

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 IN THE CENTRE WILLIAM RAPPARD ON 11 JUNE 2014

I TEM 11 CONTRIBUTION OF INTELLECTUAL PROPERTY TO FACILITATE THE TRANSFER OF ENVIRONMENTALLY RATIONAL TECHNOLOGY

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

11.1 Ecuador

1.1. Ecuador once again wishes to thank other Members for participating in the 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 and February 2014. At these meetings Ecuador emphasized that facilitating access to environmentally rational technology is critical to ensuring a transfer of technology that helps mitigate climate change, which is a phenomenon that affects all Members.

1.2. One of the reasons that prompts Ecuador to continue insisting that this issue should be addressed is that not one single Member has spoken out against the latent concern at the harmful effects of climate change. As we said before and emphasize again today, positions differ as to the way in which the problem should be tackled.

1.3. Ecuador shares the view that the rapid development and dissemination of technology for mitigation and adaptation purposes is a fundamental component of the global response to climate change, in which IPRs are a prerequisite for the transfer of technology.¹ It is accordingly necessary to prevent excessive protection from affecting the dissemination of such technology. Ecuador, as indeed other Members, has taken part in the Technology Needs Assessment Project for Climate Change, identifying the priority sectors for adaptation to and mitigation of climate change, which highlights a real interest on Ecuador's part in using ecologically rational technology as part of the development of these priority sectors. On the other hand, Ecuador has been working on national programmes aimed at promoting access to and the development of ecologically rational technology, including projects designed to encourage technology transfer.

1.4. It will be recalled that at the last meeting Ecuador requested Members to agree that the WTO and WIPO Secretariats should undertake a study of the new elements that could provide ideas and enrich the debate on this topic. Unfortunately, no agreement was reached.

1.5. In an entirely constructive spirit, Ecuador now proposes that a briefing session be held in which experts from the Intergovernmental Panel on Climate Change (IPCC) and the International Centre for Trade and Sustainable Development (ICTSD) would provide new elements to assist the Membership in further clarifying this problem. Both the IPCC and the ICTSD are fully competent and have all the necessary technical and scientific knowledge in respect of climate change mitigation mechanisms, and the information they would give us may prove an effective tool for decision-making in this Council. This briefing session could be held before the next meeting of the Council, with the WTO Secretariat providing the staff needed to arrange it.

1.6. With these considerations in mind, Ecuador emphasizes its intention to formulate new elements and include information that further supports

11.3 United States

1.9. We again thank Ecuador for sponsoring this agenda item, which provides an additional and important opportunity to discuss the positive relationship between IPRs and the environment, including but not limited to climate change.

1.10. This morning, we want to discuss success stories. Today, we will provide real world examples of how IPR protection \boldsymbol{c}

1.20. One story highlights Simpa Networks' Progressive Purchase Technology for Home Solar

1.30. A Swiss start-up ecaVert Sàrl which is based near Lausanne, has been granted an

been able to achieve those significant technological refinements that allowed the vertical green biobed to be deployed in Switzerland and beyond.

1.42. Take effective IPR protection away, and Dr. Kisaalita may not have secured funding from so many diverse sources, or may never have been able to receive much needed technology transfer from a keg-maker in Germany.

1.43. But, today we are taking about successes stories. Their success, both economic and environmental, as well as the related technology transfer and uptake by consumers, is due in part because of IPRs.

1.44. As the WTO Members in this room consider their environment-related innovation policies

using the publicly available search tools of EPO such as the "Espacenet public database" with some 88 million published patent documents and the "Patent Translate"? These tools enable the retrieval of technological information and multilingual access of knowledge in fields such as green energy

developing countries to join this promising Green Goods Trade Initiative as one way of promoting trade and the transfer in green technologies.

1.57. Finally, on the two proposals mad this agenda item again at a next TRIPS Council meeting, Switzerland is ready to continue discussing and contribute substantively to the Council addressing the issue of IP and ERT.

1.58. As concerns Ecua dedicated event with external stakeholders on IP and ERT: my delegation would need more

challenges while filing patent applications abroad. They have also been collaborating with Japanese universities, as well as being financed by the Development Bank of Japan by using their patents as collateral. In cooperation with the Japan International Cooperation Agency (JICA) and a university in Indonesia, this company has been studying how to adapt their technologies to local conditions.

1.68. This delegation agrees that climate change is one of the defining challenges

1.79. Ecuador has highlighted today the importance of bringing "new elements" to this important debate. The EU would like to present such new elements to inform the discussion of this matter. According to two recent studies conducted jointly by the European Patent Office (EPO) and the United Nations Environment Programme (UNEP), less than 1% of all patent applications relating to CCMT from the last 30 years (1980 to 2009) have been filed in Africa and less than 2% of worldwide CCMT patent applications are filed in Latin America². These studies highlight that Africa & Latin America have a huge untapped potential for generating clean energy. They also show that IPR does not hamper the use and dissemination of climate-related technologies in developing countries and cannot be seen as an obstacle to technology transfer. On the contrary, most of the more than 720.000 inventions for climate change mitigation technologies made in the last 30

years are part of these (developing and least-developed) countries' public domain and can be exploited without any IP related authorisation. Additionally, approximately 2 million patent documents relating to climate change mitigation are made available via the internet on offices' patent information services and can be freely used for R&D purposes³.

1.80. For instance referring to the countries that took the floor today - in Ecuador were identified 8 patents for CCMTs, in Cuba 14, in Chile 6 and in El Salvador 3.

1.81. Therefore, filed patent rights are unlikely to be a major consideration in any decision to exploit CCMTs. Other factors, such as lack of financial resources, high investment costs, subsidies and tariffs are much greater barriers to accessing technology. According to a study conducted by the EPO, favourable market conditions and a favourable investment climate are also considered significantly attractive conditions in the decision to enter into licensing agreements⁴. Moreover, IPR do not inherently make green technologies more expensive, as R&D costs only account for a small proportion of costs compared to manufacturing expenses.

11.10 El Salvador

1.82. We would like to thank Ecuador for its contribution, which is a good basis for us to continue to explore existing flexibilities within the TRIPS Agreement, particularly with regard to the environmentally sound technologies. While we also begin an assessment process so as to bring greater flexibility to the patentability disciplines, these could be effective tools in order to adapt or effectively mitigate climate effects that developing country Members have adopted in their climate change strategies. We are interested in continuing to review this topic. We are looking forward to the new proposals that Ecuador has announced. We would also express our thanks to the delegate of the EU for the figures responding to the pending question on how many patents had been granted. In my country's case, the number given is three, which I will be checking with my national office. The number of patents does indeed show the interest in innovation that does exist for such technologies. We believe that an information session proposed by Ecuador would be very useful.

11.11 Canada

1.83. I would like to thank the delegation of Ecuador for bringing this issue to the Council's agenda once again. The patent regime is used as a driver furthering innovation, and many clean technology companies continue to rely on the patent regime as an important part of their business model. Canadian companies continue to be involved in developing sustainable technologies such as renewable energy and many of these companies depend on IP rights, financing and international engagement to succeed. Many factors impact the transfer of environmentally rational technology. An effective approach would be to rather focus on removing tariffs and non-tariff barriers, as for example, the on-going initiative on environmental goods. We would also like to highlight that there is a wide array of enabling factors such as domestic regulatory frameworks, foreign direct investment and international trade in general that promote environmentally sound technologies. An open non-discriminatory trade and investment regime, backed by national conditions that reward innovation are core requirements for technology transfer to occur. We would point to joint

² "Patents and clean energy technologies in Africa", EPO &UNEP, 2013 <u>http://www.epo.org/news-</u> <u>issues/issues/clean-energy/patents-africa.html</u> and ongoing study on "Patents and climate change mitigation technologies in Latin America" conducted by EPO &UNEP <u>http://www.oecd.org/site/stipatents/2013%20PSDM%20Agenda_final.pdf</u>

³ "Patents and clean energy technologies in Africa", EPO &UNEP, 2013

⁴ "Patents and clean energy: bridging the gap between evidence and policy", EPO & UNEP, 2010

1.92. IPRs are an important element concerning the development and utilization of the environmentally rational technologies. According to the TRIPS Agreement, the promotion of technological innovation and to the transfer and dissemination of the technology are the objectives of the protection and enforcement of IPRs, and the abuse of IPRs by right holders or the resort to practices which adversely affect the international transfer of technology should be prevented. So, IPRs should contribute to, but not become a barrier to, the transfer and dissemination of environmentally rational technologies.

1.93. 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 environmentally rational technologies, and provide a better environment and policy space for the transfer and dissemination of environmentally rational technologies from developed country Members to developing country Members.

11.14 WIPO

1.94. WIPO would like to thank the TRIPS Council for the opportunity to present WIPO's contribution in the area of green technology transfer. We would first like to highlight our Platform WIPO GREEN in the area of Intellectual Property and Transfer of Environmentally Sensitive Technologies.

1.95. WIPO GREEN is an interactive marketplace that connects green technology providers and those seeking innovative solutions to combat environmental challenges. It is an entry point for WIPO services in facilitating green technology transfer. We work on two principal components. The first one is the WIPO GREEN DATABASE which is freely accessible and offers a broad listing of needs for products, processes, know how transfer, collaboration and finance. It also offers products, services and IP assets. The technologies and needs cover: Administrative, Design or Regulatory Aspects, Agriculture / Forestry, Alternative Energy Production, Energy Conservation, Transportation and Waste Management.

1.96. The second of the principal components is the WIPO GREEN NETWORK that connects green technology providers and seekers, catalyzes mutually beneficial commercial transactions and offers other resources and services.

1.97. WIPO GREEN Charter has provisions on WIPO GREEN's Mission and Principles. WIPO GREEN

1.101. The partner list of WIPO GREEN is growing continuously and as of today we have 47 partners. On WIPO GREEN our current emphasis is to facilitate deal making, broaden types of technologies and needs available on the database, integration with other platforms (e.g. AUTM, SS-GATE, HKTDC, Danish Patent & Trademark Office, etc.) and raise the profile of WIPO GREEN amongst the green tech community.

1.102. I would also like to inform you briefly on another platform,

relationship between innovation and IP, and show how IP can best be used for economic and social development. We participate as an observer at the UNFCCC meetings and organize side events on IP related issues. WIPO is also a forum for discussion - in July 2011 WIPO organized the Conference on Innovation and Climate Change in Geneva. We prepared a report on Global Challenges on Intellectual Property and the Transfer of Environmentally Sound Technologies.

1.109. Other activities outside the Global Challenges Division as far as technology transfer is concerned are the following: WIPO provides patent information. WIPO GOLD is a free public resource which provides a one-stop gateway to WIPO's global collections of searchable IP data. It aims to facilitate universal access to IP information. WIPO also has prepared patent landscape reports on climate change and energy on specific areas like the Report on Desalination Technologies and the Use of Alternative Energies for Desalination, Patent-based Technology Analysis Report Alternative Energy Technology, Solar Cooking and Electronic waste recycling.

1.110. WIPO provides capacity building support for the management and transfer of green technologies, including assisting in drafting IP clauses in technology transfer agreements. Technology and Innovation Support Centers (TISC) are established to provide innovators in developing countries with access to locally based, high quality technology information services and other related services.

1.111. In addition to the above, WIPO recently became a CTC Network member. WIPO GREEN will act as the entry point for assistance requests from developing countries on IP and transfer of green technologies through CTCN. UNEP/CTCN is also a WIPO GREEN partner.

1.112. The Climate Technology Centre and Network (CTCN) is the operational arm of the UNFCCC Technology Mechanism and it is hosted and managed by UNEP in collaboration with UNIDO and with the support of 11 Centres of Excellence located in developing and developed countries. The CTCN promotes accelerated, diversified and scaled-up transfer of environmentally sound technologies for climate change mitigation and adaptation, in developing countries, in line with their sustainable development priorities. As defined by the Intergovernmental Panel on Climate Change (IPCC) climate technologies cover any piece of equipment, technique, practical knowledge or skills for performing a particular activity that can be used to face climate change.

1.113. There is also the WIPO Development Agenda, which was initiated to ensure that development considerations form an integral part of WIPO's work. The effective implementation of the Development Agenda, including the mainstreaming of its recommendations into our substantive programs, is a key priority. There are 6 different clusters of Development Agenda

11.15 Peru

1.115. Peru would like to thank the Secretariat of WIPO for their useful presentation on WIPO GREEN. We would urge WIPO to also report to us on the negotiations taking place at the IGC, since this would enrich the Council's discussion under items 5 and 6.

11.16 Brazil

1.116. I would just like to add my voice to that of my colleague from Peru in thanking the WIPO Secretariat for sharing information on its activities related to technology transfer. We regret that TRIPS Council Members could not hear how WIPO reports on the work undertaken under the IGC despite of the reque