

## **Committee on Development and Intellectual Property (CDIP)**

**Eighth Session**  
**Geneva, November 14 to 18, 2011**

### **DESCRIPTION OF THE CONTRIBUTION OF THE RELEVANT WIPO BODIES TO THE IMPLEMENTATION OF THE RESPECTIVE DEVELOPMENT AGENDA RECOMMENDATIONS**

*Document prepared by the Secretariat*

1. The WIPO General Assembly in its fortieth session held in Geneva, from September 26 to October 5, 2011, considered the document WO/GA/40/18 on “Description of the contribution of the relevant WIPO Bodies to the implementation of the respective Development Agenda Recommendations”.
2. The WIPO General Assembly took note of the contents of the above-mentioned document and forwarded the relevant paragraphs from the reports of the various bodies to the Committee of Development and Intellectual Property (CDIP).
3. Accordingly, the annex to this document contains the above mentioned paragraphs.
4. *The Committee is invited to take note of the information contained in the Annex to this document.*

[Annex follows]

- (a) Report on the Work of the Standing Committee on Copyright and Related Rights (SCCR), document WO/GA/40/6, paragraph 23:

Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations,” the following declarations extracted from the draft Report of the 22nd session of the SCCR, document SCCR/22/18, paragraphs 508 to 515:

The Delegation of South Africa, speaking on behalf of the African Group, said that the implementation and mainstreaming of the Development Agenda recommendations in all areas in WIPO was of great importance to the African Group. The Committee had made significant strides in the past year in addressing the three main substantive agenda items, namely exceptions and limitations, audiovisual performances and broadcasting organizations. The minimum standards for intellectual property use through exceptions and limitations to copyright and related rights remained an important issue not only to the African Group but to all developing countries and least-developed countries, as well as the developed countries, which had advanced systems of exceptions and limitations upholding the public interest, and especially contributing towards the achievement of the biennium development goals and other international development goals. It was within that context that the African Group attached great importance to the exceptions and limitations for persons with disabilities, including the visually impaired. The African Group was therefore encouraged by the work of the Committee. The WIPO regional seminars on the protection of audiovisual performances and broadcasting organizations held in various countries in 2010 helped developing countries in understanding the socioeconomic impact of norm setting at the international level in the areas of broadcasting and the movie industry. One of the key recommendations of the Development Agenda was to ascertain the application of norm-setting to developing countries. The Abuja seminar for African countries demonstrated the benefits the African countries could derive from the protection of audiovisual performances and broadcasting organizations. The Abuja seminar had also reinforced the need for the Committee to expeditiously working towards concluding the treaties for the protection of audiovisual performances and broadcasting organizations. The Delegation hoped that the session would reach a consensus on a diplomatic conference for adopting a treaty on the protection of audiovisual performances, a draft treaty text for convening a diplomatic conference for exceptions and limitations for people with printed disabilities, and a work plan for the protection of broadcasting organizations. The Delegation called for that exercise to be guided by Cluster B of the Development Agenda, particularly Recommendations 15 and 22.

The Delegation of the United States of America, speaking on behalf of Group B, pointed out that during the previous Committee sessions, the agenda item on the Development Agenda recommendation reporting was dealt with after all substantive items. Group B understood that the procedures in the SCCR should not create a precedent.

The Delegation of the European Union wanted to hear views of the members on the contributions the Committee had made in the implementation of the Development Agenda. It added that the discussions on the contribution of WIPO bodies to the Development Agenda recommendations should in principle take place after discussions and conclusion of the other agenda items, since the objective of the discussion on the development coordination mechanism was to take into account and to report on all of the work and, in particular, on the results of the Committee.

The Delegation of India, speaking on behalf of the Development Agenda Group (DAG), expressed its satisfaction for the conclusion and thanked all Member States for the spirit of accommodation and flexibility. The Group believed the 45 recommendations of the WIPO Development Agenda adopted by the WIPO General Assembly in 2007 were immediately

relevant to the ongoing work in that Committee, and therefore welcomed the opportunity to speak about how the SCCR was integrating the Development Agenda into its work. The DAG welcomed in particular the work plan agreed to at the 21st SCCR session that integrated rule-setting in the areas of exceptions and limitations to copyright, with particular reference to persons with print and other related disabilities, as well as libraries and archives, education, teaching and research institutions. The Group recognized the value of copyright in encouraging creativity and cultural development. It believed that with exceptions and limitations in key areas would allow governments to strike the necessary balance in their intellectual property systems to ensure that those rights did not adversely affect access to knowledge and culture to disadvantaged segments of the population, especially those in developing countries. Therefore, the Group welcomed the progress being made on the persons with print disabilities treaty and looked forward to an early and positive conclusion of it to allow the vast population of visually impaired and print disabled persons to access, enjoy and derive benefits from the wealth of printed literature around the world. The Group also looked forward to similar progress being made with regard to similar initiatives in the area of libraries, archives and education, as outlined in the SCCR work program. The Group remained committed to those discussions and optimistic about constructive engagement in that dialogue with all WIPO Member States. The Group was also encouraged by the forward movement in that session on the two long-pending draft treaties under discussion, namely on the protection of audiovisual performances and on the protection of broadcasting organizations. The Group hoped that the agendas on the substantial instruments would be resolved and progress towards their finalization while moving in the same direction on the draft treaty for limitations and exceptions for visually impaired persons. The Group reiterated the importance to ensure that all those norm-setting proposals were treated on par, and there was no second class treatment to any particular issue or community. The Group also hoped that the Development Agenda recommendations, especially those pertaining to norm setting in Cluster B would fully take into account when finalizing the instruments. The Group expressed satisfaction with the progress made. To that end, the Group looked forward to an early and positive conclusion of binding international legal instruments on all of the three ongoing norm-setting initiatives in the SCCR.

The Delegation of Brazil expressed its views on the contribution of the implementation of the Development Agenda and believed that should be a model adopted by all relevant WIPO bodies. Since the approval at the last meeting of the work program on exceptions and limitations to visually impaired persons, libraries, archives and persons with print disabilities, the Committee had been on the right path to implement the Development Agenda recommendations, which called for the need for balances in all WIPO normative activities. The need for balance had already been acknowledged in the WIPO Copyright Treaty, which stated “recognizing the need between the rights of authors and the larger public interest, particularly education, research and access to information as referred to in the Berne Convention.” The DAG thought it was important there was no second class treatment on the issue of exceptions and limitations. The Delegation further stressed that there was no reason why the Committee should be discussing a treaty for the benefit of actors and even for the benefit of broadcasting organizations, and not for the benefit of the blind. The Delegation pointed out the need to look further into that issue to find a sufficient and adequate solution. It agreed with the statement made by the European Union that the item should be the last substantive item in the agenda so as to assess what had been decided upon.

The Delegation of Pakistan, speaking on behalf of the Asian Group, acknowledged the inclusion of the new agenda item on implementation of the relevant recommendations and the work of the SCCR. The Group believed that the 45 recommendations of the Development Agenda adopted in 2007 were directly relevant to the work of the Committee. The Group encouraged the work and discussions in the SCCR regarding

norm-setting on limitations and exceptions which were an essential part of the positive agenda in WIPO. In particular, the Delegation welcomed the work program which was agreed during the 21st session of the SCCR that looked for norm-setting in the areas with exceptions and limitations to copyright. The Delegation highlighted that Cluster B should form the norm-setting in the SCCR.

The Delegation of the Philippines, referring to the statements of the Delegation of Pakistan and the Delegation of India, was encouraged by the progress made in the area of norm-setting in the Committee. To make the recommendations of the Development Agenda more meaningful, the Committee should also seriously look into the maintenance of robust public domain and copyright regimes which would serve as equations of new knowledge, follow-on innovation and enable low cost access to information for developing countries, particularly the least-developed countries. In the future, the Committee needed to revisit norms and standards embodied in various treaties administered by WIPO, particularly regarding works fallen into the public domain.

The Delegation of Barbados supported the statement of the Delegation of India as well as the statement from the Delegation of Brazil. It reiterated that there should be no second class treatment given to print disabled persons. While the SCCR was supporting the protection of audiovisual performances and the protection of broadcasting organizations, the Committee could surely support a treaty for the visually impaired and print disabled persons.”

(b) Matters Concerning the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), document WO/GA/40/7, paragraphs 17 and 18;

Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations”, IGC 19 also discussed the contribution of the IGC to the implementation of the Development Agenda Recommendations.

In this regard, the following statements were made at IGC 19. These will also appear in the initial draft report of IGC 19 (WIPO/GRTKF/IC/19/12 Prov.), which will be made available, as requested by the IGC, by September 30, 2011:

“The Delegation of South Africa, on behalf of the African Group, stated that the implementation of the monitoring and reporting mechanism of the WIPO Development Agenda was an important tool. It recalled that the 2010 General Assembly approved this mechanism with a view that all relevant WIPO bodies should report on their contribution towards the implementation of the Development Agenda Recommendations. It referred in particular to Recommendation 18 that urged the Committee “to accelerate the process on the protection of genetic resources, traditional knowledge and folklore, without prejudice to any outcome, including the possible development of an international instrument or instruments.” It added that other relevant Recommendations included Recommendations 15, 21 and 40. It underlined that the Committee was one of the most important Committees in WIPO to the African Group, as it sought to develop an appropriate *sui generis* system for the protection of GRs, TK and TCEs. It was pleased that the Committee was currently undertaking text-based negotiations with the objective of concluding an appropriate international legal instrument or instruments for the protection of TK, TCEs and GRs. It said that the three IWG meetings assisted immensely in guiding the work of the Committee. As a result of these preparations, the 17th and 18th sessions of the Committee had been able to make significant progress on texts relating to TK and TCEs. It was, therefore, of the view that the current negotiation process was to a certain

extent in line with the Development Agenda Recommendation 18. It nevertheless recalled that the Committee had not accelerated negotiations on GRs and emphasized that the Committee had spent significant time addressing objectives and principles on GRs without deciding on the eventual outcome. It requested from the Committee to decide on the appropriate mechanism for the protection of GRs. It welcomed the efforts of the WIPO Secretariat to facilitate the registration and digitization of TK of interested Member States and took note of two recent WIPO events related to the issues, held in India and Oman respectively. It said that these events demonstrated the usefulness of registering TK and TCEs as well as the digitization of TK, adding that the development of databases and digital repositories would go a long way in complementing norm-setting on the protection of GRs, TK and TCEs. It recognized the role that WIPO played in providing IP information and advice in order to advance the negotiations of the CBD Nagoya Protocol on Access and Benefit sharing. It encouraged WIPO to continue interacting with the CBD Secretariat on the implementation of the Nagoya Protocol and also collaborate with other intergovernmental organizations in the areas of TK, TCEs and GRs. It was pleased with the participation of representatives of indigenous and local communities in the Committee's work and stated that their perspectives and contributions had enriched the negotiations. It expressed appreciation for the contributions that had been made to the Voluntary Fund for representatives of accredited indigenous and local communities as it enabled the participation of indigenous peoples and local communities in the Committee's work. It reminded the Committee that the Voluntary Fund was running out of funds and welcomed some of the suggestions made by some representatives of the indigenous peoples that the Member States and observers should consider contributing to the fund on a voluntary basis. It found the exercise of linking the work of the Committee with the Development Agenda through the Coordination Mechanism fruitful and an effective way of monitoring progress.

The Delegation of Brazil was pleased to state its views under a specific agenda item on how the Committee had been contributing to the implementation of the Development Agenda Recommendations. It expected that the same format of reporting be adopted in all relevant WIPO bodies. It recalled that the work of the Committee should be guided by the Development Agenda Recommendations, as in all relevant WIPO bodies. It added that special attention should be given to Recommendation 18 which urged the Committee to accelerate the process regarding the protection of TK, TCEs and GRs. It said that since the approval of the Development Agenda in 2007, the Committee had indeed accelerated its work, noting that the 2009 General Assembly had approved an even more ambitious mandate that instructed the Committee to undertake text-based negotiations with the view of reaching agreement on a text of an international legal instrument or instruments to ensure the effective protection of TK, TCEs and GRs. It recalled that three IWG meetings had been convened to achieve this goal and that that fifteen experts from capital from GRULAC had been financed for each IWG meeting. It nevertheless reminded that in spite of this new mandate, progress had been slow, noting that the Committee was not in a position to recommend at this meeting the convening of a Diplomatic Conference. It emphasized that in order to fulfill the recommendations of the Development Agenda it was essential not losing the 2009 ambition in the process of extending the mandate for an additional period of two years. It believed that at least the same number of meetings should be held and the same level of financing should be kept in order to show Member States' commitment to the cause of protection. It suggested that IWG be replaced by extraordinary sessions of the Committee, should the Member States find it useful. It said that it was in any event important to maintain the work between the sessions in order to keep the necessary momentum. It agreed with the Delegation of South Africa that spoke on behalf of the African Group that GRs had lagged behind. It added that special attention must be given to developing an effective work program in relation to that specific issue while renewing the mandate of the Committee.

The Delegation of the United States of America, on behalf of Group B, was pleased to contribute to the discussion on the Committee's implementation of the respective Development Agenda recommendations, specifically those in cluster B on norm-setting, flexibilities, public policy and public domain. It recognized the work with respect to WIPO Development Agenda Recommendations 16 as well as 17, and, in particular, Recommendation 18 which directly related to the Committee. The Delegation stated that the Committee had made good progress towards fulfilling the 2009 WIPO General Assembly mandate to reach agreement on a text of an international legal instrument or instruments which would ensure the effective protection of TK, TCEs and GRs. It added that this discussion on TK, TCEs and GRs greatly contributed to the mainstreaming of the development considerations in WIPO's work. It recalled that over the past two years, options for substantive articles for TK and TCE and options for principles and objectives for GR had emerged. It said that, despite this progress, further policy reflection and consensus were required in order to provide texts which were sufficiently mature to warrant consideration by the General Assembly.

The Delegation of the European Union and its 27 Member States recognized the relevance of the work of the Committee to the implementation of the Development Agenda Recommendations. It recalled that the most recent mandate of the Committee directly corresponded with Recommendation 18, which referred to accelerating the process on the protection of TK, TCEs and GRs, without prejudice to any outcome, including the possible development of an international instrument or instruments. It believed that further and fuller assessment of the Committee's contribution to the implementation of the Development Agenda would only be possible at a later stage. It recalled that the Committee had recently seen considerable progress in the negotiations, including through the work of the IWGs in which the participation of experts had proved to be very useful. It added, however, that much substantive work still remained to be done. It was of the view that various Committee-related activities and initiatives were guided by the relevant Development Agenda Recommendations. It noted that the norm-setting activities within the Committee were member-driven and ensured a participatory process, which took into consideration the interests and priorities of all Committee's Member States as well as the viewpoints of other stakeholders, including accredited intergovernmental organizations and NGOs. This was in line with Recommendation 15. It noted as well that the norm-setting process duly considered the boundaries, role and contours of public domain in line with Recommendations 16 and 20 and was taking into account flexibilities in international IP agreements in line with Recommendation 17. It stated as well that the Committee's negotiations were based upon open and balanced consultations in line with Recommendations 21 and 42 and were supportive of the UN development goals in line with Recommendation 22. It added that the work on the protection of TK, TCEs and GRs had a potential to contribute to the mainstreaming of development considerations in WIPO's work and the understanding and use of flexibilities in line with Recommendations 12 and 14. It emphasized that the contributions to the Voluntary Fund for Accredited Indigenous and Local Communities, which facilitated participation of the observers in the IWG and the Committee's sessions, as well as activities of the Indigenous Consultative Forum and the Indigenous Panel, should be mentioned in the context of Recommendation 42 referring to wide participation of civil societies at large in WIPO activities. It concluded by appreciating the contribution made by the Committee to the implementation of the Development Agenda and looked forward to cooperating further within the Committee on the realization of the goals set out in the Development Agenda.

The Delegation of Japan supported the statement made by the United States of America on behalf of Group B. It noted that the Committee had made progress. It believed, therefore, that the Committee had been contributing to the implementation of the Development Agenda Recommendations, especially Recommendation 18. It noted that further work was needed in order to carry on the process on the protection of TK, TCEs and GRs,

without prejudice to any outcome, including the possible development of an international instrument or instruments, as Development Agenda Recommendation 18 stated.

The Delegation of the Islamic Republic of Iran expressed its satisfaction with the inclusion of this agenda item, as it provided an opportunity for Member States to raise their points on the issue of development, with the hope of mainstreaming it through all the activities of WIPO. It was of the view that development objectives lay at the heart of the Committee and said that the 45 Recommendations of the WIPO Development Agenda were immediately relevant to its ongoing work. It stated that the Committee had reached a critical moment in its text-based negotiations and recalled that since 2000, the Committee had invested a lot of time and energy in its process. It requested that the Committee keep the momentum and try to solve the remaining divergences in order to be able to fulfill the long-pending aspirations of developing countries. It welcomed, therefore, the progress being made as a result of text-based negotiations and it was optimistic about the positive outcomes, that is, the enhancement of the effective use of IP principles for the legal protection of TK and TCEs, as well as equitable benefit sharing of GRs. Such a trend could move IP rights in a more balanced direction, would increase the interests of the developing countries in the IP system and, therefore, promote the legitimacy of WIPO as a UN specialized agency, which should be bound by UN development objectives. It said that the only avenue to realize these objectives was the establishment of international binding instruments to protect TK, TCEs and GRs. It expected that such an important paradigm shift in the IP regime would bring about sustainable grounds for the management of collective and individual rights in order to commercialize TK, TCEs and GRs for the benefit of its holders. It highlighted that this process could improve the enabling environment for development in developing countries and would enhance knowledge economy through the use of IP as well as increase the contribution of the developing countries in the global knowledge and global cultural partnership. It invited the Secretariat to provide technical assistance to countries in order to enable them to formulate robust national protection systems, as well as new methods for the commercialization of TK and folklore, for the benefit of their holders, in parallel with the on-going negotiations that were taking place in the Committee. It suggested that these activities be designed in the future as a project of the Committee on Development and Intellectual Property (CDIP).

The Delegation of Ecuador referred to the Annex of WIPO document WO/PBC/17/4 that contained the Draft Proposed Program and Budget for the 2012/13 Biennium, in particular to Program 11 which related to the WIPO Academy. It expressed its support for the creation of a new specialized course on TK in the framework of the Distance Learning Program of the WIPO Academy as foreseen in the draft. It said that this course would help the users, including civil society, to follow the developments of this issue in line with the Development Agenda.

The representative of Tupaj Amaru referred to the development issue as it had been addressed by the UN for the last 25 years. He considered that the Millennium Development Goals (MDGs) had not been met and had failed entirely. He said that the form of development that indigenous peoples were confronted with was neo liberal in nature and destructive of their GRs and TK. Indigenous peoples wished for a different type of development in accordance with their collective interests.”

(c) Report on the Work of the Standing Committee on the Law of Patents (SCP), document WO/GA/40/8, paragraph 12;

Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations”, the following statements extracted from the preliminary draft report<sup>\*</sup> of the sixteenth session of the SCP (document SCP/16/9 Prov., paragraphs 446 to 455), are reproduced hereafter:

“The Delegation of Brazil noted that, since Member States did not yet have an agreed format for reporting to the General Assembly, in the previous session of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), the Chair had invited delegations to express their views on how the Committee had been contributing to the implementation of the Development Agenda recommendations. In that session, delegations had expressed their views freely, and those views had been included in the report which would be sent to the General Assembly. The Delegation suggested that the SCP adopt the same procedure.

“The Delegation of India, speaking on behalf of the Development Agenda Group, supported the proposal made by the Delegation of Brazil and delivered the following statement:

The Development Agenda Group attaches great importance to this agenda item and is pleased to see that in keeping with the directive of the General Assembly, this Committee is taking stock of how it has so far contributed to the mainstreaming of the Development Agenda in its area of work. The patent system is a key element in the intellectual property framework, and one that impacts directly on national socio-economic development and societal welfare. The fundamental premise of the patent system is that a country confers an artificial and temporary monopoly on the inventor, in exchange for disclosing the invention to benefit the larger interests of society. There is a growing acknowledgement that the current IP system focuses heavily on ensuring rights to IP title holders, without adequately ensuring that the other side of the trade-off is taking place as it should, consequently leading to the concern that the patent system is not working as it was originally intended. If the IP system has to thrive and encourage innovation and growth – a goal that all of us share and support - this can only happen if its shortcomings are effectively addressed. While we are happy that there has been a tentative initiation of discussion in this Committee on some of these aspects, we need to have a more open and frank discussion about some of the current deficiencies in the patent system and try to recover the essential balance that ought to be inherent in the patent system. This can again only happen if there is a willingness to revise old, incorrect assumptions and a commitment to improving the system, where needed, both for the benefit of Member States, and for the future viability of the system itself. To this end, we welcome the analytical and conceptual discussions that have taken place in the last few sessions of this Committee on a range of issues, such as the economic impact of the patent system, anti-competitive practices, standards and patents, alternative models of innovation etc. They have indeed contributed to a more balanced and holistic understanding of many complex aspects of the international patent system. However, we need to go beyond theoretical discussions to the concrete practices and post-grant realities in the outside world, which are being hotly debated outside WIPO, but not yet addressed in this Committee. We must not shy away from discussing and better understanding how patents are actually being used in the market, and how these are encouraging or impeding innovation, technological growth and development. For instance, we know that the actual inventor hardly corresponds today to the owner of the patent; many patents have become a tool for extending market monopolies to enable the rich to grow richer; and that patents can be misused to promote anti-competitive behavior – all of which are counter to the notion that patents are to be accorded to the right holder only to benefit society as a whole. Only through such frank discussions can we hope

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<sup>\*</sup> In accordance with the procedure agreed by the SCP at its fourth session (see document SCP/4/6, paragraph 11), the preliminary draft report of the sixteenth session of the SCP has been made available on the SCP Electronic Forum for the members of the SCP to comment on it, prior to its submission to the seventeenth session.



to forge the collective will and action necessary for improving the system. The issue of patent quality is one such key issue to address if we want an effective and credible international patent system. High quality and credible patents are an objective that all countries share and are concerned about. There is considerable amount of literature and ongoing debate on this issue, in developed and developing countries, alike. However, we need to ensure that we have a shared and common understanding of what is meant by 'patent quality' before we proceed to discuss and finalize a work program in this regard. Another critical area is the issue of patents and health, which has seen animated discussions in the public realm and has led to many concrete actions in other organizations like the WTO and WHO. WIPO has been conspicuously silent. It is therefore heartening that this issue is on the agenda of this Committee. We hope that the time lag in WIPO in addressing this issue will be made up in terms of concrete and meaningful actions in the SCP's work program. Similarly, more tangible discussions are needed in the SCP on how patents can contribute to better addressing the key challenges facing humanity today - in areas such as food and energy security to environment, disaster management, climate change and education. We hope that in the days ahead, there will be open and constructive engagement on these important issues. The long prevalent and naïve assumption that providing patent holders with stronger rights will, by itself, foster innovation and attract investments has been rejected in the light of global economic realities and experiences. How countries can optimally calibrate the level of IPR protection using exceptions and limitations and other tools and flexibilities has so far been an academic discussion in this Committee. The formulation of a Questionnaire will hopefully be the first step towards having a concrete work program, enabling WIPO to play its due role in assisting countries in evolving tailor-made IPR policies. Finally, and most importantly, the issue of 'transfer of technology' is at the heart of the fundamental trade-off inherent in the patent system. An objective assessment of how the patent system has so far enabled or impeded technology transfer and identification of ways by which WIPO can help the patent system contribute to this goal, is at the heart of the work of this Committee. We are happy that the past few sessions have seen some useful discussions, and look forward to translating these discussions into useful elements of the SCP's work program. In conclusion, the SCP has started an important and necessary discussion on various development-related aspects of the patent system, which were hitherto not addressed. We welcome this positive step and look forward to a meaningful translation of these discussions into concrete elements of a work program for the Committee. We also hope that many critical issues that have not yet been addressed in this Committee will become the subject of honest and constructive consideration, leading to their integration in a holistic, development-oriented and balanced work program for the SCP."

The Delegation of Brazil made the following statement:

The Delegation of Brazil welcomes the opportunity to express its views on how the SCP has been contributing to the implementation of the Development Agenda recommendations. We are particularly glad to do so on a specific agenda item called "Contribution of the Committee to the implementation of the respective Development Agenda recommendations". We believe this is a very positive development and we hope the same model can be replicated to the other relevant WIPO bodies. In what concerns specifically the contribution of the SCP to the implementation of the Development Agenda, the Delegation of Brazil recalls that after some unsuccessful attempts, the SCP has agreed at its last session to a work program which in our view is quite balanced and will allow this Committee to make concrete progress. We believe that this work program is in line with the recommendations of the Development Agenda, and in this sense the Delegation of Brazil feels that the SCP is indeed making a positive contribution to the implementation of the Development Agenda. Turning now to this session of the SCP, we consider that the approval of the questionnaire on exceptions and limitations to patent rights brought a very positive step in complying with Recommendation 17, which states "In its activities, include norm-setting, WIPO should take into account the flexibilities in

international IP agreements, especially those which are of interest to developing countries and LDCs". We recall that the questionnaire is one element of the first phase of the Brazilian proposal that aims in its third phase to elaborate a manual on exceptions and limitations to be used by members as they see fit. The Delegation of Brazil is also glad that the SCP is starting to address the relationship between patents and health. The joint proposal by the African Group and the Development Agenda Group seeks to develop a work program to enhance the capacities of Member States and, particularly, developing countries and LDCs to adopt patent regime that make full use of the flexibilities available in the international patent system to promote public policy priorities related to public health. This is very much in line with Development Agenda recommendation 22 that states that "WIPO norm-setting activities should be supportive of the development goals agreed within the United Nations system, including those contained in the Millennium Declaration". We are confident that the SCP would be able to make progress on this issue at its next session. To conclude, I wanted to add that the Delegation of Brazil is also committed to show the necessary flexibility to have a good conclusion of this session of the SCP."

The Delegation of South Africa, speaking on behalf of the African Group, made the following statement:

Following the adoption of the coordination mechanism and monitoring, assessing and reporting modalities of the Development Agenda at the forty-eighth WIPO General Assembly, the African Group would like to provide its views on the contribution by the Standing Committee on the Law of Patents to the implementation of the Development Agenda recommendations. The African Group would like to reiterate its position on the importance of a balanced approach between intellectually property rights holders and public use. Underpinning the Development Agenda recommendations is the need to address the asymmetrical relations between the intellectual property rights holders and public use. It is within this context that the African Group recognizes the role this Committee could play in enhancing the understanding and adoption of patent laws suited for Member States in respect to their different levels of development. The African Group remains encouraged by the current discussions on the role that the patent system can play in the economic development of Member States, particularly developing countries and LDCs. In this regard, we appreciate the studies and activities undertaken on exclusions, exceptions and limitations to the rights; technology transfer; and dissemination of patent information, amongst others, within the context of building capacity at the national level. Not to single out one substantive issue, but the topic of exceptions and limitations to patent rights merits recognition. The minimum standards for intellectual property use through exceptions and limitations to patent rights remain an important issue not only to the African group but to all developing countries. We are of the firm view that, if properly applied, exceptions and limitations could play a significant role in advancing development goals in many developing countries. We hope that the Committee will continue intensifying its work in these areas and other relevant areas with a view to bringing out the associated development dimensions. We are pleased that the Committee will be undertaking work on patents and public health, as this is a critical issue not only to the developing countries but to all Member States. In executing its work, we expect the Committee to take into account the different levels of development of Member States and on how these countries could derive benefits from the patent system. It is therefore important that the list of issues for the consideration of the Committee remain non-exhaustive so as to accommodate the views of all Member States. This session of the Committee has underlined the importance of the coordination mechanism. This was clearly illustrated by the substantive discussion on technology transfer. We call for a coordinated approach among the WIPO bodies on cross-cutting issues through the Coordination Mechanism. In conclusion, the African Group remains positive that the Committee will find an equitable approach for its future work in the spirit of the WIPO

strategic objectives to advance the development of the patent system in a balanced manner to the benefit of all Member States, especially developing countries and LDCs, giving due consideration to the Development Agenda recommendations. This will provide developing countries and LDCs policy space to design and implement national patent law in a manner conducive to their national development.”

The Delegation of France, speaking on behalf of Group B, made the following statement:

Group B notes that the SCP has just adopted in its last session a new work program so that the bulk of our comments would come later under this item when the Committee is more advanced in the implementation of its program of work. At this stage, we would like to underline that the SCP may, because of the very nature of its mandate on the law of patents, contribute to the implementation of the Development Agenda in a variety of ways. In general, the work of the SCP is directed to the improvement of the functioning of the patent system which promotes innovation and transfer of technology. Also, we should be cautious not to duplicate the work with other committees, in particular, the CDIP.”

The Delegation of Egypt associated itself with the statements made by the Delegations of South Africa on behalf of the African Group and by India on behalf of the Development Agenda Group.

The Delegation of Hungary, speaking on behalf of the European Union and its 27 Member States, made the following statement:

The Delegation of Hungary, on behalf of the European Union and its 27 Member States, would like to recall that the SCP was established to serve as a forum to discuss issues, facilitate coordination and provide guidance concerning the progressive international development of patent law. In June 2008 the Members of this Committee decided to launch work on various issues relating to patent law and the international patent system. The components of this new work program reveal how the SCP, in fulfilling its mandate, can serve the well-functioning of the patent system and the promotion of innovation and technology transfer, and also contribute to the implementation of a number of Recommendations of the Development Agenda. Having studied the summary contained in SCP/15/INF/2, it can be observed that the SCP is on its way to contribute to the implementation of WIPO’s respective development goals. This document provides a clear guidance on how the respective recommendations may be linked to the topics in the non-exhaustive list and the related activities carried out by this Committee. Nevertheless, it should be mentioned that the components of the Committee’s new work program are still under elaboration and need further advancement, hence, the exact evaluation of their contribution to the implementation of the Development Agenda may not be carried out at this stage. We also would like to point out that when implementing a balanced work program of the SCP, we should avoid duplication of work with other WIPO committees and we should take due care of the efficient utilization of the available resources of the organization. We would like to assure you that the European Union and its 27 Member States will contribute with detailed comments to the exchange of views on the implementation of the respective Development Agenda recommendations by the SCP after the Committee’s work program has been implemented to a greater extent.”

The Delegation of Spain made the following statement:

The Delegation of Spain would like to contribute to the discussion on the contribution of this Committee to the implementation of the WIPO Development Agenda under item 12 of the agenda. In our view, there are very few doubts as to the achievement of the objective of integrating development considerations into the activities of this Organization in the work of those bodies where this is relevant. Today, the approach to all substantive issues

of intellectual property has been enriched, thanks to the consideration of various countries of the Member States and the resulting approaches can be considered as reasonably satisfactory. The implementation of the Development Agenda has been particularly widespread in this Committee. This work obliges us to consider the work of the Standing Committees, like this one and the CDIP. As regards the latter, there are many projects adopted to implement the principles of the Development Agenda to the sphere of patents. By way of an example, we could mention the two projects on the relationship between patents and the public domain under recommendations 16 and 20, one of which is already being implemented, namely, the Project on Intellectual Property and Technology Transfer: Common Challenges – Building Solutions, implementing recommendations 19, 25 and 28, the Project on IP and Competition Policy implementing recommendation 7, the Project on Specialized Databases' Access and Support implementing recommendation 8, the Project on Capacity Building in the Use of Appropriate Technology-Specific Technical and Scientific Information as a Solution for Identified Development Challenges implementing recommendations 19, 30 and 31 and the Project on Open Collaborative Projects and IP-Based Models implementing recommendation 36. Regarding this Committee, the agendas adopted at the previous sessions include items such as exceptions and limitations which implements recommendation 17, quality of patents and the proposal made by the Delegations of Canada and the United Kingdom which implements recommendations 10 and 11, patent information which implements recommendations 20 and 25, patents and health which implements recommendations 1, 7, 9, 14, 40 and 41 and transfer of technology which implements recommendations 22, 23, 26, 28, 29, 31 and 39. In conclusion, we understand that, in a fairly short period of time, a great effort has been made to include development issues in the discussions on patents. This has been enriched by considering more aspects related to social reality. This intense process has raised a number of questions which would have to be answered in the near future, such as distribution of work among committees, with the view to better using the organization's resources and making smoother progress on patent-related issues. To this effect, a project concerning patents and the public domain was submitted to the CDIP, whereas in this Committee, we have been discussing exceptions and limitations without making proper use of the synergies with other studies. We should also give some thoughts to the possible overlaps that exist in transfer of technology. And finally, the inclusion of the development perspective should not prevent discussion of other issues in committees such as this, because the loss of the necessary balance would otherwise convert this Committee into a replication of others, whereas this Committee has its own dynamics.”

The Delegation of the United States of America supported the statements made by the Delegations of France on behalf of Group B, Hungary on behalf of the European Union and its 27 Member States, and Spain. In particular, it supported the conclusion voiced by the Delegation of Spain that the work which had been carried out in the current session on patent quality as proposed by the Delegations of Canada and the United Kingdom was supportive of Development Agenda recommendation 10.

The Delegation of Australia associated itself with the statement made by the Delegation of France on behalf of Group B, and made the following statement:

This delegation recalls the instruction of the 2010 General Assembly and recognizes the importance of development issues. We consider that the current work program includes topics which are linked to the Development Agenda recommendations. In the Delegation of Australia's view, most of the topics on the current agenda related to the Development Agenda recommendations demonstrating that the SCP is fulfilling its commitments to mainstreaming the Development Agenda. As the Delegation of Hungary noted, document SCP/15/INF/2 gave a useful summary of the linkages between the work of the Committee and the Development Agenda recommendations. In particular, we would like to draw our attention to the item of quality of patents, including opposition systems, which

was linked to Development Agenda recommendations 10 and 11 in the joint UK/Canadian joint proposal. Like the Delegation of India, the Delegation of Australia shares the view that this topic could have relevance to a wider range of Development Agenda recommendations. We would also note the strong linkages between the Development Agenda recommendations and the work on patents and health and technology transfer. We look forward to the further evolution of the SCP work program and its contribution to the Development Agenda.”

(d) Report on the Work of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT), document WO/GA/40/8, paragraph 19;

Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations”, the following declarations extracted from the draft Report\* of the twenty-fifth session of the SCT, (document SCT/25/7 Prov., paragraphs 233 to 246) are reproduced hereafter:

“233. The Delegation of Brazil, speaking on behalf of the DAG, recalled that, according to the General Assembly’s decision on coordination mechanisms and monitoring, assessing and reporting modalities, the SCT shall include in its annual report to the Assemblies a description of the SCT’s contribution to the implementation of the Development Agenda Recommendations. To this end, the DAG would like to make some comments on how the SCT is contributing to the implementation of the Development Agenda, especially in regard of Cluster B of the Development Agenda. The Delegation pointed out that the SCT had used questionnaires to identify areas related to trademark, industrial designs and geographical indications that may deserve the attention of delegations, and added that in some cases and after the questionnaires have asserted the legal framework in different jurisdictions, the SCT advanced to identify areas of convergence and divergence and considered the possible next steps. The DAG expressed its belief that the sheer fact that there are convergences in one specific issue amongst member States does not necessarily mean that norm-setting activities are either needed or desirable and that any such initiative should be preceded by open and inclusive discussions among member States about the desirability and need for norm-setting in the first place; only after there is a broad agreement on the end goals of the exercise should text-based discussions be initiated. The DAG pointed out that it is precisely these concerns that Recommendations 15, 17, 21 and 22 of the Development Agenda seek to address, and noted that Recommendation 21 determines that any new norm-setting activity shall be preceded by informal, open and balanced consultations through a member-driven process, promoting the participation of experts from member States. The DAG expressed its opinion that this process should enable all members, in particular developing countries, to make a conscious decision on whether the proposed norm-setting activity meets with their national interest and needs. The Delegation added that once members have agreed to the need of norm-setting Recommendation 15 dictates that these activities shall: i) be inclusive and member-driven; ii) take into account different levels of development; iii) take into consideration a balance between costs and benefits; iv) be a participatory process, which takes into consideration the interests and priorities of all WIPO member States and the viewpoints of other stakeholders, including accredited inter-governmental organizations (IGOs) and non-governmental organizations (NGOs); and be in line with the principle of neutrality of the WIPO Secretariat. The Delegation stated the flexibilities in international

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\* In accordance with the procedure agreed by the SCT at its first session (see document SCT/1/2, paragraph 8), the preliminary draft report of the twenty-fifth session of the SCT has been made available on the SCT Electronic Forum for the members and observers of the SCT to comment on it, prior to its submission to the twenty-sixth session.

intellectual property agreements should also be taken into account, especially those which are of interest to developing countries and LDCs, as prescribed by Recommendation 17, and be supportive of the Development Goals agreed within the United Nations system, including those contained in the Millennium Declaration, as prescribed in Recommendation 22. In this regard, the DAG commended the SCT members' decision to take the time to listen to different opinions and views on the relationship between Trademarks and the Internet, as this is in accordance with the Development Agenda Recommendations on norm-setting. The DAG indicated it felt that if the same preparatory work had been conducted in relation to Industrial Designs, members would now be better equipped to evaluate whether the proposed draft provisions correspond to their national development needs.

The Delegation of India, taking note of the intervention by the Delegation of Brazil, expressed its satisfaction to see this agenda item inscribed for discussion, so as to enable the SCT to comply with the General Assembly's directive to report to it on how it is mainstreaming the Recommendations of the Development Agenda in its work. The Delegation pointed out that, in its view, the Development Agenda of WIPO was not a set of Recommendations that stand in splendid isolation and meant to be discussed only in the Committee on Development and Intellectual Property (CDIP) and that the Development Agenda was adopted by all WIPO member States in recognition of the fact that developmental considerations ought to form an integral part of WIPO's work in every Committee and in all areas of its work, recognizing that all processes, decisions and outcomes that result from the work in WIPO have inherent developmental implications and these ought to be factored into our consideration. The Delegation of India expressed its view that the consideration of how the SCT is integrating this aspect in its work is especially significant in view of the substantive discussions in the SCT and the specific proposal for norm-setting in the area of Industrial Design law and practice. With regard to whether the discussions so far in this Committee, especially the draft text on Industrial Design procedures, have been aligned with the Development Agenda, the Delegation of India supported the statement made by the Delegation of Brazil on behalf of the DAG. The Delegation of India stated its view that, prior to making provisions for convening a Diplomatic Conference, which is the very last step in a treaty-making process, there should be focused discussions to see whether there is agreement among all WIPO member States about the need for new norm-setting in this area. This is especially important in the Industrial Designs area, where there is a great diversity in member States' systems of protection and where developing countries are not the key beneficiaries of existing international agreements on Industrial Design protection. The Delegation of India mentioned that out of the 58 member States of the Hague system, nearly 88% of the international registrations made under the system belong to only 3 developed countries and the European Community, while there are 29 developing countries and LDCs that do not have a single registration. In the Delegation's view, developing countries and LDCs that are party to the Hague system have not been able to benefit from the unified procedures under the system. The Delegation expressed its belief that it is unclear how they would benefit from the proposed new treaty seeking to harmonize the maximum criteria that national offices can request from applicants. The Delegation stated that while it is evident that foreign applicants, particularly those interested in filing in multiple jurisdictions would benefit from the harmonized application requirements, the issue as to whether this would result in significant benefits to national applicants from developing countries needs to be closely examined. In the Delegation's view, given the existing diversity among national systems in the area of Industrial Designs, the fact that countries would be required to make substantial changes to their national laws to harmonize procedures makes it all the more necessary to have a clear understanding of its developmental implications before proceeding further with norm-setting. The Delegation of India suggested that, as mandated by the Development Agenda Recommendations 15 and 22, the Secretariat prepares a working document for the next SCT session outlining

the costs and benefits taking into account the different levels of development. As stipulated in the Development Agenda Recommendation 22, this document should also address whether the proposed norm-setting is “supportive of the development goals agreed within the United Nations system, including those contained in the Millennium Declaration” and explore the “possibility of additional special provisions for developing countries and LDCs”. In the Delegation’s view, any discussion on future work in the area of Industrial Designs, including consideration of the need for norm-setting and the kind of norm-setting required, should be a better informed discussion that takes into account the above-mentioned considerations of the Development Agenda. To this end, the Delegation mentioned that Member-driven, open consultations should be convened wherever appropriate, as stated in Recommendation 21, which reads, “WIPO shall conduct informal, open and balanced consultations, as appropriate, prior to any new norm-setting activities, through a member-driven process, promoting the participation of experts from member States, particularly developing countries and LDCs”. To conclude, the Delegation of India said that the Recommendations of the Development Agenda were not merely symbolic; they were adopted in the wake of a series of unsuccessful norm-setting initiatives in other WIPO Committees and with a view to better guiding future norm-setting processes and steering them towards successful outcomes. The Delegation stated that it was in this spirit that it made its suggestion, as it firmly believed that adopting the transparent, inclusive and participatory approach outlined by the Development Agenda would facilitate consensus building and smooth and efficient progress in the work of the Committee, by making sure that time and energy is well-spent in terms of progressing work in an incremental fashion while taking all Members on board towards a clear and commonly agreed goal.

The Delegation of Philippines, mindful of the decision of the 2010 WIPO General Assemblies on Coordination Mechanisms and Monitoring, Assessing and Reporting, namely, document WO/GA/39/7, which was clearly premised in the fact that the Development Agenda is intended to ensure that development considerations form an integral part of WIPO’s work, expressed its view that this Committee, as a relevant body of WIPO, should include in its annual report to the Assemblies a description of its contribution to the implementation of the Development Agenda where it identifies the ways in which the said Recommendations have been mainstreamed in its work. The Delegation of Philippines indicated its support for the interventions made by the Delegations of Brazil and India and stated that, without intending to create any hierarchy of importance among the 45 Development Agenda Recommendations, it was its belief that it is noteworthy and timely for this Committee to assess how it has implemented Cluster B Recommendations on norm-setting, flexibilities, public policy and public domain of the Development Agenda *vis-à-vis* the discussion on Industrial Designs. The Delegation recalled that Cluster B, particularly Recommendations 15, 17, 21 and 22, provide the fundamental elements attendant to all norm-setting activities in WIPO. The Delegation of the Philippines expressed its belief that it is important to have a cost-benefit assessment on norm-setting, as indicated clearly on the Development Agenda Recommendations. In good faith, member States shared information on its laws, regulations, and practices on Industrial Designs Law by replying to the questionnaires prepared by the Secretariat, and participated in relevant discussions during previous SCT sessions. The Delegation recalled that, during the twenty-first Session of the SCT in June 2009, the Secretariat was requested to prepare a working document based on the information and comments provided by delegations regarding their respective State practice with the understanding that the preparation of the revised working document was “without prejudice to the position delegations may have with regard to any possible area of convergence on industrial design law and practice”, which was reflected in paragraph (8) of the Chair’s Summary of the twenty-first SCT and paragraph (139) of the twenty-first SCT Report. The Delegation of the Philippines acknowledged the efforts of the Secretariat in preparing the questionnaires, but said there was neither a clear understanding among member States

as to what the questionnaires purported apart from information-sharing purposes nor was there even an implicit understanding on the part of member States to advance discussions with the end in view of negotiating an instrument on Industrial Designs. The Delegation of the Philippines indicated its view that if the intention was to commence discussion on possible norm-setting activities in the field of Industrial Design Law, then it would be imperative to conduct preliminary, informal, open, balanced and member-driven consultations as provided under the Development Agenda, as a means to attain a cost-benefit analysis of the potential impact that such an endeavor may have on Member countries, particularly developing countries and LDCs. In the Delegation's view, this is important because of the varying levels of development among member States and it is particularly significant because a considerable number of developing countries and LDCs are not States Party to any or all of the international instruments on Industrial Design Law.

The Delegation of South Africa, supporting the declarations of the Delegations of Brazil India and the Philippines, reiterated that the aim of this important exercise under this agenda item was to compile the views of member States on the implementation of the Development Agenda Recommendations in the SCT. The Delegation considered that the discussion of norm-setting in Industrial Design Law should be member-driven, transparent, and with enough information at the disposal of the member States so that the delegations may first familiarize themselves with the work and then move further to help in a concrete manner.

The Delegation of Cuba supported the declarations by the delegations of Brazil and India and the Philippines and indicated that it considers important, from the offset of the discussions, that countries give their opinions, continue to analyze the document, and exchange experiences. The Delegation expressed its view that delegations need to have more solid information for analysis before engaging in harmonization and pointed out that there are many examples as to why developing countries need this. The Delegation of Cuba recalled that some of the present delegations were able to participate in the meetings that preceded the signing of the Singapore Treaty, while some were not able to do so, and that many countries involved understood the need to converge and not to resist the inclusion of certain elements; but some delegations, for different circumstances, were not able to accede to the Treaty and therefore the people in their country were not able to benefit from those provisions. In the view of the Delegation, part of the reason why countries were not able to sign the Treaty was because the Committee did not carry out enough thorough analysis of countries' needs and requirements before the treaty was agreed. The Delegation of Cuba stated that this problem needs to be born in mind, in order to avoid users in member States from not being able to participate again in a future treaty because their needs are not properly taken into account in the run-up discussions to the agreeing of that treaty, which is when the content of the treaty is determined. For the Delegation, having harmonization instruments is acceptable only if those instruments meet the concerns of member States; otherwise some may not be able to accede and enjoy the benefits. The Delegation concluded that the SCT needs to thoroughly analyze all aspects before taking a decisive step forward.

The Delegation of India, taking into account that this is the last meeting of the SCT before the General Assembly meets in September-October, stated that the Committee should report to the General Assembly the current discussion under this agenda item. The Delegation mentioned that the Secretariat had previously prepared a document saying how the proposed initiatives in this Committee and the ongoing discussion on Industrial Designs would benefit users and Industrial Design national offices. The Delegation sought to clarify that the document suggested under this agenda item would be on the same lines of the mentioned previous document, which the Secretariat could modify by outlining the developmental implications of this Industrial Design law initiative and present for the next session of the SCT. The Delegation further elaborated on its clarification by stating that



the document would not detail the current process, mainly because the SCT had already engaged in this exercise, which resulted in a more refined document after delegations had presented their comments. The Delegation of India expressed its certainty that the time will come when the issue is mature enough for all delegations to sit together and decide the next steps. To conclude, the Delegation stated that its suggestion was, as required by the Development Agenda prior to any norm-setting exercise, for the Secretariat to prepare a document outlining developmental considerations and present it at the next session of the SCT, as it would help the discussion and perhaps bring more clarity to the questions that some delegations had raised.

The Delegation of Germany stated that it did not find it surprising that there was not one individual, coherent view of the statements that had been presented and noted that there were many differences. The Delegation indicated that there were two main approaches: first, the approach presented by the Delegation of Brazil, which stated that Members should express their views on how developmental issues are dealt within the SCT and then such views would be communicated to the General Assembly; and second, the approach presented by the Delegation of India, which stated that there should be a cost-benefit analysis and that the competence for addressing such analysis lies with the Secretariat. The Delegation of Germany expressed that it trusted that the Secretariat would perform the mentioned task in a very good and neutral way, should such responsibility be delegated to it. The Delegation said that this second approach is very different from the first one, which states that it would be the member States, and not the Secretariat, who would indicate what is and what is not good for them and in what way they see that there is a potential deficiency in implementing developmental issues. The Delegation of Germany expressed its preference for States acting as their own advocates, presenting their own views. At the same time, the Delegation stated that the discussions on the potential Industrial Design Law Treaty had given ample opportunity for developing and developed States to say in what way the suggested clauses were good or not so good for them. The Delegation declared that it would be satisfied if, in the future, developing States would indicate if a developing issue arises from one of the clauses of the text being discussed; such discussion should take place at that moment, not on the basis of other, more general papers. If a paper was to be prepared by the Secretariat, the Delegation of Germany reiterated it believed the responsibility would not be lying on developing countries themselves, but it would be delegated.

The Delegation of Brazil referred to the Decision of the General Assembly in 2010 and stated that in that decision there is no detailed process on how the relevant reporting should take place. Since approved last September, delegations have discussed how this reporting should take place; and during the last session of the Advisory Committee on Enforcement (ACE) an *ad-hoc* process was agreed, which is the process the Delegation of Brazil was suggesting to duplicate in the SCT as it considered it to have been a successful endeavor. The Delegation of Brazil explained that, according to this *ad-hoc* process, an item should be included in the agenda for all delegations to freely express their views on how the Committee is implementing the Recommendations of the Developing Agenda so that then the Secretariat summarized the views presented and sent its report to the General Assembly. The Delegation recapitulated that its own Delegation, along with the delegations of the Philippines, India and South Africa, had already expressed its views on this matter. The Delegation noted that a separate issue was that of having a study on the cost-benefit analysis, and in this regard it declared that it could be useful and, if all countries agreed, the Delegation of Brazil was open to that suggestion.

The Delegation of France declared in response to the statement made by the Delegation of Brazil that it had a slightly different point of view because when this item was introduced in the Agenda at the beginning of the session, the Delegation of France had specified it

agreed to its inclusion as long as it would not have value as a precedent, whether it was in the framework of this Committee or in another Committee, such as the ACE.

The Delegation of Australia expressed its belief that there was some confusion on what was being suggested, but stated it agreed with the suggestion by the Delegation of Brazil as it complies with the instructions from the General Assembly. Regarding the suggestion by the Delegation of India, the Delegation of Australia suggested it might be better to do one thing at a time and therefore wait until the next session.

The Delegation of Egypt expressed its view that a norm-setting activity should be preceded by an analysis of the benefits that would be received by the States that would undertake such activity. The Delegation commented that it was quite normal that developing countries and least developed countries ask for a more in-depth study about the impact these new norms would have at a developmental level, and stated its belief that the Secretariat is perhaps amongst the most capable to carry out this work, which would be presented at the next session of the SCT. Further, the Delegation indicated that it considered it was not acceptable to oppose to what the Delegation of India proposed, as it is normal that developing countries wish to know what will be the effects these new norms would have on their development, particularly as this is contained in the Development Agenda.

The Delegation of Iran (Islamic Republic of) supported the request of the Delegation of India as it too preferred to see a separate document from the Secretariat on the developmental impact of the new treaty and annexed to the draft Industrial Design Law provisions in order to let developing countries make an informed decision on moving toward a diplomatic conference on this matter.

The Chair noted that a number of delegations made declarations under that Agenda item on the contribution of the SCT to the implementation of the WIPO Development Agenda. He stated that all declarations would be recorded in the report for the twenty-fifth session of the SCT and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda Coordination Mechanism.

The Chair also noted that the Secretariat was requested to present an information document to the twenty-sixth session of the SCT on how the Development Agenda Recommendations, in particular Cluster B, were mainstreamed with regard to the work of the SCT on industrial design law and practice.”

(e) Report on the Advisory Committee on Enforcement (ACE), document WO/GA/40/8, paragraph 26;

Further to the 2010 WIPO General Assembly decision “to instruct the relevant WIPO Bodies to include in their annual report to the Assemblies, a description of their contribution to the implementation of the respective Development Agenda Recommendations”, the following declarations extracted from the Summary by the Chair of the Sixth Session of the ACE, (document WIPO/ACE/6/11, paragraphs 15 to 19) are reproduced hereafter.<sup>1</sup>

The Delegation of Brazil on behalf of the Development Agenda Group (DAG) stressed that Development Agenda Recommendation No. 45 was directly related to the mandate of competences of the ACE. The principles contained in that recommendation should orient WIPO activities regarding enforcement. The DAG believed that WIPO had indeed been making progress in the implementation of Recommendation 45 since the adoption of the

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<sup>1</sup> Paragraphs 15 to 19, document WIPO/ACE/6/11.

Development Agenda. The work program approved in the last session of this Committee was a milestone in this process. It provided various pertinent elements for discussion in future meetings that corresponded to the different views and objectives of Member States on issues of enforcement. The results of this work program could already be perceived in the documents before the Committee at that session. The studies reflected WIPO's efforts to develop an "inclusive approach" in its activities to building respect for IP. They took into account diversified views and opinions on enforcement issues and were a good basis to promote a balanced discussion on building respect for IP. The DAG hoped that future sessions would continue promoting that kind of debate based on balanced documents, as the Group had seen in that meeting. Despite such achievements, the Group believed that there still was a long way to fully implement Recommendation 45. For example, the contribution of the protection and enforcement of IP rights to the transfer and dissemination of technology remained to be addressed. As document WIPO/ACE/6/7 had stressed, the ACE was also at the beginning of a long process to improve how to measure the economic consequences of all types of IP violations, especially those related to counterfeiting and piracy. Empirical evidence was key. This information was of utmost importance to designing effective measures against those violations. The Delegations of Egypt and South Africa supported the statement made by the DAG.

The Delegation of the Philippines aligned itself with the statement made by the DAG. The Delegation further underlined the need for the WIPO Development Agenda Recommendations to be implemented with full vigor in all the activities of the Organization to ensure fuller participation of all Member States, particularly developing countries such as the Philippines. The Delegation was greatly encouraged by the approach taken by WIPO towards the creation of an enabling environment to promote respect for IP. In that context, technological innovation and the promise of transfer and dissemination of technological knowledge were areas that required the Committee's intensified consideration.

The Delegation of Iran (Islamic Republic of) aligned itself with the statement made by the DAG. The Delegation further stated that the work of the ACE should be guided by a balanced approach to IP enforcement, and could not approach the issue of enforcement exclusively from the perspective of right holders. The ACE should give consideration to the social, economic and technological variables and different levels of development, particularly the access to medicines and educational materials at affordable prices, and should try to introduce practical solutions through its technical assistance programs. Member States should discuss in the ACE how to intensify and improve WIPO's technical assistance in that area. Particular attention should be paid to ensure that enforcement procedures were fair and equitable. The ACE could mainstream the Development Agenda through implementing Recommendation 45. In order to create an enabling environment to build respect for IP, there was a need to identify the key reasons behind IP infringements.

The Delegation of Brazil referred to the thematic approach of the ACE, and to the practice of inviting presentations by experts in its sessions. That systematic working method had proven to be very useful. It offered predictability and consistency to the discussions of the ACE on the various aspects of ensuring respect for IP rights. It was emerging from all the excellent papers submitted by the Secretariat under agenda item 5 that there should be no place in the discussions of the ACE for wasting time on a fruitless search for one-size-fits-all approaches to dealing with enforcement of IP rights. Each document individually, and all of them taken together, could only confirm that the reality of a complex landscape prevailed. It was against that background that Brazil believed that the ACE had indeed been making progress in the implementation of Recommendation 45 on the basis of the concept of building respect for IP. This was a much broader and inclusive concept than sheer IP enforcement. It rejected the assumption that repression only was the key to compliance, and incorporated societal interests and development concerns into

discussions on IP enforcement. Policies and activities developed on the basis of that concept not only benefited from a greater degree of legitimacy, but also were more likely to be effective, as they were based on a deeper understanding of the underlying causes of trademark counterfeiting and copyright piracy, which might vary according to the different socio-economic realities at stake. The Delegation also recognized the efforts made by the Secretariat into implementing technical assistance activities and seminars in line with a comprehensive, balanced and development-oriented approach that was suggested by Recommendation 45 of the Development Agenda. At the same time, the Delegation stressed the need for transparency in all enforcement-related technical assistance and capacity building programs undertaken by WIPO.

The Delegation of Bangladesh supported the current directions of the work of the ACE, in particular with a view to the implementation of Recommendation 45 of the WIPO Development Agenda. The Delegation expressed its wish that the Committee in its future work would pay particular attention to a customized approach to addressing the needs and concerns of least developed countries (LDCs), as well as socio-economic welfare issues relating to building respect for IP, including issues such as the implications of IP infringements on poverty and inequality, and of counterfeiting and piracy on, for instance, employment.”

(f) Report on the fourth session of the PCT working Group, document PCT/A/42/1, paragraph 25.

The Delegation of India, speaking on behalf of the Development Agenda Group, thanked all delegations for their cooperation and flexibility in the inclusion of the proposed new agenda item “Contribution of the Working Group to the implementation of the respective Development Agenda Recommendations”. For the Development Agenda Group, the inclusion of this agenda item was important since development is an integral part of the PCT, and the Members of the Working Group were required to report to the WIPO General Assembly as to how the Working Group was contributing to the implementation of the Development Agenda Recommendations. This agenda item would enable PCT Contracting Parties and other Members to express their views on this matter and allow the Working Group to report to the WIPO General Assembly.

The Delegation of India, speaking on behalf of the Development Agenda Group, stated that the PCT was a holistic and well-considered Treaty that recognized and accorded due importance to the special needs and interests of developing countries and least developed countries in its provisions and in the functioning of the PCT system. The preamble of the PCT included, as one of its aims, the desire to “foster and accelerate the economic development of developing countries”. Article 51 specifically mandated the establishment of a Committee for Technical Assistance to organize and supervise technical assistance for developing countries. The negotiating history and records of the Washington Diplomatic Conference on the PCT envisaged deep and meaningful assistance for the development of developing countries, such as strengthening their domestic innovation capacities and assisting them in ensuring the award of high quality patents through meaningful examination of the technical aspects of inventions.

The Delegation of India, speaking on behalf of the Development Agenda Group, further stated that it was understood that the International Bureau was providing some of the mandated technical assistance to developing countries through projects overseen by the Committee for Development and Intellectual Property (CDIP) and also through other avenues. As requested by the Delegation under agenda item 6(c), the International Bureau was requested to furnish details of all such technical assistance being provided currently, and also a break down indicating the source of funding, whether they were being funded through the regular budget or through funds-in-trust, to the next session of the Working Group. As also stated under this agenda item, the Delegation believed that it was important to urgently reconvene the PCT

Committee for Technical Assistance immediately preceding the sessions of the PCT Working Group, where all PCT-related technical assistance activities could be properly coordinated and overseen, while avoiding duplication and overlap with similar activities being undertaken in other WIPO bodies. The Delegation also looked forward to the submission of the review of the “PCT’s Aims of Disseminating Technical Information, Facilitating Access to Technology and Organizing Technical Assistance for Developing Countries” at the fifth session of the Working Group. It trusted that the review would address the important issue of sufficiency of disclosure, which was not included in the CDIP project and contained recommendations and suggestions on how to improve the realization of this aim.

The Delegation noted with satisfaction the decision of the second session of the PCT Working Group to integrate the Development Agenda recommendations in the discussions on improvements to the PCT system and hoped that the Development Agenda would continue to inform the discussions in this body on this important issue. Similarly, the Delegation welcomed the ongoing discussions on reviving the PCT Committee for Technical Assistance and also the review of the extent to which PCT has succeeded in its aim of disseminating technical information and facilitating access to technology for developing countries. It looked forward to continued constructive discussions on these important issues at the fifth session of the Working Group and hoped that these discussions would contribute to meaningful improvements to the PCT system, alongside other technical improvements.

The Delegation remained committed to engaging actively and constructively in the PCT Working Group and to work with other Members and the International Bureau in ensuring that the PCT system fulfilled its objectives and functions effectively, to the benefit of all Contracting States.

The Delegation of South Africa, speaking on behalf of the African Group, stressed the importance of the implementation on the monitoring, assessing, discussing and reporting mechanism, commonly referred to as the “coordination mechanism”. The WIPO General Assembly had approved this mechanism with the view that all relevant WIPO bodies should be part of the contribution towards the implementation of the Development Agenda recommendations. The African Group emphasized that over and above its purpose of enabling the reporting to the General Assembly on the mainstreaming of the Development Agenda recommendations, the coordination mechanism, if properly applied, facilitated the scrutinizing within the Organization of cross-cutting issues and activities in a manner that was complementary so as to avoid duplication, a concern that had been expressed by some Member States. The Delegation was pleased that the PCT Working Group would report to the General Assembly on its contribution to the implementation of the Development Agenda recommendations.

The Delegation of South Africa, speaking on behalf of the African Group, further stated that the discussion on the contribution of the PCT Working Group to the implementation of the Development Agenda recommendation was being held at an opportune time when the Membership was currently discussing the improvements to the functioning of the PCT system. This had provided the Membership with an opportunity also to assess the activities of the PCT as they related to development. Development activities were intrinsically part of the PCT, as articulated in its preamble and Article 51. In this context, the Delegation noted particularly paragraph 5 of the preamble, which read: “desiring to foster and accelerate the economic development of developing countries through the adoption of measures designed to increase the efficiency of their legal systems, whether national or regional, instituted for the protection of inventions by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology”. With this paragraph in mind, the African Group was pleased that the third session of the Working Group took the decision to undertake a study that looked into the PCT implementation of the technical assistance activities referred to in paragraph 5 of the preamble. As the Delegation had mentioned in its opening statement, it had been rather

disappointed that the study on these activities had not been ready for discussion in the present session of the Working Group. It expected, however, that the study, once presented, would provide the Membership with some insight on the implementation of the Development Agenda recommendations by the Working Group, mindful of the effect that the study was being undertaken as a CDIP project.

The African Group applauded the initiative by the Secretariat of making information digitally available through the PATENTSCOPE system, which was proving a useful tool for accessing information on patents, especially for developing countries. However, it believed that more could be done to ensure access to relevant information by PCT Contracting States, especially developing countries and least developed countries. With regard to the way forward, as the African Group had stated in its opening statement, the Secretariat should continue facilitating the access to information systems by developing countries, especially least developed countries, and also conduct training for regional and national Offices as well for small and medium-sized enterprises and universities. The training provided to national and regional Offices had to be targeted at examiners, as Africa had few search and substantive examiners. The Delegation thus wished to reiterate its call for the Secretariat to establish an examiner training program, to be set up in the medium to long-term, for the benefit of national and regional Offices in Africa. Understanding the limitation of the WIPO Secretariat explained after the Delegation's earlier intervention on the issue of establishing such a training program, the Delegation continued to be of the view that, if WIPO was to play a meaningful role in rendering technical assistance activities, it needed to move to diversify its workforce so as to enable it to carry out specialized technical assistance in the form of training of examiners in Offices. While the Delegation had no reservations against these training activities being carried out by large intellectual property Offices, WIPO should take a lead on those training activities.

In concluding, the Delegation of South Africa stated that the African Group was of the view that all technical assistance activities should be discussed, organized and supervised by the Committee for Technical Assistance, as envisaged by Article 51. It thus called for the revival of the Committee for Technical Assistance which had not met since it had been established in 1978. The revival of the Committee on Technical Assistance would augment the work of the PCT Working Group in implementing not only its goals but the Development Agenda recommendations. The Delegation was looking forward to constructive discussions on the way forward on this matter, which was of great importance to developing countries, in the fifth session of the Working Group.

The Delegation of Brazil stated that it supported the statement made by the Delegation of India on behalf of the Development Agenda Group. The Delegation noted with satisfaction that all members of the Working Group agreed that the PCT was relevant and important to the implementation of the Development Agenda recommendations. It was particularly pleased to be able to express its views on this specific agenda item, thus underlining the importance of the matter. The Development Agenda had been adopted by WIPO as a way to address the concerns of developing countries, since it had been perceived that the previous situation had not been adequate to simultaneously address the objectives of WIPO and spread the benefits of the intellectual property system to all countries. Since its adoption, mainstreaming of the recommendations was the continuous effort by all Committees. Considering the importance of the PCT, the Delegation expected that the PCT Union would incorporate the Development Agenda recommendations in its work.

The Delegation of Brazil further stated that the study presented by the Office of the Chief Economist on the surge in worldwide patent applications was in line with Development Agenda recommendation 35, which stated that economic studies on the impact of the use of the intellectual property system in developing states were to be undertaken by WIPO, and it was obvious that investigating the root causes of the surge in patent applications was useful when States considered ways to manage the surge well while maintaining a high quality of patents.

Another example was document PCT/WG/4/6 (The PCT's Aims of Disseminating Technical Information, Facilitating Access to Technology and Organizing Technical Assistance to Developing Countries), which the Delegation hoped would support the partial implementation of Development Agenda recommendation 25 pertaining to the transfer of technology to the benefit of developing countries. Nevertheless, much work remained to achieve for full mainstreaming of the Development Agenda. One important matter related to technical assistance and capacity building was still missing in the PCT, namely, the revival of the Committee for Technical Assistance under Article 51; the Delegation wished to underline the urgent need of reviving that Committee in order to assist those States who intended to benefit from its activities.

The Delegation of Algeria associated itself with the statements made by South Africa on behalf of the African Group and India on behalf of the Development Agenda Group. It also thanked Group B for the constructive spirit and flexibility shown during the present session and hoped that the same agreement regarding the inclusion of the agenda item on the coordination mechanism concerning the development agenda recommendations could be reached for all pertinent WIPO bodies.

The Chair stated that, in anticipation of the general nature of the discussion on this agenda item, he had composed a short paragraph for the Summary by the Chair to describe the discussions of the Working Group on this agenda item, as follows: "A number of delegations made statements on the contribution of the PCT Working Group to the implementation of the respective Development Agenda recommendations. The Chair stated that all statements would be recorded in the report for the fourth session of the PCT Working Group and that they would be transmitted to the WIPO General Assembly in line with the decision taken by the 2010 WIPO General Assembly relating to the Development Agenda coordination mechanism". This summary had the same wording as that used following the discussions on the same subject at the sixteenth session of the Standing Committee on the Law of Patents (SCP).

[End of Annex and of document]