



*Intellectual Property and its Role in the Generation and
Diffusion of Green Technologies,
Hong Kong China
12 November 2014*

**Session VI: Role of IPRs in the
diffusion and transfer of green green**



OVERVIEW

- Background to recent EST discussion in TRIPS Council
- Ecuador's proposal in the TRIPS Council
- Reaction of others, including opponents
- Will a Doha type declaration help?
 - Difference between medicines and green technologies
- Concluding remarks



Background

- Environmental negotiations since 1972, including the UNFCCC negotiations on climate change, have raised issues related to transfer of ESTs.
- Marrakesh Decision on Trade and Environment
 - To consider relationship of WTO agreements and MEAs, including with reference to the relevant TRIPS provisions
- India's submissions to the CTE in 1996, 1998
 - For ex. WT/CTE/W/82
- India and China's submissions in



Ecuador's initiative

- Ecuador brought this subject to the TRIPS Council under "Other



Ecuador's objectives in IP/C/W/585

- Reaffirmation of the existing flexibilities in the TRIPS Agreement so that Members use them in connection with ESTs, for example through a declaration addressing flexibilities in the TRIPS Agreement, climate change and access to ESTs;
- Initiation of a review of Article 31 of the TRIPS Agreement to determine which of its provisions may excessively restrict access to and dissemination of ESTs, and particularly its paragraph (f) and the need to include provisions on, as the case may be, the transnational



Ecuador's objectives in IP/C/W/585 2

- Recognition that adaptation to and/or mitigation of the harmful effects of climate change should be assimilated to the concept of "public interest", with the adoption of a provision authorizing **exemption from patentability on a case by case basis**, for inventions whose exploitation is vital for the diffusion of ESTs needed for adaptation and/or mitigation of climate change;
- Evaluation of Article 33 of the TRIPS Agreement to establish **a special reduction in the term of protection for a patent of [X] years** in order to facilitate free access to specific patented ESTs for adaptation and/or mitigation of the effects of climate change because of urgent need in the public interest; and
- Inclusion of a mechanism in the TRIPS Agreement **to promote open and adaptable**



Views expressed in TRIPS meetings

- All welcome discussion – US and others want this to be placed on the agenda on a meeting by meeting basis
- Some support Ecuador's views – Bolivia, Cuba, Venezuela, El Salvador, India, Indonesia, South Africa
 - Patents create monopolies leading to high prices and lack of adequate access
 - Patents do not disclose technical information sufficiently, even if they do – no transfer
- Others support further ~~meetings~~ ~~meetings~~



Views expressed in TRIPS meetings 2

- Others (mainly US, EU, Japan,) strongly rebut premise that IPRs are obstacles to tech transfer – most ESTs from private sector and enabling environment crucial for transfer to take place – many examples given, many arguments made
 - IPRs do not inherently make green technologies more expensive highly competitive not only within the sector, but also between alternative sectors
 - Few patents taken out in smaller developing countries – can use patent information
 - Lack



Will a Doha type Declaration help?

Difference between medicines and ESTs

- Climate change technologies **highly diverse** in character and involve large number of different sectors,



Will patent exclusion or reduction in patent term help?

- Not relevant whether patents induce innovation or not – existence of patents is said to be a problem
 - Patents rights **are obtained for each jurisdiction** separately and are independent of each other.
 - At the time of patent filing, or even grant, it is **not commercially proven technology** – many fall by the wayside.
 - Even if it is commercially proven, the **mere existence** of a patent on a particular clean technology in a particular coun97m41n1a71Tf3.92J/TT71TfA.970TDO



Concluding remarks

- TRIPS contains obligations on standards of protection (and enforcement) of IPRs but also contains flexibilities to take measures to tackle climate change, provided that these are otherwise consistent with the Agreement
- TRIPS Council discussions have provided a unique forum for discussions on record on the role of IPRs in the transfer of ESTs