedures and rules, but would like to have a clarification as to whether the subjects which are being discussed by the Council have been the subject of a specific request by particular countries to be included on the agenda?

11.20 Secretariat

361. The rules of procedure for meetings of the General Council, which in this respect also apply to the TRIPS Council, provide that "its shall be open to any Member to suggest items for inclusion in the proposed agenda up to, and not including, the day on which the notice of the meeting is to be issued", and that "requests for items to be placed on the agenda of forthcoming meetings shall be communicated to the Secretariat in writing, together with accompanying documentation to be issued in connection with that item". So this is the normal procedure when a delegation wants to put any additional items on the proposed agenda. Our practice has been that if the same delegation or some other delegation wants to revert to such a matter at a subsequent meeting, then it submits a new request. As you are aware, there are a number of themes to which the Council has returned several times, not necessarily at the request of the same delegation, but also by another delegation, or sometimes by groups of delegations. Of course the Council can take a decision by consensus to revert to such a matter at its next meeting. However, the normal and non-controversial procedure is, where a delegation wants to continue the discussion of such an item, that it submits a written request after which the item will be included on the proposed agenda.

11.21 Chairman

362. May I ask whether the Council, pursuant to Ecuador's suggestion, is willing to agree to have this item on the agenda of its next meeting. If not, Ecuador has every right to once again request it in writing.

11.22 United States

363. We need to fully consider the implications of this issue and would prefer to review this issue back in capital. We are perfectly happy to return to this agenda item if Ecuador submits a written request through the normal procedures.

11.23 Ecuador

364. We regret that a single Member of the Council is unable to join the consensus. I do not really understand it because, in various statements that have been made by the same Member, they have led us to believe that it is a matter of interest to them and we are very grateful for all of the examples that have been cited. We simply do not understand why taking up the same item at the next Council meeting is a problem. We have proposed the preparation of new studies and indicated that we will submit a revised version of our proposal on this topic. So we would urge the US delegate to agree that this item could be on the agenda for the next meeting, as happened in October at the last Council in which the United States was in agreement to deal with this item. There have been so many Members who have said that it is a topic of interest to them and therefore we would ask for the indulgence of the United States in enabling us to consider this item.

11.24 Chairman

365. I suggest that the Council take note of the statements made. Since delegations may exercise their rights under the provisions in a rational way, there is no need to have a discussion in the Council on the interpretation of the rules. So I would invite any interested delegation to submit a written request for the inclusion of any item of interest to them.

11.25 Ecuador

366. Ecuador would already like to indicate that it will put a request to the Secretariat at the appropriate time in order to continue consideration of this item.