

Second WIPO Inter-Regional Meeting on South-South Cooperation on Patents, Trademarks, Geographical Indications, Industrial Designs and Enforcement

Inter-Regional Meeting
Cairo, Arab Republic of Egypt, May 6 to 8, 2013

REPORT

prepared by the Secretariat

The Second Inter-Regional Meeting on South-South Cooperation was held in Cairo, Arab Republic of Egypt, as part of the implementation of the Development Agenda Project on *Enhancing South-South Cooperation on Intellectual Property (IP) and Development among Developing Countries and Least Developed Countries (LDCs)*.

OPENING

1. The meeting was opened by Mr. Maged Al-Sherbiny, President, Academy of Scientific Research and Technology (ASRT), Ministry of Scientific Research, Arab Republic of Egypt, His Excellency (H. E.) Ambassador Amr Ramadan, Deputy Assistant Minister for Non-Aligned Movement, Organization of Islamic Cooperation and Specialized Agencies, Ministry of Foreign Affairs, Arab Republic of Egypt, and Mr. Yo Takagi, Assistant Director General, Global Infrastructure Sector, World Intellectual Property Organization (WIPO).
2. After a welcome address by Mr. Maged Al-Sherbiny, the floor was given to H. E. Ambassador Amr Ramadan. In his introductory remarks, H.E. Ambassador Ramadan pointed out to the WIPO Project on South-South Cooperation as an important fruit of the Development Agenda. Put forward by the Arab Republic of Egypt and strongly supported by the African Group before its adoption by Member States in the framework of the Committee on Development and Intellectual Property (CDIP) in 2011, the WIPO South-South initiative confirmed the developmental trend to see the IP system as a tool for socio-economic and cultural development, ensuring a balanced system between the obligations of the protection of

IP rights and the necessities and requirements of the protection of public policy objectives in the field, amongst others, of health, food security and sustainable development. As a complement to North-South and triangular cooperation, South-South cooperation, he stressed, had become an important item on the agenda of the United Nations (UN) General Assembly (GA) with the adoption, in 1978, of the *Buenos Aires Plan of Action for Promoting and Implementing Technical Cooperation among Developing Countries* and the adoption, in 2009, of GA Resolution 64/22 urging all UN specialized agencies, including WIPO, to strengthen their support to South-South cooperation by increasing, in particular, the allocation of financial, technical and human resources for South-South cooperation activities in their respective areas of work. The First WIPO Inter-Regional Meeting on South-South Cooperation held in Brasilia in August 2012, H. E. Ambassador Ramadan pointed out, had led to a number of proposals on how to further enhance South-South cooperation in the fields of traditional knowledge, genetic resources, traditional cultural expressions, copyright and related rights, and IP governance, and Egypt, he stressed, was keen to see some of these proposals be implemented by WIPO. The Second Inter-Regional Meeting, he added, would focus on issues related to patents, industrial designs, trademarks, geographical indications, enforcement, and the use of flexibilities by developing countries and LDCs to achieve their development and public policy objectives. In this regard, H. E. Ambassador Ramadan highlighted the importance of the first roundtable exchanging experiences, lessons learned and best practices with regard to the formulation and implementation of national IP strategies, a very important issue for many developing countries and LDCs striving to develop an effective and balanced IP system to support their development objectives. Suggesting the possibility of further integrating South-South cooperation into the work of WIPO through the allocation of financial resources dedicated to South-South cooperation activities in the framework of the Program and Budget for 2014/2015, Egypt, he added, would be particularly interested in hearing from participants about specific ideas and proposals on how to further develop South-South cooperation in the IP areas which would be discussed during the meeting to identify how to take the process forward. Thanking WIPO and the ASRT for the organization of the meeting and welcoming the participation of Mr. Yo Takagi, Assistant Director General, WIPO, taking into account in particular WIPO's commitment in strengthening cooperation with Egypt in the field of infrastructure, H.E. Ambassador Ramadan concluded his opening statement by congratulating the Egyptian Patent Office for becoming an International Searching and Preliminary Examining Authority under the Patent Cooperation Treaty (PCT), by thanking the National Committee for IP for its efforts in leading the development of an effective IP system in Egypt, and WIPO for its efforts in leading the South-South initiative and in integrating the recommendations of the Development Agenda into its work.

3. Speaking on behalf of WIPO, Mr. Yo Takagi started his introductory remarks by pointing out the fact that South-South cooperation had its roots in the 1978 *Buenos Aires Plan of Action for Promoting and Implementing Technical Cooperation among Developing Countries*, in which the UN GA had then recognized the need for the entire UN system to be permeated by the spirit of technical cooperation among developing countries and had stressed the permanent role to be played by UN specialized agencies as promoters and catalysts of such cooperation. In a more recent resolution (Resolution 64/222 of December 2009), the GA, he added, had called upon all UN organizations and specialized agencies to increase resources for South-South cooperation. As the specialized UN agency in the field of IP, it was therefore appropriate for WIPO to include South-South cooperation in its work. The WIPO Development Agenda and its forty-five recommendations, which, Mr. Takagi underlined, had been adopted in 2007 by Member States, aimed to place development considerations at the heart of the Organization's work in an effort to develop a balanced and accessible international IP system that stimulated innovation, rewarded creativity and contributed to development while safeguarding the public interest. In keeping with its mandate, the Organization had embarked upon a structured approach to mainstream development concerns into all its work and substantive programs and had adopted, in November 2011, a two-year project designed to enhance South-South exchanges in the area of IP and in the framework of which this meeting had been organized. Taking into account the fact

that developing countries had increasingly been using IP as a tool for economic development, which had led, in recent years, to innovative means of using the IP system to make the most effective and strategic use of IP taking into account different levels of development and particular socio-economic conditions and challenges, developing countries, he stressed, had gained important experience that could be shared with other countries facing similar challenges. South-South cooperation therefore presented many advantages and benefits for developing countries and LDCs in terms, in particular, of knowledge and experience sharing. After the First Inter-Regional Meeting on South-South Cooperation held in Brasilia in 2012, the Second Inter-Regional Meeting on South-South Cooperation, he pointed out, would focus on patents, trademarks, geographical indications, industrial designs and enforcement. These IP areas, he stressed, required strong government action in order to ensure effective responses to users of the IP system and effective enforcement of their IP rights. There were in this regard important commonalities shared by developing countries and LDCs and South-South cooperation, he underlined, appeared to be the right way forward as a platform for developing countries and LDCs to share experiences and lessons learned. Mr. Takagi concluded his opening remarks by thanking the Government of the Egypt, and in particular the Ministry of Foreign Affairs and the ASRT, for the arrangements made for the meeting.

ROUNDTABLE: FORMULATION AND IMPLEMENTATION OF INTELLECTUAL
PROPERTY (IP) STRATEGIES AND WIPO'S DEVELOPMENT
AGENDA. NATIONAL EXPERIENCES

4. Presenting the Secretariat's perspective on WIPO's work and assistance in guiding national undertakings for the formulation of national IP strategies by way of introduction to the roundtable, Mr. Alejandro Roca Campaña, Senior Director, Access to Information and Knowledge Division, Global Infrastructure Sector, WIPO, and Project Manager, Development Agenda Project on *Enhancing South-South Cooperation on IP and Development among Developing Countries and LDCs*, pointed out the fact that a specific Development Agenda Project entitled "Improvement of National, Sub-regional and Regional Institutional User Capacity", executed from 2009 to 2012, had had, as one of its objectives, the development of a methodology to assist countries in elaborating national IP strategies and plans aligned with their national development priorities. In this regard, he stressed, WIPO had prepared a methodology based on existing tools elaborated by or with the support of the Regional Bureaus and other divisions which had been tested and validated in six pilot countries from different geographical regions and had resulted in a set of tools, including: a) a roadmap to guide the national IP strategy formulation process through a number of essential elements and phases (e.g. identification of a national project team and steering committee to ensure government ownership and commitment from the onset, inclusive multi-sectoral consultation process involving all key stakeholders at the national level, identification of priority areas and strategic objectives, implementation framework or action plan containing a clear timeframe and resource mobilization plan); b) a questionnaire to assist in the data collection process with the objective to evaluate the state of the IP system, assess needs and identify the government's strategic objectives and priorities; and c) a handbook to support the use of the questionnaire entitled "benchmarking indicators". This methodology, he concluded, was now being used to guide WIPO's assistance activities in the field of national IP strategies.

5. Mr. Georges Ghandour, Senior Program Officer, Development Agenda Coordination Division (DACD), WIPO, complemented the Secretariat's perspective on the subject by pointing out its link with the Development Agenda. As a Member State driven process, the Development Agenda, he stressed, was seeking to place development concerns at the core of the global IP system by: a) making the global IP system more development-friendly; b) taking into consideration the specific needs and challenges faced by developing countries and LDCs; c) ensuring a balance between the rights of IP holders and public interest; and d) ensuring that development considerations became integral to WIPO's work. The negotiation process for establishing the Development Agenda, he pointed out, had started in October 2004 with a

proposal from the Governments of Brazil and Argentina to the WIPO General Assembly discussed in three inter-sessional inter-governmental meetings in 2005. Fifteen papers containing 111 proposals from developing countries and developed countries had been discussed in the provisional committee which had been established by the General Assembly in 2005 and had met twice a year in 2006 and 2007. This had led to the adoption of a milestone agreement in October 2007 with the establishment of the Development Agenda. Forty-five recommendations, grouped into six clusters, had been adopted and the CDIP had been established with the mandate to develop a work program for implementing the 45 adopted recommendations, monitor, assess, discuss and report on the implementation thereof, and discuss IP and development-related issues. Since 2008, the CDIP had met ten times. Each time, WIPO had financed the participation of 26 developing countries and LDCs from different geographical regions. Since the adoption of the Development Agenda, its principles, he stressed, had been successfully mainstreamed into the Organization's work and included in WIPO's strategic framework, program and budget. With regard to the implementation of the Development Agenda, Mr. Ghandour pointed out the fact that a project-based methodology had been adopted and that 26 projects had resulted from this approach, including the project on South-South cooperation. The projects adopted by the CDIP, he added, fell into three categories: 1) projects and activities for technical assistance; 2) projects for the enhanced use of the IP system; and 3) projects/activities for the enhancement of management structures. In conclusion, Mr. Ghandour stressed the fact that while WIPO was striving to ensure an effective mainstreaming of the Development Agenda principles into all of its work, the success of the Development Agenda, as a collective effort, also depended on the full commitment and support of WIPO's Member States and other stakeholders.

6. H. E. Ambassador Amr Ramadan, Ministry of Foreign Affairs, Egypt, took the floor to share the experience of Egypt. In the field of IP, he pointed out, the government had established a National Committee for IP which brought together all the government authorities dealing with IP issues. The objective of this committee, he stressed, was to facilitate exchanges among these authorities and provide a platform for coordinating the position of Egypt in different international organizations such as the World Trade Organization (WTO) and WIPO. The committee was headed by the Ministry of Foreign Affairs and reported directly to the Prime Minister. In addition to its coordination function, a recent agreement had granted the National Committee for IP an execution authority, thereby strengthening its mandate and decisions. This decision, he concluded, paved the way for the possible establishment of a higher Council for IP in Egypt.

7. Thanking the Government of Egypt and WIPO for the opportunity to participate in this meeting, Mr. Vinicius Bogéa Câmara, Director, Directorate of Trademarks, National Institute of Industrial Property (INPI), Ministry of Development, Industry and Foreign Trade, Brazil, took the floor to share the national experience of Brazil in the field of cooperation for development on IP. In addition to IP rights registrations, one of the main objectives of cooperation, he stressed, was to promote the generation, protection and commercialization of IP rights. In this connection, three elements were particularly important: in order to ensure an effective valorization of IP, it was important in the first place to strengthen collaboration and cooperation with industry and with different government provinces in Brazil. Secondly, it was important to align the objectives of all the main stakeholders in the field of IP, including the government, industry, research institutions, and so on. Thirdly, training activities in the field of IP were essential. INPI, he pointed out, had established a Master on innovation, IP and development 7 years ago and had also created, in 2013, a PhD program on IP, innovation and development. In addition, IP issues had been included in several undergraduate degrees. INPI, he added, had also invested a lot of efforts into e-learning and distance learning courses with a customization for instance of the WIPO DL-101 module on IP, and had so far trained, as from 2005, over 10,000 students. More needed however to be done, including in the field of strengthening inter-regional cooperation in the framework of the Development Agenda to achieve economic growth, reduce inequalities and promote the competitiveness of developing countries. All this, he pointed out, had to do with the

spirit of the Marrakesh Declaration which had recognized the fact that South-South cooperation was a valuable complement to traditional North-South cooperation as a different and less asymmetrical form of cooperation. In this connection, he stressed, Brazil had established, in 2012 and in cooperation with WIPO, a special program and fund dedicated to South-South cooperation. The program aimed to promote South-South cooperation in the field of IP with regard to, in particular, the development of appropriate public policies and innovation strategies. A number of activities had already been initiated under this framework, including IP audits, support for the creation of inter-ministerial committees in the field of IP at the national level, and the establishment of institutional IP policies. The PROSUR project, he stressed, was an interesting example of cooperation between nine South American countries which aimed to share best practices in the field of patent application examinations and to develop a collaborative platform in the field of patent examinations. Another objective of the South-South program was to strengthen industrial property offices, as well as to promote effective and modernized legal frameworks for the protection of IP. Training and capacity-building activities were therefore essential elements of this demand-driven cooperation framework. In conclusion, Mr. Bogéa Câmara pointed out the fact that an inter-regional meeting between South American and Arab countries would take place in the forthcoming month in the framework of the South-South fund and that additional meetings and trainings would be organized in the course of 2013 and 2014 with African Portuguese-speaking countries in the field of, in particular, patents and trademarks.

8. Sharing the Chinese experience in formulating and implementing its national IP strategy, Mr. Zhicheng Zhang, Deputy Director General, Protection and Coordination Department, State Intellectual Property Office (SIPO), People's Republic of China, started his presentation by pointing out the fact that the deepening globalization and development of knowledge-based economies had been important factors in driving China to improve its market economy system and to transform its economic development mode. China, he stressed, had established a relatively sound IP system in line with international rules with the aim, in particular, to assist and support businesses in enhancing their competitiveness through innovation and the appropriate use of IP. China had officially launched its IP strategy formulation process in 2005 and had completed it in June 2008. The main objectives of the strategy, he highlighted, were to use the IP system for development by focusing on IP creation, protection, utilization and management. Taking into account the fact that the implementation of the strategy required action by a large number of government agencies, the Chinese Government had approved the establishment of an inter-ministry joint meeting system to coordinate the implementation of the strategy. Twenty-eight Ministries or Ministry-level agencies had been included in this system, and a specific task division had been set up to specify the functions and duties of each institution through an annual implementation plan. IP was also included, he stressed, as a major issue in China's Twelfth Year Plan for National Economic and Social Development and IP considerations had been integrated into a large number of important industry and development programs. The strategy, he added, had been implemented to date in 27 provinces and 159 cities/regions and a number of specific programs and strategies related *inter alia* to patents, trademarks, copyright, science and technology had been formulated. Looking at the achievements, Mr. Zhicheng Zhang pointed out that the application rate for IP rights and granted rights had maintained a steady growth. IP laws had been revised and IP rights protection had improved, as well as public awareness about IP. With regard to the lessons learned during the process, Mr. Zhicheng Zhang underlined the importance of focusing on IP in the context of the country's overall development objectives and strategies. A balanced IP system was important for innovation-oriented development, and priorities had been given to integrating IP into the country's national policies in the fields, amongst others, of science and technology, economy, culture, trade and industry. While IP protection was a crucial element of the IP strategy, China had also realized that other elements were equally important, including IP promotion, management, utilization, and awareness-raising. Enhancing the IP capabilities of businesses and raising awareness of the IP system through education for instance had been identified as critical components of the strategy. Other lessons learned, he stressed, included

the importance of coordination at the national level and of setting up adequate monitoring mechanisms to review progress made in the implementation of the strategy. In conclusion, Mr. Zhicheng Zhang underlined China's commitment and readiness to strengthen cooperation with other countries in the region to realize global development objectives through enhanced exchanges and the sharing of experiences, lessons learned and achievements.

9. Mr. Zakir Thomas, Project Director, Council of Scientific and Industrial Research (CSIR), India, started his presentation by underlining the importance of IP as a key component of the innovation ecosystem and by stressing the fact that any innovation strategy had to be tailored to each country's circumstances and strengths. Quoting the Director General of WIPO, he pointed out the classic struggle between two views on IP: "one [...] defined by the need to innovate, and, therefore, the need to protect investment. The second way is that it should not solely be about protecting the interests of investment, but instead should be about balancing social benefit with the whole mix". In India, Mr. Thomas pointed out, the approach to IP had been tailored to the specific national and cultural context with, for instance, specific provisions and exceptions for the use of music during marriage processions and religious festivals, specific provisions for the blind, and special provisions for the adaptation and reproduction of any work in any accessible format for private and personal educational and research use. In the field of geographical indications (GIs), GI protection was provided both for handicrafts and the manufacturing sector. As far as plant variety protection and farmers' rights were concerned, India had a sui generis system providing protection to both plant breeders and farmers. To accelerate agricultural development in India, he pointed out, it had been recognized that it was necessary to stimulate investment for research and development in this area and to adequately protect farmers' rights and thereby stimulate the development of new plant varieties. Referring to the Indian Patent Act, Mr. Thomas mentioned the fact that it contained provisions to prevent ever greening, provisions to implement the Doha mandate, compulsory licensing provisions, bolar exceptions and working requirements. To ensure an effective patent protection system, he pointed out that the Indian Patent Act provided for pre grant opposition providing the opportunity to anyone to oppose the granting of a patent, as well as a post grant opposition procedure. Due to lack of resources, he added, it greatly depended on the community at large to confirm whether a patent did or did not fulfill the novelty requirement. With regard to compulsory licenses, the grounds for granting compulsory licenses could be the refusal to grant licenses on reasonable terms, non-meeting of demand for the product to an adequate extent or on reasonable terms, or non-availability to the public at an affordable price. The first compulsory license in India, he pointed out, had been granted to an Indian pharmaceutical company in 2012 for the anti-cancer drug 'Nexavar' patented by Bayer. The Indian Patent Act, he added, also defined inventions that were not patentable and contained an exhaustive list among which the provision to prevent ever greening, stating that "the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance is not an invention. Hence, the mere change of a form with properties inherent to that form would not qualify as "enhancement of efficacy" of a known substance". As an example, Mr. Thomas pointed out to a case in which Novartis had claimed in its patent application that the beta crystalline form of Imatinib Mesylate was inventive because it had more beneficial flow properties, better thermodynamic stability and lower hygroscopicity, to which the Supreme Court of India had responded that these were the physicochemical properties of beta crystals and that these had nothing to do with therapeutic efficacy. These provisions, he stressed, did not prevent incremental innovation. In fact, quite a large number of patents had been granted to research-based pharmaceutical products by the Indian Patent Office (around 4000 patents had been granted between 2005 and 2011). Mr. Thomas concluded his presentation with another quote from the Director General of WIPO: "yes, an intellectual property regime that balances social benefit perhaps could be in the offing. In the end, it is basically a problem of variance in purchasing power between countries. There is a global market, but no global consumer as of yet. In the end, the right balance must be found repeatedly. We will have more and more situations like Novartis in India, and we must see how

IP can not only be about protecting investment, but also social benefit". In the end he pointed out, it was all about finding the right balance.

10. Mr. Kenji Shimada, Director for IP, Japan External Trade Organization (JETRO), Germany, then took the floor to present Japan's experience, starting with a brief overview of the history of the IP system in Japan. In 1885, when the patent system had been established in Japan, patent applications, he stressed, had been mainly filed by independent inventors. As inventors had started expanding their businesses using IP, many businesses had emerged and this had contributed to the industry's modernization. After World War II, technology transfers utilizing patents from foreign countries had further contributed to Japan's high economic growth. From then on, he stressed, IP had become an important tool to foster innovation in the country. The strong correlation between Japan's economic growth and increase in patent applications confirmed the important contribution of IP to the country's economic development. Thanks to the technological precedence of Japanese companies and an effective use of the IP system, he added, Japan's technological trade surplus had continuously grown. Protecting and utilizing IP therefore had not only encouraged innovation but also brought a valuable source of income for the country. In order to establish an IP-based nation, he underlined, it was necessary to systematically and continuously promote IP creation, protection and utilization, and Japan's national IP strategy had been developed on that basis. The basic IP Act, he highlighted, had been established in November 2002 with the aim to promote such IP-related policies and start Japan's IP cycle in a focused and planned manner. This Act had provided the basis for the formulation of the national IP strategy. The first IP strategic program, he added, had been adopted by the Prime Minister in July 2003 and fully integrated into as well as guided Japan's Ministries' and other agencies' policies. The strategic program, he stressed, was reviewed and updated as necessary on a yearly basis. In order for developing countries to reach higher levels of economic development, an improvement of their national IP systems, he emphasized, was an essential step. Lack of adequate enforcement leading to counterfeiting and piracy, he stressed, were not only a major barrier to international trade but also destroyed local industries. An effective global IP infrastructure was therefore a necessary foundation to build new partnerships. IP protection, he added, formed the basis for direct investment and technology transfer from developed countries and was therefore indispensable for the self-sustaining development of developing countries. A number of case studies highlighting successful international partnerships and the successful use of IP by businesses, he highlighted, could be found in the IP Advantage database hosted on the WIPO website which had been established by Japan in collaboration with the WIPO Japan Office and which contained over 170 success stories. In conclusion, Mr. Shimada underlined the importance of establishing an adequate and effective IP infrastructure and legal framework to attract investments and to build new partnerships for sustainable development in developing countries.

11. Presenting the perspective of the International Centre for Trade and Sustainable Development (ICTSD), Mr. Ahmed Abdel Latif, Senior Program Manager, Program on Innovation, Technology and IP, ICTSD, Geneva, started his presentation by underlining the role of IP as a tool for innovation with an impact on many public policy areas and the importance of national IP strategies as a holistic and comprehensive approach to the role of IP in development. As a landmark development in WIPO, the Development Agenda, he stressed, provided principles upon which the elaboration of IP strategies could be based such as, very importantly, consistency with national development and public policy objectives. The starting point, he underlined, should not be IP but rather a country's development and public policy objectives, and each country's IP system had to be tailored to its level of development and socio-economic circumstances. In this regard, he pointed out, a number of concepts were very important: balance between IP and the public domain, balance between costs and benefits, full inclusion of all relevant stakeholders in the IP strategy formulation process, and the notions of 'IP for development' and 'development-oriented IP'. A growing number of countries, he pointed out, were formulating and implementing IP strategies/policies/action plans sharing a number of common elements and using different methodologies available to guide such undertakings such

as the WIPO methodology or the UNCTAD methodology for elaborating national IP strategies. With regard to the content of IP strategies, Mr. Latif pointed out the importance of two complementary dimensions to be taken into account, namely (a) the notion of IP for development (e.g. innovation promotion, improvement of IP administration, infrastructure, protection, utilization), and (b) the notion of development-oriented IP with a focus on balance, flexibilities, exceptions and limitations, ensuring that IP supported public policy objectives. Under these two dimensions, he stressed, there were a number of important elements to keep in mind when designing an IP strategy such as for instance the importance of domestic coordination on IP, the effective use of IP rights for development, including through improved IP administration, enforcement, collective management and regional collaboration, policy coherence and use of flexibilities, limitations and exceptions. In conclusion, Mr. Latif reiterated the fact that IP strategies were not an end in themselves but a tool to achieve broader development objectives. In this regard, and as highlighted by Mr. Zhicheng Zhang, it was also very important for IP strategies and plans to include progress indicators and adequate monitoring and review mechanisms to ensure regular follow-up.

12. In response to a question raised by Egypt on how to “connect the dots” and build on the best practices of developing countries to achieve the Doha objectives of IP for development and development-oriented IP, Mr. Roca Campaña highlighted the fact that WIPO was working on all these aspects in the framework of its Program and Budget and CDIP through specific projects. In the field of national IP strategies/development plans/innovation strategies undertaken with the assistance of WIPO, emphasis was placed on the importance of responding to the development needs of objectives of each country. With regard to the IP for development dimension, he added, there were specific projects and programs directly related to the promotion of the use of IP for economic development and growth, the use of the different modalities of IP, and the management of IP assets from their creation and protection to their management and utilization. In addition, there were also a number of programs, projects, norm-setting activities and tools available to developing countries and LDCs for the strengthening of their IP administration and infrastructure.

13. Mr. Thomas stressed the importance of creating an innovation eco-system generating wealth and employment and underlined the importance in this regard of formulating inclusive innovation strategies tailored to the specific circumstances of each country, drawing on the lessons learned and experiences from other countries.

14. In this regard, Mr. Latif added the fact that, while it was important to learn from the experiences of others, it should also be recalled that no one size fits all and that creating a balance was essential.

15. Concluding the session, Mr. Al-Sherbiny underlined the importance of exchanging experiences in such fora and expressed the wish for the WIPO project on South-South cooperation to be continued.

TOPIC 1: THE INTERFACE BETWEEN IP POLICY AND COMPETITION POLICY: EXPLORING POTENTIAL TENSIONS AND COMPLEMENTARITIES

16. To set the stage and brief participants on the state of play on the interface between IP policy and competition policy, exploring potential tensions and complementarities, a short video statement by Mr. Nuno Pires de Carvalho, Director, IP and Competition Policy Division, Global Issues Sector, WIPO, was screened. Protecting intangible assets that differentiated products, services and businesses, IP he stressed was essentially and inherently a pro-competitive mechanism. In order to perform that role however, it was necessary to ensure that IP covered assets that were genuinely differentiating. In other words, copyrighted works had to be truly original, patented inventions truly new and inventive, trademarked signs truly distinctive, and so on. On the other hand, intangible assets that were seen as genuinely differentiating by

consumers such as sound marks, colors or traditional knowledge, could not be left without exclusive protection. Granting IP protection to assets that were not sufficiently differentiating – such as registering functional signs as trademarks – or denying IP protection to assets that were genuinely differentiating – such as failing to adopt effective enforcement measures – would lead to confusion and thus defeat competition. Too much and too less IP, ultimately, were a barrier to free competition. Fashioned that way, the interface between IP and competition, he stressed, required cooperation between national IP offices and competition authorities. A great deal of attention also had to be paid to abuses of IP which undermined the objectives of the law and restrained competition. In conclusion, Mr. Pires de Carvalho underlined the fact that IP and competition went hand in hand. One could not exist without the other. When they interacted in an adequate and balanced manner, consumers had a greater power of choice and societies enjoyed economic democracy and development. To find that balance, he concluded, was the main goal of the WIPO program on IP and competition policy.

17. Presenting the Egyptian perspective, Mr. Maged Al-Sherbiny, President, ASRT, Egypt, started his presentation by highlighting how Egypt was using financial and other resources to raise awareness of the importance of IP for society at large, especially in the science and technology sector. Egypt, he stressed, had a national strategy for scientific research and technology with a specific vision, mission and strategic objective focusing mainly on the importance of reaching a knowledge-based economy through innovation in a competitive and transparent environment and through the application of the so-called “4P concept” in scientific and technology research, i.e. publication, patent, prototype, and final product as the outputs of research. To achieve this goal, international cooperation, he pointed out, was essential. In this regard, Egypt’s so-called “science decade” had started in 2007 as a ten year cooperation effort with a wide range of countries, including Germany in 2007, Japan in 2008, Italy in 2009 (special project on renewable energies), France and the United States of America (USA) in 2010, and the European Union in 2012. Egypt had also engaged in cooperation activities in the framework of the African Ministerial Council on Science and Technology (AMCOST) and the African Network for Drugs and Diagnostics Innovation (ANDI) where Egypt had implemented, together with Kenya, Nigeria and South Africa, a program to foster innovation and collaboration among these countries which now covered the entire African continent. Taking into account the impact of science and technology on Egypt’s GDP, resources had been increased and expenditures for research in the field of science and technology currently amounted to 0.6 percent of GDP with approximately hundred thousand researchers in Egypt. The aim, Mr. Al-Sherbiny stressed, was to reach 2 percent of GDP, and this implied increased collaboration with private industries and non-governmental organizations (NGOs). In the field of patents, the number of patent applications had also grown and the contribution of Egyptians had grown from 9 percent to 33 percent. A lot more was however needed with less than one hundred granted patent applications per year. In this regard, he pointed out, IP education and different forms of innovation were critical. With regard to the national innovation system in Egypt, Mr. Al-Sherbiny highlighted the importance of having adequate structures and policies. In this regard, Egypt, he stressed, was in the process of elaborating a national IP strategy with the assistance of many partners including WIPO, an initiative led by the Ministry of Foreign Affairs. With regard to monitoring and evaluation in the field of research, Mr. Al-Sherbiny shared the experience of Egypt by which a map of publications had been developed based on different research clusters to better identify the outputs of the country’s research institutes and universities, which could then be used to monitor funding and brain drain, an important initiative, he stressed, which could also be applied in the field of patents. Mr. Al-Sherbiny also highlighted a number of initiatives in the field of science and technology such as the Mobtakron initiative (or Innova-all) focusing on harnessing innovation at grassroots level and at the level of micro-industries, and a program entitled “STEM school and FAB-LAB” to promote and harness innovation in schools. Egypt, he added, would also join a Millennium Development Goals initiative entitled ‘Millennium@EDU’ to provide access in schools to multiple technology solutions for learning and education, and to fight illiteracy. Egypt was also part of the GLORIAD network facilitating the exchange of data and information, and, last but not least, the ASRT was also involved in an initiative to develop

“Academy Innovation Center for Entrepreneur” (AICE) centers in universities to promote student innovation and create links and partnerships with businesses. In conclusion, Mr. Al-Sherbiny underlined the fact that the ASRT was trying to integrate programs to enforce competition and transparency and to promote innovation and an effective use of the IP system in every layer of society.

18. Mr. Hebert Tassano Velaochaga, President of the Board, National Institute for the Defense of Competition and IP Protection (INDECOPI), Peru, then took the floor to present INDECOPI's perspective on the interface between IP policy and competition policy. INDECOPI, he started, carried two important functions, namely as Peru's competition agency and as Peru's IP authority. As the IP authority, INDECOPI had three main directorates responsible for copyright, inventions and new technologies, and trademarks. In parallel, INDECOPI also had a specialized chamber for the defense of competition and a free competition commission. With regard to the relationship between IP and competition law, Mr. Tassano Velaochaga highlighted the fact that the potential conflict between the two areas stemmed from the fact that IP right holders could be inclined to delay technology transfer to the public domain by using anticompetitive practices. One example where the link between IP protection and competition was most evident, he stressed, was in the area of compulsory licensing, which consisted in the ability to use and exploit a patented product without the authorization of the patent holder, in particular cases properly defined by law. Another area where the link between IP and competition became apparent was in the case of competition cases involving IP rights, those for instance where a company had a dominant position because it was the holder of an IP right and refused to grant a license to its competitors, making use of its right but thereby distorting competition. With regard to compulsory licenses, Mr. Tassano Velaochaga highlighted the fact that as Peru was a member of the Andean Community, it applied decision 486 of the Andean Community providing for cases where compulsory licenses could be granted, i.e. mainly in case of public interest, national emergency and in case of abuse of dominant position. In the case of public interest, urgency or national emergency, a compulsory license could for instance be requested when the Peruvian Government needed to use a patented invention to address a situation of public interest, emergency or national security. In such cases, the Inventions and New Technologies Directorate of INDECOPI (DIN), which was in charge of granting compulsory licenses and determining the amounts and terms of financial compensation to be received by the patent owner, also had to establish the scope of the license (duration and object). This type of compulsory license, he added, was only valid for the duration of the situation that had originated the request of the government and it did not eliminate the exploitation right of the patent holder. In the second situation, i.e. granting of a compulsory license as a result of abuse of a dominant position, DIN could grant a compulsory license in the presence of anticompetitive conduct, as determined by the Defense of Free Competition Commission of INDECOPI. With regard to anticompetitive conduct involving IP rights, Mr. Tassano Velaochaga pointed out the Law on Enforcement of Anticompetitive Conduct (Legislative Decree 1034) which provided for sanctions in case of abuse of a dominant position when the holder of an IP right for instance refused to grant a license, thereby unduly restricting competition. This law, he added, established the need to demonstrate that the restrictive effects outweighed the positive effects on the market. To date, the Defense of Free Competition Commission had not sanctioned such behavior but there were however a number of cases that had involved IP rights. In this regard, Mr. Tassano Velaochaga pointed out to the case of *Telecable S.A. against Telefónica del Perú S.A.A. and Telefónica Multimedia S.A.C.*, in which *Telecable S.A.* had filed a complaint against *Telefónica del Perú S.A.A. and Telefónica Multimedia S.A.C.* because of anticompetitive conduct consisting of subscribing exclusive agreements with Turner Broadcasting System Latin America, Inc. and Fox Latin American Channel, Inc. for broadcasting and refusing to grant IP licenses. While the ruling had favored the complainant, some had opposed the decision arguing, in particular, that any limitation of IP rights had to be based on the belief that consumer welfare was being affected in the long term, a question which had not been properly addressed in this case. Taking into account the fact that potential conflicts could indeed arise between IP and competition law, Mr. Tassano Velaochaga underlined the

importance that each country put in place legislative mechanisms to solve potential conflicts. These however, he stressed, should be considered exceptional situations. In fact, he pointed out, it had to be kept in mind that IP rights mainly encouraged innovation and the development of incremental technologies, and therefore stimulated rather than curbed competition. In conclusion, Mr. Tassano Velaochaga pointed out the importance of South-South cooperation and enhanced exchange of knowledge and experiences among developing countries and LDCs to develop public policies harmonizing the interface between IP rights and competition. Peru, he stressed, attached a great importance to the development of guidelines and procedures for the granting of compulsory licenses in cases of public necessity, urgency or national emergency and therefore suggested to work with WIPO and other developing countries on this aspect with a view to standardizing the use of these flexibilities in practice.

19. Asking about the framework of Egypt's cooperation with other countries in the implementation of its IP strategy, the Delegate of Senegal highlighted Senegal's wish to find partners to assist in the implementation of its strategy.

20. In response to the intervention from the Delegate of Senegal, Mr. Al-Sherbiny underlined the fact that the partnerships which had been established with other countries had been based on mutual interest and equal footage. Egypt had identified thematic areas where there was a need for cooperation with other countries as well as areas in which other countries could also benefit from Egypt's experience. This initiative had been put to a halt in 2013 as a result of the political climate but it was hoped that activities would resume in 2014 with, in particular, China and Australia. In response to the Delegate of Ghana's intervention on the need for partnerships with the private sector and other partners for research and development activities, Mr. Al-Sherbiny pointed out an ASRT initiative to promote research from universities and research institutes and to help them commercialize their research outputs in collaboration with industry. In this regard, he stressed, an important resource was the Thomson Reuters IP Solutions service which provided information about the potential of new products and inventions for market commercialization, a service which Egypt's research institutes and universities had greatly benefited from. Mr. Al-Sherbiny concluded by underlining the importance of enhancing collaboration among, in particular, African countries, and to share knowledge, experiences and enhance capacity-building and training in the South.

TOPIC 2: PATENT-RELATED FLEXIBILITIES IN MULTILATERAL TREATIES AND THEIR IMPORTANCE FOR DEVELOPING COUNTRIES AND LDCs

21. To set the stage for the second topic, a short video statement by Mr. Philippe Baechtold, Director, Patent Law Division, Innovation and Technology Sector, WIPO, was screened. In his introduction to the topic, Mr. Baechtold highlighted the fact that flexibilities in the IP system were by no means a new phenomenon. At all times, the IP system had found means and ways to accommodate necessary exceptions in the system in order to accommodate various needs countries could have in implementing the IP system and, in particular, the patent system. Flexibilities, he stressed, had to be seen in the broader context of innovation capacity, economic development and various policy considerations. In times of economic uncertainty, countries had to carefully consider the opportunities available to them to develop the tools and policies necessary to increase well-being for their societies. One of these tools was the encouragement of innovation, in particular, in knowledge creators such as SMEs and universities. Increasingly, he stressed, a significant part of economic growth was linked to the innovative capacity of a country, and countries that systematically encouraged innovation appeared in many cases to develop faster. One way to encourage innovation, he underlined, was through the use of IP, and in particular the patent system. This required creating a secure legal framework respecting a balance between the rights of patent owners and the welfare of society, dependent on innovation for the creation and dissemination of new products. Thus the question arose as to how the patent system should be shaped to be both an incentive to support the creation of new and useful products for society and an instrument to disseminate and help society have access

to that innovation. In managing the equation of granting private rights in order to foster innovation for public welfare, flexibilities, namely the freedom to choose between different options when putting into place and applying the patent system in a given country, played an important role, and every country had, within the framework of its rights and obligations, the freedom to choose when, how and which flexibilities to use. At the same time, he added, it was important to understand the role and the consequences of the use of flexibilities, taking into account in particular the innovation capacity of a country, its level of development and its economic and industrial structure, including its future prospects and aspirations. In other words, flexibilities, as any other policy instrument, had to be used in a smart manner, taking into account the conditions of the given case, and understanding the consequences of exercising them, in order to obtain the most adequate result in each case. In conclusion, Mr. Baechtold underlined three important points to be considered in the context of the discussions on flexibilities: 1) the objective of using flexibilities, i.e. how to achieve the right balance between supporting innovation and using flexibilities to ensure access to the goods produced through innovation; 2) a coherent approach in respect of flexibilities, understanding the consequences of the flexibilities to be used, the economic objectives of each country in applying such flexibilities and which flexibilities to use to achieve these goals; and 3) the importance of sharing experiences while at the same time recognizing the fact that different circumstances may prompt different solutions.

22. H.E. Ambassador Amr Ramadan then took the floor to present Egypt's perspective on the topic, focusing on an analysis of the TRIPS Agreement in this regard. After a brief introduction underlining Egypt's commitment to IP protection with its participation in both the Paris Conference on the protection of industrial property and the Berne Conference, and with a membership in over 25 international IP agreements and treaties, H.E. Ambassador Ramadan pointed out to the TRIPS Agreement which covered seven fields of IP protection (copyright and related rights, patents, industrial designs, layout-designs and integrated circuits, trademarks and service marks, geographical indications, and undisclosed information, including trade secrets). The TRIPS Agreement, he stressed, had introduced IP rules into the multilateral trading system for the first time. Described by WTO as establishing minimum levels of protection that each government had to give to the IP of fellow WTO members, striking a balance between the long term benefits and possible short term costs to society, the Agreement, he stressed, had come into effect in 1995. Developed countries were given one year to ensure that their laws and practices were in line with the Agreement, while transition economies were given five years. For developing countries and LDCs, the Agreement stipulated different transition periods: until 2000 for most developing countries except for those mentioned under Article 65.4, a transition period which was extended until 2013 for LDCs, and until 2016 for pharmaceutical patents and undisclosed information. Before the Doha Round had been launched in November 2001, he pointed out, discussions in Geneva had revealed that some developed countries were keen to negotiate additional rules and build on the TRIPS Agreement before most of the developing countries had even started to implement previous commitments or at least grasped their implications. In this regard, H.E. Ambassador Ramadan pointed out the importance of Articles 7 and 8 of the Agreement, summarizing the main purpose and objective of the Agreement by stating that it aimed mainly at balancing rights and obligations to the mutual advantage of producers and users of technological knowledge, in a manner conducive to social and economic welfare. To this end, developing countries' objectives were twofold: first, to reach a common understanding among WTO members on the flexibilities inherent in the Agreement with regard to pharmaceuticals, and secondly, to clarify certain pharmaceutical-related provisions in the Agreement. This included issues related to compulsory licensing (Article 31), the exhaustion of IP rights and parallel imports provisions (Articles 6 and 28), limited exceptions (Article 30), failure to work of an invention (Article 27.1), the right to allow health authorities to use test data to examine or assess a similar product within the context of fair and non-commercial use (Article 39.3), the application by members, in situations where a practice was determined after judicial or administrative process to be anti-competitive, of the full range of provisions contained in Article 31(k), and exclusive marketing rights (Article 70.9). The preparatory process for the

Doha Ministerial and the outcome of the Conference itself, he underlined, had been limited, primarily due to time constraints, to the issue of the situation of countries with insufficient or no manufacturing capacities in making effective use of compulsory licensing, or the so called paragraph 6 issue. The proposals envisaged under paragraph 6 of the Declaration to achieve the public health goal could be summarized as follows: 1) a flexible interpretation of Article 30 so as to recognize the right of governments to authorize third parties to make, sell and export patented public health products without the consent of the patent holder, in order to address public health needs in another country (limited to the pharmaceutical area), 2) an authoritative interpretation or a waiver on the obligation to supply “predominantly” the domestic market with products produced under a compulsory license, permitting the use of a locally produced medicine to alleviate adverse health situations in another country, and 3) a waiver on the obligation to grant exclusive marketing rights, a moratorium on resorting to dispute settlement concerning Article 31(f), or a combination of approaches. The debate in the TRIPS Council, he stressed, had led to a number of divergences on questions of country eligibility, setting criteria for countries with insufficient manufacturing capacities, product coverage and so forth. The envisaged solution in the end had been reached by a mechanism put in place on December 6, 2005 (General Council Decision on the Amendment of the TRIPS Agreement, Document WT/L/641), used, it appears, only once by Rwanda with Canada’s assistance. Outside the Protocol, Brazil and Thailand had already used compulsory licensing under Article 31. It had to be noted, in this respect, that the Protocol did not have the required signatories enter into effect, i.e. two thirds of WTO’s Member States. The conclusion, in this regard, was that there was a real and urgent need for a true understanding from major trading partners to reach a workable, effective, legally predictable and above all permanent solution and to explore permissible exceptions in depth. Both commercial interests and humanitarian considerations were part of the equation. The commercial interest was well recognized where anti-competitive practices, as depicted in Article 31(k), offered a legitimate cause for waiving the Agreement limitation, under Article 31(f), imposed on the export of a pharmaceutical produced through a compulsory license. Humanitarian considerations on the other hand arose when a public health crisis afflicting a poor country lacking the manufacturing capacity offered the case for a similar waiver, thereby enabling the export of a pharmaceutical produced under a compulsory license to a destination where it was critically needed. In the first case, we were faced with a situation where the waiver was punitive and offered correction or remedy through an explicit TRIPS provision. In the second, we were faced with an incomparably more serious situation where the waiver could be a lifesaver for millions of human lives. In implementing the solution envisaged under paragraph 6, there was therefore a need to ensure that such solution would bring the fullest range of health benefits to the poor countries afflicted by serious public health crises, without causing avoidable damage to the pharmaceutical patent right holders. This, in practice, required that effective measures be taken to prevent the misappropriation and misuse of the pharmaceuticals produced under a compulsory license and imported into a poor country afflicted by a health crisis, in order to avoid trade diversion to countries facing no such crisis or, possibly, to countries which should not enjoy the privileges resulting from a solution in question.

23. Mr. McLean Sibanda, Chief Executive Officer, The Innovation Hub, Pretoria, South Africa, then took the floor to present an African perspective on the question. Looking at Africa today, he stressed, one could see an increase in urbanization and literacy with a growing youth and an economically active population. From a mobile connectivity aspect, Africa was the second fastest growing mobile connected region outside of Asia providing new opportunities for applications and enterprise-level development. In terms of growth, out of the ten fastest growing economies in the world, seven of them were in Africa. At the same time, there were a number of important challenges in the field of health (69 percent of those affected by HIV were within the Sub-Saharan African region) which the IP and innovation system had to respond to and would have to increasingly respond to in the future. From a technological perspective, it was questionable whether Africa would be in a position to deal with these challenges. Indeed, in terms of PCT applications for instance, only one country from the African region appeared in the PCT statistics, namely South Africa. This, he stressed, showed the importance of embracing IP

and of ensuring the implementation of TRIPS provisions in terms of facilitating technology transfer and developing local capabilities. When looking at flexibilities, one had to bear in mind the importance of a balance between obligations and rights. Article 8 was in this regard very important as it highlighted the fact that in formulating or amending laws, the measures had to promote the public interest and sectors of vital importance to the country's socio-economic and technological development. While much of the emphasis had been on health, in the future some of this emphasis would shift to climate change issues and energy security challenges. When defining flexibilities, he stressed, there were different options through which TRIPS obligations could be transposed into national laws to ensure compliance with national interests as well as compliance with TRIPS provisions and principles. The different types of flexibilities could be divided up into three categories, namely 1) flexibilities in the process of acquisition of the right, 2) flexibilities in defining the scope of the right, and 3) flexibilities when enforcing the right. For this presentation, he stressed, the focus would be mainly on the second aspect, looking in particular at research exemptions and compulsory licensing. The most prominent case in terms of research exemptions was the Canadian patent protection of pharmaceutical products. The critical aspect here was in terms of whether one could use, for experimental research purposes, a patented product for scientific use without infringement. The key public policy issues underlying this were that patenting was meant to facilitate the dissemination of knowledge and the advancement of technical knowledge and that allowing the patent owner to prevent experimentation with a patented product, one would in essence be violating or going against the particular principle that the nature of the invention be disclosed to the public. Countries appeared to define this particular exemption in different ways in their legislation, in some cases referring to scientific experimentation which was clearly scientific, in other cases referring to experimentation in general. In some cases, it was also made clear that it should be for non-commercial reasons. As far as compulsory licenses were concerned, i.e. a tool to prevent abuses of exclusivity and ensure a wider application of patented subject matter, these, he stressed, provided safeguards for governments to ensure public interest objectives and to respond to national security concerns, public health crises, or other national emergencies. In Zimbabwe for instance, a compulsory license had been granted in 2002 to make, use or import important generic HIV/AIDS drugs as a result of a state of emergency. Another example was the case of South Africa in 2002, when Hazel Tau and TAC had filed a complaint with the Competition Commission against GlaxoSmithKline (GSK) and Boehringer Ingelheim alleging excessive pricing and abuse of patenting rights, and where the Commission had confirmed that the GSK and Boehringer Ingelheim had contravened the Competition Act of 1998 and abused their dominant positions by denying competitors access to an essential facility, excessive pricing and engaging in an exclusionary act. Before a license could be issued in this case, a voluntary settlement was made to provide access to market, including a reduction in some of the prices. With regard to constraints, Mr. Sibanda highlighted, the lack of domestic manufacturing and pharmaceutical capabilities in most African countries had led to increased reliance on imports. Other constraints and challenges included the lack of awareness of the patenting system, and lack of technical capacity and expertise. Countries were often put under pressure to waive some of the flexibilities that they could use. In conclusion, while a number of countries had amended their laws in order to include compulsory licensing and other flexibilities, their use was not sufficiently widespread and limited to public health or national emergency situations. In South Africa, the case against GSX and Boehringer Ingelheim had not resulted in a compulsory license but in a voluntary settlement.

24. Presenting WTO's perspective, Mrs. Thu-Lang Tran Wasescha, Senior Counselor, IP Division, WTO, Geneva, started her presentation by highlighting the fact that while the TRIPS Agreement incorporated the Paris Convention on industrial property, the Berne Convention on copyright, the Treaty on integrated circuits (IPIC) and the Rome Convention, there were many national and regional laws, free trade agreements (FTAs) and other treaties which went beyond the TRIPS Agreement. In a nutshell, WTO had 159 Member States, representing about 97 percent of all trade in goods and services. With regard to how to strike the right balance between rights and obligations in the field of patents, a very sensitive issue in the Uruguay

round, the balance had been struck in section 5 of the TRIPS Agreement. In terms of flexibilities, i.e. what one can do within a certain space of maneuvering, the provisions had been drafted in such a way to allow for different interpretations. The so-called “policy space” of each country, with a certain marge of maneuver to interpret the rights and obligations of the TRIPS Agreement, served to define their policy orientations. The implementation of the provisions also depended on the constitutional rules of each country. In some countries, treaties were self-applicable, while in others, they had to be transposed into national law. In both cases however, she stressed, there was some freedom to implement the provisions to ensure conformity with national interests and policy coherence. In striking the balance of interests between rights and obligations, already carefully negotiated in the Paris and Berne Conventions, the balance of interests, she stressed, was in the negotiated flexibilities (e.g. exhaustion of rights, patentability, compulsory licensing). On one hand there was the right to invent, but on the other there was also the obligation to accept that some exclusions were permitted, e.g. one could exclude inventions which were against public order, morality or the environment. A patent application had to respect certain criteria: novelty, inventive step, industrial applicability, and disclosure. Once a right was granted, there were still some obligations to respect and exceptions that could be applied, such as research exceptions, or exceptions allowing a competitor to use a patented invention in the area of pharmaceuticals for experimentation purposes to obtain market approval. The TRIPS Agreement, she stressed, provided a minimum level of protection, but countries could choose to go beyond this level of protection, based on their national interest. The Doha Declaration, she added, had confirmed this policy space. With regard for instance to the grounds for compulsory licensing, Member States had the freedom to define what was considered to be a national emergency in their country. Balance was nevertheless a fragile concept. While TRIPS provided for great flexibility, the way it had been used by some had created an imbalance. It was very important, she concluded, to maintain in the future a balance between innovation and research for new molecules and access and affordability of new medicines. Short, medium and long-term visions were essential in this regard.

25. Mr. Mohammed El Said, Reader, Lancashire Law School, University of Central Lancashire, United Kingdom, started his presentation by defining flexibilities as options and directions countries could pursue in their implementation of IP obligations. The purpose was to achieve a balance between right holders and the public interest. Flexibilities were non-uniform in nature, i.e. there was a policy space for Member States to define and phrase such flexibilities within their IP regimes. Another important aspect, he highlighted, was that they were non-automatic in their application, i.e. it required that countries took active steps to actively incorporate these under their national regimes. This in itself had proven to be a challenge for many developing countries and LDCs in the past where the lack of technical expertise had been an important challenge to ensure that these countries incorporated these flexibilities under national law. The policy space had also diminished with the introduction of international obligations of various nature and increased levels of IP protection through bilateral agreements and other multilateral initiatives which had resulted in TRIPS-Plus arrangements. In terms of flexibilities, there were implementation flexibilities, i.e. different transition periods for developing countries and LDCs to implement TRIPS provisions, as well as substantive standards flexibilities (while identifying the patentability criteria for instance, TRIPS had remained silent on defining these criteria, leaving considerable space to Member States to define this in accordance with their development objectives). India, for instance, had implemented very strict patentability criteria for the granting of patents, particularly for those in the pharmaceutical area. Other important exceptions were compulsory licensing, educational, experimental exceptions, exhaustion of rights in terms of parallel importation, and regulatory review. Further flexibilities which were yet to be fully utilized by many developing countries were those related to utility models, i.e. patents granted for incremental improvements on existing patents. There were also procedural flexibilities including pre and post-grant oppositions, these to ensure that patents were granted for true innovations. The third category of flexibilities was enforcement-related flexibilities. In this area, he underlined, the TRIPS Agreement did not provide for exact and explicit standards, but only general guidelines, namely that countries should provide for an

effective action against IP infringement, that IP enforcement procedures should be fair and equitable, allowing for judicial review of final administrative decisions. These were subject to the countries' capacities and resources. An important question as far as flexibilities were concerned, he pointed out, was whether flexibilities actually worked. There had been little evidence in the past of their importance, but new studies on the subject seemed to highlight their positive impact in a number of areas, in the field of public health in particular. One study focusing on anti-retroviral (ARV) medicines in Kenya had shown that parallel importation had reduced the price of ARV medicines to one-third of the price of the patented version. In another case, the decision of Malaysia to issue a government use license for the import of generic ARVs in 2003 had reduced the average cost of Malaysia's Ministry of Health's monthly treatment per patient from 315 United States dollars to 58 United States dollars. Ecuador, he highlighted, had also been one of the recent countries to issue a license for ARVs. This had immediately reduced the cost of the drug by 27 percent. With regard to transition periods, Mr. El Said referred to the Indian model with a long-term articulated policy to make use of the transition periods as a good example. In the 1950s, he stressed, India had had some of the highest prices for medicines in the world, while today it was considered the pharmacy of the world in terms of its access to medicines and availability of drugs. An important concept here was also the quality of the patents, not the quantity. It was important to avoid creating fake monopolies on the markets by granting patents that were not worthy of protection. An important point to keep in mind, he underlined, was the fact that while a number of flexibilities were available under TRIPS, many developing countries and LDCs did not have these flexibilities in place and did not use them. An overview of the situation in the Arab world showed that a large number of Arab countries had flexibilities in place, but evidence suggested that in terms of actual utilization and use, there had been little use, if none at all, of these flexibilities. It was therefore not sufficient to have flexibilities in place; there was a need for clear guidelines and for more awareness on the importance of flexibilities. In conclusion, Mr. El Said pointed out the TRIPS-Plus requirements, which he stressed, countries in the region should resist as these would be limiting their policy space and preventing them from using the IP system in a balanced way.

26. In the framework of the general discussion on topic 2, the representative of the African Regional Intellectual Property Organization (ARIPO) highlighted the fact that in the African region, Africa's contribution in the field of patent applications had been less than 5 percent during nearly twenty years and raised the question why countries in the African region were still technologically under-developed. Reacting to the representative of ARIPO's comment, Mr. Sibanda mentioned that in South Africa, over 60 percent of patent applications filed originated from other countries. Looking at China's and Japan's experiences, it seemed that there was a strong need, in the region, to strengthen human resources and capacities for research and development to start generating local IP. An effective use of the patent system was also crucial. Flexibilities, he stressed, allowed for countries to use the IP system taking into account their own level of development. There was a need to develop solutions to local challenges. He also pointed out to Article 66 TRIPS placing an obligation on developed countries to facilitate technology transfer to LDCs. This Article, he stressed, was very important in developing local capabilities. Mr. Sibanda also reiterated the importance of developing guidelines for the implementation of flexibilities, in particular in the field of compulsory licensing. In this regard, he suggested gathering information from countries that had successfully used flexibilities and compiling these into case studies to create additional awareness on the importance and value of this tool.

27. Reacting to a comment by H.E. Ambassador Ramadan on pressure and lobbying from some companies or countries when trying to use flexibilities, Mr. El Said confirmed that in the contentious area of compulsory licensing, political will to issue a compulsory license was essential. Brazil, he stressed, had used a policy for many years where even the threat of issuing a compulsory license had often led to important price reductions. The most important, he concluded, was to ensure that an adequate framework was in place.

TOPIC 3: PATENT SYSTEMS IN DEVELOPING COUNTRIES AND LEAST DEVELOPED COUNTRIES (LDCs). THE NEED FOR COHERENCE BETWEEN PATENT LAW AND PUBLIC POLICIES: INNOVATION, HEALTH AND TRADE

28. Presenting WIPO's activities aimed at contributing to a better coherence between patent systems and public policy objectives, Mr. Philippe Baechtold, Director, Patent Law Division, WIPO, underlined first the fact that WIPO provided legislative and policy assistance to Member States, on demand. This assistance was tailor-made, i.e. taking into account the development stage of the country, its multilateral and regional or national commitments, and the existing policies related to the patent system. Designing and drafting patent laws was a complex matter as patent law was a highly technical and specialized field, but perhaps more so, because each country had a broad sphere of freedom in adopting national legal frameworks. In fact, he stressed, there were as many patent systems as there were jurisdictions. The only limitation to such differences stemmed from international commitments, but even in such international instruments (multilateral, regional or bilateral), there was a policy space for national policies, the so-called flexibilities. Drafting patent laws alone, he stressed, did not necessarily ensure coherence between the law and related policies. The patent system was a policy instrument to promote innovation, and thus, the first effort to achieve coherence had to be undertaken in the area of innovation policies. There was, he underlined, no right or wrong patent law as long as it was in line with the country's innovation policy. Putting in place patent laws which, on the one hand were in conformity with international commitments and on the other, were coherent with national policies such as policies on innovation, health, agriculture, trade or foreign direct investment, was the most compelling challenge for developing countries. The WIPO Patent Law Division, he stressed had prepared and presented to CDIP two documents on patent-related flexibilities highlighting in particular how ten flexibilities had been implemented in over 100 jurisdictions. Discussions were being held on whether to address additional flexibilities in the future. The Division had also organized three regional meetings and several sub-regional and national meetings with the main goal of sharing experiences in the implementation and use of flexibilities.

29. Mr. Hossam A. El Saghir, Director, Regional Intellectual Property Institute, Helwan University, Egypt, then took the floor to present Egypt's perspective, focusing on patent law and public health policies in developing countries. Patent systems in developing countries before TRIPS, he stressed, were very different and many developing countries had excluded medicines from patent protection. The law stipulated that there should be no monopoly in the area of medicines and no monopoly in the area of nutrition. The situation had changed with Article 27 of the TRIPS Agreement which stipulated that patents shall be available for any inventions, whether products or processes, in all fields of technology and subordination of IP disputes to WTO's dispute settlement rules. Member States became subjected to WTO's regulations and arbitration system and IP became a new element of the new global economic order, with a clear link, therefore, between IP and trade. A fair balance could nevertheless be ensured through the use of flexibilities provided under TRIPS. Article 27 for instance, he stressed, stated that Member States could exclude from patentability diagnostic, therapeutic and surgical methods for the treatment of humans or animals and inventions necessary to protect human, animal or plant life or health. Where TRIPS mentioned the exclusion of plants and animals, the Egyptian legislator had interpreted it as not applying to all plants and animals but only to parts of animals and plants. There were numerous examples of national legislations giving effect to the flexibilities provided under TRIPS, such as providing for international patent exhaustion, applying the Bolar type exception, providing exceptions for research and development (reverse engineering), compulsory licensing, and transition periods. In the field of public health, he underlined, TRIPS provisions had to be interpreted and applied in support of the right of Member States to maintain public health and to strengthen access to medicines for all at affordable prices, in line with the right of Member States to determine what constituted a national emergency and when there was a need to protect public order or protect public health. Compulsory licenses, he stressed, were a solution for developing countries and LDCs with weak

technological capacities. With regard to patents and competition policies, Mr. El Saghir underlined the fact that the objective of competition policies was to preserve market competition by regulating anti-competitive conduct. Without competition, there could be no progress or innovation. Competition and IP laws therefore complemented each other. At the same time, one had to understand that since IP laws gave the right holder exclusive rights, these could be viewed as a sort of legal monopoly and there could be, in some cases, the need to take measures to protect competition (Article 8 TRIPS) to prevent the abuse of IP rights by right holders. Some licensing practices and contracts could also restrain competition and have adverse effects on trade and on the transfer and dissemination of technology. In such cases, Article 40 of the TRIPS Agreement provided that Member States may adopt appropriate measures – usually through competition policies – to prevent or control such practices. With regard to undisclosed information, TRIPS provided for protection of undisclosed information through unfair competition (e.g. results from clinical trials). Developing countries should not however be forced to apply data exclusivity for test data like other countries had done to give additional protection to drug registration data (i.e. TRIPS-plus protection). From a public health perspective, the introduction of TRIPS-plus standards was not advisable for developing countries. Bilateral agreements, he added, also played an important role in raising the levels of protection. A large number of Free Trade Agreements between the USA and countries in the Arab region such as Bahrain, Jordan and Oman had raised the levels of IP rights protection in the region. Finally, referring to the issue of enforcement, Mr. El Saghir mentioned the increasing pressure from big powers to raise the levels of protection (through, for instance, the World Customs Organization, the Universal Postal Union and other counterfeiting agreements), which, he concluded, would not be beneficial for developing countries and LDCs.

30. Mr. Mohammed El Said, Reader, Lancashire Law School, University of Central Lancashire, Preston, United Kingdom, started his presentation by underlining the fact that the main question under this topic was whether a country could reconcile a policy including all these elements together in a coherent way and ensure that its citizens were, in relation to access to medicines and health, provided with the drugs they needed at reasonable prices, without, at the same time, breaching international obligations. This in itself was a very difficult act of balancing which required huge national efforts. When referring to patents, one often referred to them as “sanctioned monopolies authorized by the State”, but these, he stressed, were in fact exceptions. Most countries operated to ensure fair competition by abolishing monopolies. In this regard, it was important to look at patents as part of a country’s development agenda. There was a need for incentives to stimulate innovation, to create a competitive environment, and to ensure at the same time that there were mechanisms in place to prevent any abuse of IP rights. A coherent policy in this regard therefore meant that a country had to take into consideration all these elements and not simply look at the IP regime as an end in itself. Other tools had to be used to support that system. In the health sector for instance, he stressed, the need to ensure access to medicines required a certain level of commitment, a strong research and development sector and innovation cycle, and at the same time the question of availability and affordability of medicines. Looking at countries’ experiences, there appeared to be more and more supportive patent-related tools and innovation incentives such as *inter alia* open drug discovery and development projects, grants regimes, advance market commitments, patent pools, tax breaks for companies, and priority review vouchers. Many initiatives had come hand in hand with the IP regime to improve accessibility and at the same time to encourage innovation. With regard to patent information, Mr. El Said highlighted the fact that many patent offices still lacked digitized information on granted patents and databases on rejected patent applications. Under pressure to save costs, many patent offices had promoted patent grants increase with the risk of a negative impact on the quality of patents being granted. An IP regime, he added, could also not operate independently from pension schemes, national health insurance programs, national innovation agendas, procurement policies and so forth. It was therefore important for national IP regimes to involve all stakeholders. In this regard, he concluded, a major challenge in developing countries and LDCs remained the absence of national coordination mechanisms.

31. Mr. Mohamed Gad, Counselor, Minister's Office, Ministry of Foreign Affairs, Egypt, started his presentation by pointing out that there were ultimately two justifications for the patent system, firstly the traditional historical justification where the patent system was seen as an instrument of justice to the inventor, and secondly, a public justification where the patent system was seen as an incentive to innovate and as a way to disseminate information, i.e. a system where the patent was seen as a social contract between the inventor and society. While the patent system was beyond any doubt the predominant system to foster innovation, its main drawbacks were its sometimes anti-competitive effects and hindrance to public policy priorities, particularly in more vulnerable countries. Public policy on the other hand could be defined as a system of laws, regulatory measures, courses of action, and funding priorities concerning a given area. While not necessarily a neutral exercise, taking into account the impact of many interest groups, public policy was undertaken in the name of the public, and intended for the public good. Referring to the title of the session and the focus on three important public policy areas, namely innovation – the public policy most directly relevant to patent law –, health – the most controversial –, and trade, which became directly relevant to patent law with the adoption of the TRIPS Agreement, and stressing the fact that the fundamental public policy was development, Mr. Gad mentioned that four questions had to be asked when talking about coherence between patent law and public policy, namely why it was needed, what it was, how to achieve it, and what the main challenges were. In this regard, he stressed, a patent system that was coherent with public policy on a given issue was the essence of a development-oriented patent policy. Coherence, in other words the tuning and fine-tuning between policy areas, entailed variation, responding to differences in factors affecting a particular policy set-up and in the needs and priorities of a given society and economy. It was therefore a dynamic process. To achieve coherence, the most important factor was to acknowledge that the patent system was not an end in itself (Articles 7 and 8 TRIPS). Some of the main challenges to achieve coherence were for instance treating patent protection and enforcement as an end in itself, equating a “better” patent system with higher levels of protection, and patent harmonization. It was alarming in this regard, he pointed out, to witness the so-called “invisible harmonization” in the field of patent processing and examination procedures. Another challenge was the lack of capabilities and capacities to implement coherent policies as a result of lack of qualified human resources, but also as a result of constraining obligations, most notably in the form of IP provisions in preferential trade agreements. Ultimately, he stressed, the main challenge was regulatory capture. It needed to be avoided at all costs. In conclusion, he emphasized the fact that in order to achieve coherence, what was needed was to change the discourse on patent law and public policy. Following the Doha Declaration, developing countries had played a more assertive role in IP debates, seeking to develop their own pro-development policies. The role of civil society actors had also drastically changed the debate favoring a more contextualized patent system adhering to public policy priorities. Different government departments had to be involved in the design and implementation of patent policy such as in the case of Brazil and Egypt, and clear linkages with public policy issues had to be made. In order to reap some of the benefits of innovation and to ensure flexibility in public policy domains, patent law had to be integrated in various public policy areas. In this regard, Mr. Gad highlighted the importance for developing countries and LDCs to continue to exchange experiences to better understand common challenges and to fully implement the Development Agenda. South-South cooperation was an important stream of cooperation, which had to be continued. Part of the problem that the global IP regime was facing, he stressed, was the fact that developing countries were pressured to implement patent regimes that were not necessarily in their interest, when they could benefit from examples of countries facing similar challenges and circumstances. In this regard, he underlined that he fully supported Mr. Ahmed Abdel Latif's suggestion for South-South cooperation to be fully integrated into WIPO's work and pointed out the importance of establishing a virtual platform to further facilitate the exchange of ideas and experiences among developing countries and LDCs in the field of IP.

TOPIC 4: SUPPORTING INNOVATION, TECHNOLOGY TRANSFER, PATENT INFORMATION AND KNOWLEDGE DISSEMINATION. NATIONAL AND REGIONAL EXPERIENCES

32. Introducing topic 4 with a concrete example from Chile, Mrs. María José García, Deputy Director, Transfer of Knowledge Division, National Institute of Industrial Property (INAPI), Chile, started her presentation by pointing out the fact that INAPI was the agency responsible for industrial property in Chile and that it was in particular responsible for the management of IP rights, the promotion of IP rights and the dissemination of technological assets. Contributing to the innovation and entrepreneurship strategy of Chile, INAPI had been striving to create an efficient system for the use and protection of IP rights, while also promoting competition and transfer of knowledge to society. Since its inception in 2009, a number of initiatives had been undertaken such as *inter alia* the creation of online services for patent and trademark registrations and the promotion of IP throughout the country. The “*INAPI proyecta*” platform, a virtual platform for the dissemination and transfer of knowledge aiming to create opportunities for entrepreneurship and to promote innovation and creativity through the effective use and management of industrial property, she stressed, had been established in 2010 as a result of a number of factors, including low use of IP rights by residents in Chile, weak use of rights such as utility models, industrial design, integrated circuits, and in general a weak use of the IP system and a poor awareness of the benefits of IP rights. Funded by the European Union and the Government of Chile in the context of the “Innovation and Competitiveness Program, UE-CHILE” with a 584,744 euro budget split equally between the European Union and Chile, the program had been successfully completed in April 2012. The platform, she stressed, aimed to achieve three main objectives, namely firstly IP education and awareness-raising through, in particular, a number of e-learning tools and e-courses for inventors and researchers and case studies on successful examples of the use of the IP system by inventors, secondly IP use and management, with legal and technical guidance on how to protect, commercialize and effectively use IP, and thirdly transfer of technology and knowledge. In this regard, the platform, she stressed, included a patent/innovation search database, a newsletter, a forum for exchange, and provided for alerts on latest technological developments. Ultimately, the platform aimed to strengthen research and development capabilities through increased knowledge of IP and technological information, contribute to economic and social development through the dissemination of technological information as a means to foster innovation, and improve the awareness and use of the IP system in Chile.

33. Mr. Zakir Thomas, Project Director, Council of Scientific and Industrial Research (CSIR), New Delhi, India, then took the floor to share the experience of the CSIR, a chain of about 37 national laboratories and institutes spread across India in the field of physical, chemical, biological, engineering and information sciences, with over 4,600 scientists and 10,000 students involved in it and a budget of about 600 million dollars from governmental sources and about 100 million dollars generated from internal resources. CSIR, he stressed, had about 3,250 patents worldwide, out of which 9 percent were being utilized. Referring to a case study available on the WIPO website entitled “licensing to save lives” regarding a specific example of technology transfer of streptokinase, a protein that could be used as an effective and inexpensive clot-dissolving medication for heart attacks, Mr. Thomas pointed out the fact that such examples clearly showed that innovation was market-driven. One problem that most developing countries and LDCs were facing, he stressed, was that there was no market demand for technologies developed in their laboratories. The role of governments in giving a technology push and in developing appropriate strategies and mechanisms in this regard was therefore essential. In developing countries, there was for instance a strong need to support the micro, small and medium enterprises sector. The preferred mode of licensing for technology transfer in CSIR was non-exclusive licenses without the motive of financial returns. Innovating where markets did not exist was, he stressed, a major challenge for the South. Developing countries and LDCs did not have attractive enough markets to attract bigger players. Research-based pharmaceutical companies based in developed countries had, he stressed, no economic or

moral pressure to develop new drugs for neglected diseases like tuberculosis or malaria. Most treatments for tuberculosis were from the 1950s and 1960s, and despite the technological developments in the last 50 years, no new drugs had been developed for this neglected disease. The reason for this, he stressed, just like for malaria, was the absence of a market. The traditional innovation model, he highlighted, was a virtuous circle starting with a breakthrough in science, followed by investment to develop a new product on that basis, protect it, and more investment to bring the product to the market. Return on investment from the product/market would then lead to increased investment in research and development, which in turn would lead to further innovation. In the case of neglected diseases such as tuberculosis or malaria however, the market element was missing, therefore breaking the virtuous circle. Indeed, while patents on tuberculosis had increased over the years, these had not translated into new drugs because of a lack of investment interest. In order to make such drugs available in the absence of such market forces and in the absence of investment from bigger players, one solution, he stressed, was open innovation (cf. open source drug discovery project of CSIR). Taking into account the need to ensure access to affordable healthcare to all, such a model was based on collaboration between academia and industry. As part of the open source drug discovery project, CSIR, he stressed, had established a web-based portal with over 7,000 registered users from over 130 countries worldwide working in research. CSIR worked with clinical research organizations and brought in public and government funds to support clinical trials in publicly funded institutions. CSIR's approach, he emphasized, was to ensure that innovations remained open-source and to use patents to ensure affordability and accessibility through non-exclusive licenses. In conclusion, Mr. Thomas underlined the importance to have a balanced view between seeing health as a right and health as a business.

34. Mr. Emmanuel Sackey, Chief Examiner, African Regional Intellectual Property Organization (ARIPO), Harare, Zimbabwe, then took the floor to present ARIPO's experience. After providing a brief overview of ARIPO's governing structure, membership, and main legal instruments (i.e. the 1982 Harare Protocol to register and administer patents, utility models industrial designs and the 1993 Banjul Protocol to register and administer trademarks and service marks), Mr. Sackey stressed the fact that development was still a major concern in Africa. Only about 5 percent of applications came from African innovators with about 95 percent coming from foreign innovators. In order to address some of these concerns, ARIPO, he stressed, had recently adopted the Swakopmund Protocol to give legitimacy to traditional knowledge holders and to promote the development and utilization of these resources for development purposes. South-South cooperation, he underlined, was an important framework in which developing countries and LDCs could discuss issues such as the issue of interest groups influencing legislative framework developments in the field for instance of genetic resources and breeders' rights. Referring to the Harare Protocol, Mr. Sackey highlighted the fact that it was a centralized registration system which enabled Member States that lacked the capacity to register IP rights within their jurisdictions. ARIPO had also developed a number of tools to promote innovation and enhance the use of the IP system within its Member States. In terms of capacity-building and IP education, ARIPO had established its first Masters in IP in the University of Mutare, Zimbabwe. To date, over 140 graduates had been trained and ARIPO was now planning on establishing similar systems in Tanzania (in 2014) and in Ghana (in 2015). Through South-South cooperation, ARIPO had also built many partnerships, including with Mexico, and was planning on developing future partnerships with Brazil, China and the Republic of Korea to strengthen the IP system in the region. With regard to patent information, ARIPO, he stressed, had a virtual library and collection of publications, mainly used by research and development and educational institutions. Nevertheless, the actual utilization of the patent system remained slow and limited and needed to be encouraged, especially by research and development institutions. In conclusion, Mr. Sackey emphasized the importance of putting in place regional networks and mechanisms to promote the utilization of patent information and innovation in Africa, and to build patent information diffusion mechanisms and networks for researchers and inventors in the region.

35. Sharing the South African experience, Mr. McLean Sibanda, Chief Executive Officer, The Innovation Hub, South Africa, started his presentation by underlining the fact that when one talked about innovation, it was important to distinguish innovation and invention. Inventions, he stressed, were the result of a process of putting money in and getting knowledge out and innovations the result of the process of using new knowledge to get money out. The patent system, he pointed out, was the basis for competitiveness and more research and development. One major challenge, however, was, as pointed out by Mr. Sackey, the fact that research institutions did not appear to make use of the available patent information, mostly because the rewarding system in education was based on publications rather than on patenting. Patent information, he stressed, was the most recent and up-to-date source of information regarding new technologies. Using it appropriately was therefore important in order to avoid duplication in the innovation process. Referring to South Africa's national system of innovation, the first main policy milestone, he stressed, had been a 1996 Science & Technology White Paper, which had emphasized the importance of an effective monitoring system and of establishing a fund to support innovation and SMEs in the development of IP. This had been followed by a series of technology foresight studies in 2000, which had led to South Africa's Research and Development Strategy in 2002. The strategy, he stressed, highlighted the need for an enabling environment to manage publicly financed research and development and the need to establish a fund to secure patents whenever in the national interest. A dedicated department of science and technology (DST), established in 2003/2004, had formulated a "Ten Year Innovation Plan" setting out a number of objectives to develop the South African economy. In 2008, the government formulated a "Technology Innovation Agency Act" which established South Africa's Technology Innovation Agency. In the same year, the "IP Rights from Publicly Funded Research and Development Act" (IPR-PFRD) was also passed. The object of this Act, which came into effect in August 2010, was to ensure that IP emanating from publicly financed research and development was identified, protected, utilized and commercialized for the benefit of the people. With regard to science and technology parks in Africa, Mr. Sibanda highlighted the example of the Province of Gauteng, the fourth largest economy in Africa representing about 30 percent of South Africa's GDP, about 25 percent of the population of South Africa, and containing seven higher education institutions. The Innovation Hub had been set up in 2005/2006 by the government as a science and technology park to spear innovation. It focused on areas of ICT, green economy and biosciences, with a specific focus on enterprise development, skills development and innovation support to support and further develop the economy of the province, reduce poverty and increase employment. In terms of skills development, the Innovation Hub ran a number of programs such as one on ICT entitled "coach lab" and another one on biosciences known as the "Gauteng Accelerator Programme" focusing on IP in collaboration with Emory University, Atlanta, Georgia. The Innovation Hub also ran a number of internships for graduates. With regard to enterprise development, the Innovation Hub had set up a climate innovation center in collaboration with the World Bank focusing on climate change and mitigation, with a link to WIPO GREEN. It had also developed the Maxum Business Incubator, where about 80 percent of the entrepreneurs were from SMEs and industry. Other initiatives included innovation competitions to drive demand and a so-called M-Lab, a mobile solutions laboratory providing entrepreneurs and mobile developers with support needed to develop innovative mobile applications and services, an important area for emerging countries. In conclusion, Mr. Sibanda highlighted the emergence of a number of innovation hubs and centers in Africa, underlining the increasing need and demand for facilities and infrastructure to support entrepreneurs. IP protection and enforcement was not an end in itself; opportunities had to be created, and the IP system had to be integrated into and aligned with the innovation eco-system. Looking at the growing role of science and technology parks and innovation centers in fostering innovation, there was a need to collect more information on lessons learned and good practices and compile these into case studies.

ROUNDTABLE: SOUTH-SOUTH EXCHANGES ON BEST PRACTICES FOR THE
DEVELOPMENT OF NATIONAL PATENT AND INNOVATION
STRATEGIES IN DEVELOPING COUNTRIES AND LDCs

36. Mr. Zhicheng Zhang, Deputy Director General, Protection and Coordination Department, SIPO, People's Republic of China, started his contribution by pointing out that an effective IP system was the cornerstone of an innovation-oriented development system; hence it was critical for each IP system to be carefully planned, implemented and revised/adapted when necessary. IP protection, he stressed, had become a major component of China's 2012 innovation-driven development strategy. To realize the objectives of the strategy, he added, China had formulated and published the outline of a national medium and long-term science and technology development plan focusing on science and technology, education, talent and IP. With regard to China's national patent development strategy (2011-2020), the strategy, he stressed, concentrated on enhancing China's core competitiveness through an effective use of the patent system. The strategy established a number of important tasks such as to improve the patent law system, to promote the patent-related policy system, to enhance patent creation and utilization as well as patent examination capacity, to strengthen patent protection capacities, to establish an IP review mechanism for major economic activities, and to strengthen IP education and awareness. The main focus of the strategy was to enhance patent quality and competitiveness, encourage research and development, promote patent utilization, and strengthen the availability of patent information. In this regard, it was also seen as crucial to establish and improve China's development-oriented system. China, he underlined, had not only amended its laws to intensify patent protection, but had also taken a series of measures and developed a number of tools to help companies, i.e. major stakeholders in implementing the strategy, patent their innovations. China had also increased the number of patent examiners, intensified training, and strengthened the development of the patent examination system through *inter alia* automation and the development of specific examination centers. In 2012, he concluded, patent applications in China had reached 2 million applications.

37. Mrs. María José García, Deputy Director, Transfer of Knowledge Division, INAPI, Chile, then took the floor to share the experience of Chile. Despite Chile's economic system's openness and competitiveness, she stressed, the country faced many development challenges. The Chilean Government had begun shaping the innovation system in Chile with the adoption of an inclusive national innovation strategy in 1992. A National Innovation Council comprised of various Ministries had been set up with a view to strengthening scientific research and facilitating technology transfer. INAPI's role in this regard was to create an effective IP system and an enabling environment to promote the protection and use of IP and to raise awareness of the importance of IP. With regard to best practices that could be shared with other IP offices worldwide, and specifically in the context of South-South cooperation, Mrs. García mentioned the fact that INAPI had developed a number of useful tools such as a compilation of national IP laws and relevant international treaties in the field of IP, a number of guides (e.g. a guide to trademark and patent registration), the "*INAPI proyecta*" platform, as well as a number of trainings and workshops. INAPI also provided a virtual database of patents and trademarks on its website. With regard to innovation and the public domain, INAPI had published a document which identified all the technologies available in the public domain, and provided technological alerts. In response to an important earthquake which had taken place in Chile in 2010, she stressed, a publication had been issued in which INAPI had pointed out and promoted a number of technologies that could be used in case of future earthquakes. INAPI had also developed a program in collaboration with the Ministry of Economy for the protection and promotion of geographical indications (GIs) and appellations of origins (AOs) in Chile. Chile now had over 50 GIs and AOs. In conclusion, Mrs. García underlined the fact that South-South cooperation was indeed a useful tool to exchange best practices and that there was a need for IP offices to discuss how to take the process further and how to further cooperate in the field of IP.

38. Referring to the previous presentations, Mr. Ahmed Abdel Latif, Senior Program Manager, Program on Innovation, Technology and IP, ICTSD, stressed the fact that both Chile and China had relatively advanced technological capacities and that he would therefore also raise the situation of LDCs to present a more global picture. Article 7 of the TRIPS Agreement, he stressed, stated that “the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology”. The word “should” was important here because it implied that it was not automatic; it required the right conditions and environment. Absorptive capacity played a very important role in this case. If there was no good institutional base to absorb a technology, the technology could not be assimilated. This, he stressed, was a key challenge for LDCs in particular. One could see a big difference between emerging economies, middle-income countries and poor countries. In the case of middle-income countries, foreign direct investment (FDI) contributed to absorptive capacity, thereby promoting a virtuous circle, but as far as LDCs were concerned, the lack of FDI flows prevented absorption from taking place. To bridge the technological gap in low-income countries, one model suggested encouraging public-private partnerships. Other important issues from the point of view of LDCs were, firstly, the issue of the TRIPS extension and the need to further extend the transition period for LDCs to be able to build their technological base, and secondly, the issue of incentives provided by developed countries to promote technology transfer for LDCs. This did not occur through normal market flows. As mentioned before, there had been a lot of discussion on how to improve the implementation of Article 66.2 and on how to improve these incentives for technology transfer to LDCs. Overall, most developing countries ranked fairly low in terms of innovation capacity. Looking at the WIPO Global Innovation Index 2012 providing a ranking of countries, the first African countries to appear in the index ranked at number 49. Looking at expenditures for research and development, many developing countries appeared to have much lower rates of expenditure for research and development compared to OECD countries. With regard to patents, seen as one of the main tools for innovation, it was also important to ask whether all patents equated innovation. This was particularly questionable in the case of trivial patents or in the case of patents on human genes and on software. The European Parliament for instance had rejected software patents in 2005 stressing that these could have a detrimental effect on innovation by blocking the flow of ideas and technologies. Patent trolls, i.e. companies who take out patents without the intention to use them and then sue for patent infringement, and patent litigation where more resources were spent on patent litigation than on research and development, were also areas of concern. The key, he stressed, was patent quality, i.e. to ensure that a patent promoted innovation by being truly novel, inventive and applicable industrially. The quality of patents, he stressed, was also a better indicator of innovation than the quantity of patents. In conclusion, it was important for developing countries elaborating innovation strategies to take into account not just IP and patents, but also research and development policies, trade, investment, ICT, government procurement, competition and industrial policies, technical standards, and so forth. Likewise, innovation was not solely about research and development. Most importantly, it was the way research and development was utilized that was critical for innovation. Despite being the biggest spender among all IT companies in terms of research and development, Nokia for instance had not sufficiently commercialized its technologies and brought them to the market and had therefore done less well in the last few years than other companies. Innovation also had to address local needs. Different approaches in this regard had been pursued in the past, e.g. China’s indigenous innovation system and India’s frugal/inclusive innovation system, and it was important to tailor innovation strategies to the needs and circumstances of each country. Mr. Latif also mentioned the fact that many countries had developed FTAs and included innovation-related provisions in the agreements, such as for instance in the economic partnership agreement between the EU and CARIFORUM which contained a specific chapter entitled ‘Innovation and Intellectual Property’ so that CARIFORUM countries could benefit from the EU innovation program. Mr. Latif concluded his intervention by reiterating the fact that each IP system should be tailored to each country’s level of technological development. In case of weak technological capacities, the IP regime should help maximize the space for imitation and reverse engineering while respecting international

obligations in the context of the current framework, and the innovation strategy should therefore be sector-sensitive. In terms of South-South cooperation, two areas that could be further explored, he stressed, were the issue of the commercialization of publicly-funded research and the use of utility models. Utility models, he highlighted, were a type of IP rights used for incremental innovation, and countries with low technological capabilities could use such utility models as a starting point. This was an area, he concluded, where countries could really benefit from each other's experiences.

39. Reacting to Mr. Latif's concluding remarks on South-South cooperation on utility models, the representative of ARIPO underlined the low use of utility models in the region, as a result of which Egypt suggested that WIPO put in place a specific program or activity to raise awareness of utility models in developing countries.

40. Referring to the discussion on utility models, Mr. Sibanda suggested looking at the examples of Cuba and South Africa during their isolation and how these two countries had been able to develop some technological capabilities during that time, Cuba in the area of biotechnology and health, and South Africa in the defense and petroleum industry. Innovation, he stressed, was a response to challenges that countries were facing and African countries therefore had to focus on their own challenges and domestic markets to move forward. This also put in question the issue of patent quality. If the objective was to stimulate endogenous innovations, then quality also became a concern of secondary importance.

41. In conclusion, Mr. Mokhtar Warida, Counselor, Permanent Mission of the Arab Republic of Egypt to the UN and specialized institutions in Geneva and other international organizations in Switzerland, underlined the key points made during the roundtable, namely that innovation strategies had to start with a clear vision and understanding of the national development needs and the national context. In this regard, it was important for developing countries and LDCs to identify their own assets and how to best utilize them. Utility models were an interesting tool as they required limited capital investment and allowed for incremental innovation. To conclude, Mr. Warida highlighted the importance of aligning innovation strategies with the countries' sectoral policies and strategies.

ROUNDTABLE: SOUTH-SOUTH EXCHANGES ON INFRASTRUCTURE AND INSTITUTIONAL CAPACITY FOR AN EFFECTIVE USE OF THE PATENT SYSTEM IN DEVELOPING COUNTRIES AND LDCs

42. Mrs. Maha Bakhiet Zaki, Minister Plenipotentiary, Director, IP and Competitiveness Department, Economic Sector, League of Arab States (LAS), started her presentation by mentioning the Memorandum of Understanding (MoU) between LAS and WIPO in 2000, which, she stressed, had opened a new avenue of cooperation, coordination and consultation between the two organizations, with annual consultation meetings, workshops and seminars organized in the Arab region. The concerns and needs of Arab countries, she stressed, had changed and developed with the changing landscape of IP issues since the conclusion of the MoU in 2000. This had required both organizations to work closely to develop a common understanding of the challenges and opportunities Arab countries were facing in the field of IP and how best to address them. A number of issues were of crucial importance such as the innovation infrastructure of a country, the competitiveness of domestic enterprises, the ability to access international technology markets, the links between public research organizations and private companies in the field of research and development, and so forth. Arab countries, she stated, had enacted IP legislation to ensure compliance with international treaties and considerable efforts had been made to ensure an effective management of patent offices in charge of the registration and grant of patents rights to provide enterprises with reliable mechanisms for protecting their creations and innovations. Nevertheless, a key challenge remained how to further enhance and strengthen South-South cooperation. In the final declaration of the second Arab-South American Cooperation (ASPA) Summit in 2009, the Heads of State and

governments of participating Arab and South American Countries had reiterated their keenness to work on promoting Arab-South American relations, coordinating bi-regional efforts to build a strong community in which mutual benefits could be exchanged and common interests protected. In the field of IP, they had agreed to exchange information and documents, including information about updating laws and regulations regarding the protection of IP rights, and statistics on patents and IP rights infringements. They had also stressed the importance of collaborating in the field of copyright and related rights and endeavored to promote cooperation among IP offices to exchange experiences in managing IP rights. In this regard, she added, a number of joint meetings, educational seminars and training programs on different IP issues had been organized. During the third ASPA Summit in 2012, the commitment to further develop bi-regional relations and consolidate the ASPA framework was made. For this purpose, and in order to develop the future activities of ASPA, it was agreed to promote efforts to coordinate positions where possible in international fora in issues of common concern in the field of IP and to explore the possibility of establishing a common database on information related to patent legislation. In the framework of the Africa-Arab Summit in 2010, Heads of State and governments of African and Arab Countries, she highlighted, had also stressed their desire to boost cooperation between African and Arab countries and to establish a strategic partnership among the two regions, including in the field of IP. In 2013, during the Third Africa-Arab Summit, participating African and Arab countries had agreed to prepare a study on IP rights in African and Arab countries to look at the link between IP and economic and social development in their respective regions. In terms of enhancing South-South cooperation, Mrs. Zaki highlighted a number of proposals emanating from LAS Member States, such as for instance Jordan's proposal to learn from the Brazilian experience in the field of IP awareness-raising, with a special focus on awareness-raising in schools. Other interesting experiences to learn from included Brazil's elaboration of its national IP policy and its experience in GI protection. Saudi Arabia on the other hand had mentioned its interest in learning from Brazil's experience in the field of patent examination, learning from its e-filing and electronic internal transaction technique and from its experience in supporting inventors and marketing their inventions. Yemen had also mentioned its interest in learning from Brazil's experience in terms of GI protection and in terms of formal and substantive patent examination methods. Another important aspect brought forward by Yemen, she stressed, was technology transfer and capacity-building between the Arab and South American regions, in particular in favor of Arab LDCs. Other country proposals included Sudan (interest in learning about experiences in the fields of genetic resources, traditional knowledge, new plant varieties, and lay-out designs of integrated circuits), Iraq (IP policies, awareness-raising to build an IP culture, patent examination mechanisms, patent information, international classification techniques and their latest developments, and latest techniques in documentary research processes), and Oman (GI protection, patents and technology transfer). In conclusion, Mrs. Maha Bakhiet Zaki pointed out the fact that IP had always been a component of cooperation between the LAS and other countries such as China or Japan and that the most important in the end was to have a political framework for cooperation.

43. Mr. Zakir Thomas, Project Director, CSIR, India, took the floor to share India's experience and highlight the government's policy interventions to support innovation. Statistics-wise, India, he stressed, had a low number of researchers yet a high number of patents and innovative research. The government had declared the decade as a decade of innovation and had accordingly set up a National Innovation Council. It had also announced, in 2013, a Science, Technology and Innovation Policy with new additions to a large number of existing programs. In this regard, the CSIR, he stressed, had an initiative entitled "New Millennium India Technology Leadership Initiative", an initiative linking academia, research institutions and industry to develop products that would then be taken by the industry to the market. Innovation, he pointed out, required funding. CSIR provided two types of funding, namely grants to academic institutions and loans to industry. Industry therefore had a definite interest in collaborating with research institutions and academia. The initiative, he underlined, focused on technological development projects and had been very successful. One example of a technology that had

been developed and transferred to industry had been specialty chemicals from sugar cane from Bagasse. The technology had been transferred to an industry named “Godavari Biorefineries” which had set up a plant investing almost 100 million United States dollars. In addition, fiscal incentives were also provided. Fiscal incentives, he stressed, played a very important role in encouraging industry to invest in research and development. New schemes had also been launched, such as a “patent acquisition and collaborative research and technology development (PACE) scheme” to support SMEs to acquire patented technology at an early stage and develop products for India and abroad. This was to create an enabling environment for collaborative research between Indian industry and research and development institutions in India and abroad. The scheme was operated by the Department of Scientific and Industrial Research and the Ministry of Science and Technology. Another newly launched scheme was the “Access to Knowledge for Technology Development and Dissemination (A2K+)” scheme which aimed at providing access to e-journals to in-house research and development units in industry. CSIR also had a technology development and utilization program for women, as well as another scheme focusing on micro and small enterprises (MSEs) entitled “Building Industrial Research & Development and Common Research Facilities (BIRD)”, which aimed at creating common research and technology development centers for research and development and innovation dedicated for MSEs, as these enterprises mostly operated in cluster. The objective of the scheme was to unleash the innovative process of MSEs, create cluster-based centers in target areas, provide customized technical support and research and development capacity building in MSEs, and enable them to sustain competition. In addition, CSIR had also recognized the importance of developing infrastructure and had to date 40 national laboratories. To market the technologies that came out of these laboratories, CSIR had set up innovation complexes where industry could come in to develop new technologies into prototypes before taking them to the market. In the field of traditional knowledge (TK), India had focused on how to prevent TK from misappropriation by using the existing patent system and legal framework. In this regard, the “Traditional Knowledge Digital Library (TKDL)”, a TK resource classification and patent search mechanism had been developed as a defensive protection tool against misappropriation of TK. The TKDL, he stressed, contained information in 34 million pages in five languages (English, German, Japanese, Spanish, French) on the Indian system of traditional medicines. It contained information on 2.7 lakh codified medicinal formulations. Agreements had been signed with a number of patent offices worldwide, including USPTO, EPTO, and the Japanese patent office, after which about 1,080 cases had been identified and proactive action had been taken in 118 cases of patent claims. In 2011, he stressed, 35 countries had come to India to learn about this database, and another 19 developing countries had come to India in March 2013 to learn about the TKDL as part of a WIPO initiative. The objective, he highlighted, was to add an additional 3.5 lakh medicinal formulations and utilize the TKDL for developing new drugs based on traditional systems of medicine, providing access to the database to national publicly funded research institutions. WIPO, he concluded, had plans to internationalize the database and use it as a template for other interested countries rich in TK and genetic resources, as a unique pioneering approach against bio piracy.

44. Presenting the civil society perspective on this topic, Mrs. Heba Wanis, Researcher, Egyptian Initiative for Personal Rights, Egypt, started her presentation underlining the importance of South-South cooperation, as an acknowledgement of the growing capacities in the South in the area of IP. This growing expertise, she stressed, took into consideration socio-economic conditions and challenges in developing countries and LDCs, thereby contextualizing IP discussions. This, she said, was very important as it represented safeguards against non-development friendly IP systems. In addition, it was important to acknowledge and share the learning process that developing countries and LDCs were going through and to understand the options that were available to them based on other countries’ experiences and lessons learned. South-South cooperation, she underlined, acknowledged both the particularity and diversity of developing countries and LDCs. In addition to exchanges among governments, South-South cooperation also occurred among academia, research centers, civil society and so on. Such exchanges, she stressed, often occurred when there was a credible facilitator, i.e. an

intergovernmental organization (IGO) or international non-governmental organization (NGO). There were also a number of bilateral initiatives, most commonly within one region because of geographical commonalities, such as for instance patent offices signing bilateral agreements, often for training purposes, expert visits and so forth. Regional initiatives on the other hand allowed for wider participation and for the creation of informal networks to support official work normally conducted by governments (e.g. regional training workshops for pharmaceutical patent examiners in South African countries, in the Middle East and in North Africa). At the global level, there were also a number of initiatives and programs led by IGOs and NGOs such as WIPO and the South Centre, an IGO of developing countries. In the field of research and documentation, an important initiative was the Global Health Watch Project of the People's Health Movement on access to medicines and healthcare in the South. Media was also an important player in terms of news exchange, mailing lists and virtual think tanks. South-South cooperation, she added, took place in two parallel arenas, the technical and legislative arena and the political arena. In the former, South-South cooperation was about creating an orientation towards development (e.g. training human resources and creating capacities to use the IP system, how to use particular flexibilities and how to incorporate TRIPS flexibilities in national legislation and make full use of them, and so forth). In the political arena, cooperation was linked to regional influences countries had on each other. The use of certain TRIPS flexibilities for instance often happened in a concentrated region. With regard to compulsory licenses for instance, one of the most important flexibilities, this flexibility had been issued in Zimbabwe in 2003, followed by Zambia and Mozambique in 2004, and Ghana in 2005. In Asia, another example was Malaysia's introduction of a government use license in 2002 to import the generic version of patented antiretrovirals (ARVs) from India, which had caused a drop of 81 percent in the cost of the drugs. Likewise, Indonesia had also issued a government use license in 2004 for ARVs, followed by Thailand. With regard to the role of civil society in South-South cooperation, Mrs. Wanis underlined the importance of distinguishing between public-interest and business-interest oriented NGOs. Indeed, recent reports had shown that a number of NGOs had business interests or were backed by pharmaceutical companies, and ultimately that they did not advocate for the public interest. Public-interest oriented NGOs, she stressed, formed a large network across the globe, with a high level of expertise, providing on-going research in specialized areas such as access to medicines and health policies, and strong advocacy tools. They had a strong presence in global health trade and IP negotiations at the intergovernmental level and supported the positions of developing countries, advocating for instance for the extension of the transition period for LDCs in WTO. They had also influenced the outcomes of negotiations on the TRIPS Agreement, the WHO Global Strategy on Public Health, Innovation and IP, the WIPO Development Agenda, and influenced discussions on substandard medicines at WHO, shifting the focus from the counterfeit/IP angle to a more health-related one. It was therefore important to include civil society actors in future South-South cooperation. In addition, and beyond patents, she concluded, it was important to share experiences at the wider policy national level on issues such as constitutional support of public interest, health insurance schemes (access to health and medicines), medicine pricing and procurement mechanisms, rational use of medicines such as antimicrobials, investments in domestic pharmaceutical manufacturing capacities, and the role of public interest civil society organizations at the national level.

45. Referring to the Indian experience, the Delegate of Senegal asked how the Indian Government had supported Indian industries and how it had promoted investments. Referring to India's experience in developing the TKDL and in the field of technology transfer and partnerships between industry and research institutions, the Delegate of Senegal also mentioned Senegal's interest in learning from India's experiences in the framework of South-South cooperation.

46. In response to the question raised by the Delegate of Senegal, Mr. Thomas mentioned that the Indian Government had, as it was widely known that industry responded to tax incentives, provided tax exemptions for research and development to attract investment. With

regard to India's experience in developing an innovation infrastructure, increasing human and other resources for this purpose, he stressed the fact that India had been working with other countries, such as Mozambique for instance, to help them set up similar laboratories to CSIR. As far as the TKDL was concerned, he stressed that India was already committed to working with developing countries in the framework of its cooperation with WIPO and that it was willing to share the process further with other interested countries. The TKDL, he stressed, was mainly a defensive mechanism that did not require extensive infrastructure or a legal framework. In this regard, the Delegate of Colombia also mentioned the interest of Colombia in learning from India's experience in the field of TK protection, and the Delegate of Egypt highlighted the importance of the South-South cooperation framework in this regard.

47. Reacting to the comments on TK, the Delegate of ARIPO highlighted the fact that while there was no need for legislation if TK was used defensively to prevent misappropriation and the grant of illicit patents, legislation was however needed in a general sense where knowledge-holders wanted to assert their rights. In this regard, he emphasized the importance of an inclusive approach in protecting TK, using both defensive and positive protection mechanisms. ARIPO, he stressed, had started developing its own TK digital library. In Africa, the main challenges in this regard were the issue of TK resource classification and the oral nature of African TK, which was very different from India's situation.

48. Referring to a WIPO initiative to create a technology transfer office (TTO) in the Middle East, the Delegate of Senegal asked the representative of the LAS about the status of this initiative and whether there were any possibilities for cooperation with African countries so that they could for instance use this infrastructure. Referring to cooperation between the LAS and the African Union (AU), he also asked whether the issue of substantive examination of patents was being discussed as this was a key challenge for countries in the region.

49. In response to the Delegate of Senegal's questions, Mrs. Zaki stressed the fact that the TTO project had focused on African countries present in the Arab region as this had been a condition of the donors, but that the LAS was open to the idea that other countries could benefit from it and that Islamic Bank was ready to support the project. With regard to cooperation with the AU, the problem, she stressed, was the fact that the AU did not have a specialized IP unit. The LAS had started working with national offices, such as Nigeria, to enhance cooperation in the field of IP but the support of WIPO was essential in this regard. Many Arab countries, she concluded, also faced challenges in the field of substantial examination and would be discussing this issue in Brazil in the framework of their cooperation.

TOPIC 5: TRADEMARKS AND OTHER DISTINCTIVE SIGNS AND THE PUBLIC DOMAIN: MAIN POLICY ISSUES FACING DEVELOPING COUNTRIES AND LDCs

50. Presenting the Secretariat's perspective on topic 5, Mr. Marcus Höpperger, Director, Law and Legislative Advice Division, Brands and Designs Sector, WIPO, stressed the fact that trademarks were signs protected for certain goods or services. Whether or not the sign could constitute a trademark was usually decided by national trademark registration authorities, in the application of the relevant law or regulatory framework. Various countries, he stressed, had developed various approaches to the question, such as for instance whether visible or non-visible signs could be protected or whether three-dimensional signs could be protected and registered. It was also important to recall that the right conferred by a trademark registration was not of an absolute nature. It gave the holder the right to exclude others from using the protected sign in relation to the goods and services for which this sign was registered but it did not give absolute monopoly over the use of the sign. The WIPO Law and Legislative Division serviced the Standing Committee on the Law of Trademarks, Industrial Designs and GIs (SCT). The SCT, he highlighted, had carried out some work on the question of the registrability of signs and in particular on absolute grounds for the refusal of trademark protection. The question of the public domain and of exclusive industrial property rights in the area of trademarks was also

regularly addressed in the context of trademarks. As a result, he stressed, the SCT had established a guiding document providing some background as to the relative grounds and absolute grounds that were being applied by trademark offices around the world when it came to the examination of signs that could constitute trademarks. Questions such as whether they were descriptive or not, deceptive or not, or whether they described certain features in nature (e.g. list of descriptive terms of biodiversity) were being dealt with. The document constituted an important reference for all Member States interested in looking deeper into the question. Another important project for which the Division had been responsible was a WIPO study on trademarks and the public domain as part of a CDIP project on IP and the public domain. In the course of this study, the question as to what extent signs could be registered or should be kept free had been analyzed with the help of 15 regional consultants. The resulting study had been published and was available for consultation on the WIPO website. Professor Senftleben who had been the master consultant on that study, he concluded, would be providing more insight on this topic.

51. As the master consultant for the WIPO study on trademarks and the public domain, Mr. Martin Senftleben, Professor, VU University of Amsterdam, and Senior Consultant, Bird&Bird LLP, The Hague, Kingdom of the Netherlands, started his presentation by referring to Development Agenda Recommendation 16 stipulating the need to “consider the preservation of the public domain within WIPO’s normative processes and deepen the analysis of the implications and benefits of a rich and accessible public domain”, and Recommendation 20 stipulating the importance of promoting “norm-setting activities related to IP that support a robust public domain in WIPO’s Member States”. In this framework, he stressed, the study had focused on the role that the public domain had in the trademark system with regard to several stakeholders, including trademark owners, competitors and consumers. The public domain, he underlined, could play a crucial role for these stakeholders in the field of trademarks. First of all, it was important to recognize the fact that trademarks had increasingly become communication tools for enterprises. They were more than mere indicators of origin, spoke to consumers, sent lifestyle messages, and so on. Trademarks also had to be kept free to some extent for social, political, and cultural speech. The WIPO study on misappropriation of signs (document CDIP/9/INF/5), he stressed, consisted of 15 region reports. The notion of public domain in the study, he highlighted, went beyond the traditional definition of public domain understood as those creations of the mind that were unencumbered by IP. In the field of trademarks, this approach was too restrictive as trademarks could be renewed indefinitely. This had led to a concept of the public domain addressing first the exclusion of signs from protection, which came in two different kinds: general bar to registration and protection as trademarks, i.e. even if a sign has distinctive character it always remains in the public domain, and exclusion on the basis of the basic protection requirement of ‘distinctiveness’, i.e. the moment distinctiveness is acquired through use and trade, the sign can still attract trademark protection. With regard to freedom of use, it considered exemptions of specific forms of use, which could result from the limited scope of trademark rights or the adoption of exceptions to keep certain forms of use free. Looking at concrete examples, and firstly at the general bar to registration and protection, the study found that several countries dealt very flexibly with Article 6quinquies of the Paris Convention stressing that deceptive signs could be excluded from trademark protection all together, which could be a tool for keeping signs for instance of indigenous peoples in the public domain. There were also signs that were contrary to morality or the public order. Even though few countries had applied it at the national level, this ground for refusing trademark protection could be used to keep cultural or religious signs free of trademark protection. With regard to signs and emblems of States protected by the Paris Convention, some countries had extended the principle of Article 6ter and also excluded signs belonging to the World cultural heritage such as the Russian Federation for example. These general exclusions from protection also applied to signs that were technically or esthetically functional, which could be an important exclusion for competition reasons. It was also important to distinguish between trademark protection and industrial design protection, and between trademark protection and patent protection. The Lego brick case was a good example to illustrate this point. Following an

attempt to acquire trademark protection after patent protection of the Lego brick had expired, the Court of Justice of the EU had pointed out that the Lego brick as such had become distinctive in consequence of the use which had been made of it and was therefore a sign capable of distinguishing the appellant's goods from others which had another origin. There were also examples where exclusion on the basis of a lack of distinctiveness was applied, in the case, for instance, of new kinds of marks. In order for them to be registered as trademarks, they had to show that the sign had acquired distinctiveness through use and trade. The exclusion here was therefore not absolute. Another area where the distinctiveness test was applied was in the case of signs of cultural significance. When it came to signs such as Mickey Mouse for instance, he stressed, one could see that trademark protection had been granted almost all over the world. This situation raised some concerns as far as the public domain was concerned. Indeed, even when copyright protection expired, trademark protection still applied. In the case of traditional cultural heritage like the Mona Lisa, a Court decision had pointed out that if an enterprise had invested enough on marketing strategies for such a cultural heritage sign, then trademark rights may be acquired on the basis that the sign had become distinctive through use and trade. The study therefore raised a number of questions: was investment in abstract color marks desirable? Was investment in cultural heritage marks desirable, in the sense that companies would start advertising campaigns in order to acquire the distinctive character necessary for a trademark registration? Or should some signs simply be kept free? When talking about the limited scope of trademark protection, it was important to keep in mind the principle of speciality and the notion of trademark use. Indeed, trademark rights could only be invoked if a competitor used the sign in trade and when the use became commercial. The study also highlighted the fact that the limited scope of trademark rights was no longer a strong argument in countries that had an advanced protection system for well-known trademarks offering broad protection against dilution, i.e. protection against blurring and unfair free-riding. The moment there was broad protection, the argument that trademark protection as such remained limited to cases of confusing use was no longer a strong argument for saying that trademark protection was not a burden on the public domain because the scope of protection had become so broad. This raised an important question, namely whether it was wise to adopt exceptions to trademark rights. The basis for this was Article 17 TRIPS. There were many examples of exceptions adopted at the national level (e.g. personal names, addresses, geographical names, indications concerning the intended purpose of a product or service, particularly in the case of accessories or spare parts, prior rights that had been acquired in good faith, use in comparative advertising, use for the resale of goods, and so on). The study, he stressed, had highlighted substantial differences among countries in using such exceptions, especially between developed and developing countries. The USA and the EU for instance had a long list of exceptions to trademark rights, while developing countries by contrast had very short lists or even no exceptions in many cases. As long as the trademark system was limited to protection against confusion, this could be a good solution, but from the moment there was broader protection (under a FTA for instance) to dilution and so forth, countries, he stressed, would need to consider the space available for adopting exceptions. In conclusion, referring to exclusions from protection, it was important to consider the need to keep some signs free (signs of cultural importance, signs of religious significance) and balance this against the potential risk of consumer confusion. When it came to the adoption of exceptions, one needed to consider the inherent limits of trademark protection in each country.

52. Mrs. Mona Ahmed Zaki, Supervisor, General Administration of Trademarks and Industrial Designs, Egypt, then took the floor, underlining the importance of strengthening cooperation among developing countries and LDCs in the field of IP to share knowledge and experiences. The WIPO South-South project had been an important step in this direction in order, in particular, to help the South develop effective IP systems and infrastructure ensuring a fair balance between IP protection and the public interest. The main problems Egypt was facing in the field of trademarks, she stressed, were the presence of a high number of trademark infringements by imitation, i.e. a high number of counterfeit products on the market, and frauds in the trademark registration process, such as for instance attempts to register trademarks with

minor modifications in order to protect counterfeit products. In this regard, she highlighted, it was of crucial importance for developing countries and LDCs to raise awareness among the public of the importance of IP and how to use it effectively. It was also important, with regard to future cooperation, to support trademark offices of developing countries and LDCs so as to enhance their efficiency and to encourage the transfer of technology to developing countries and LDCs. It was also important for information to be available in Arabic, one of the six official languages of the UN system, not only as far as official documents and publications were concerned, but also as far as international registration systems and other tools were concerned.

53. Sharing the experience of Brazil, Mr. Vinicius Bogéa Câmara, Director, Directorate of Trademarks, INPI, Brazil, started his presentation by pointing out the fact that the main function of a trademark was to identify the source of a determined good or service. The role of the trademark registration system was to regulate competition between trademark owners and to preserve consumers from risks of confusion, association or deception. Trademark rights were therefore granted in order to ensure that the use of distinctive signs in trade served to identify the source of the goods and services in question. There were, he stressed, five types of trademarks: fanciful, arbitrary, suggestive, descriptive and generic. Descriptive and generic trademarks were the ones most widely used. Trademarks, he added, could not be deceptive and had to be suggestive and distinctive. Absolute prohibitions, he stressed, existed to limit the scope of trademark rights such as isolated colors, common, descriptive or generic names, flags, public monuments, slogans, signs offensive to religion or to the public order and deceptive signs in general. In order to simplify trademark application examination procedures, ex officio disclaimers could be used. What were the risks of granting weak, descriptive or generic trademarks without disclaimers or limitations? To what extent did trademark offices have to pay attention to the interface between trademark registration and other types of rights such as TK and folklore? He concluded his presentation by stressing the fact that trademark protection should not affect the right of free speech (parody, criticism, satire, and so forth) and that fair use of trademarks had to be ensured, as well as protection against abusive enforcement and anti-competitive practices.

54. In the framework of the general discussion, the Delegate of Honduras highlighted the fact that in Central America, Panama and the Dominican Republic had prepared a manual with the help of WIPO to guide the trademark registration process, as different criteria were often used and there was a need for harmonizing standards and procedures in this field. Supporting this statement, the Delegate of Brazil also highlighted the fact that South-South cooperation was a platform that could be used to enhance cooperation in this regard.

55. Referring to the issue of counterfeit products in Egypt, the Delegate of Senegal highlighted the fact that it was important to collaborate and exchange information in the region on this issue as counterfeit products ultimately crossed borders. In this regard, it was important to ensure good cooperation between IP offices, the judiciary and customs in the region.

56. Referring to the concept of nation branding as an instrument for marketing products and services from developing countries and LDCs, Mr. Senftleben stressed the fact that while official signs were excluded from protection under Article 6ter, this did not necessarily mean that the State itself could not register and protect such signs, as these signs were in fact kept free on behalf of the State. With regard to international registration instruments, such signs, he stressed, could be registered as collective trademarks or as individual marks sub-licensed to particular trusted companies for developing the nation brand. The main issue here was that the State had to target the right companies and make sure that the nation brand was used exclusively in a context that fully complied with quality standards, to ensure that the investment into the brand would not be lost. One could see that nation branding was a tool that was increasingly being used by countries and specific regions within countries. The lack of data on the subject however did not allow for a more in-depth analysis. In this regard, the Delegate of

Peru pointed out that it had registered the nation brand “Peru” and that he was fully prepared to share Peru’s experience in this regard.

57. Sharing some final remarks on the debate, Mr. Senftleben stressed the fact that he was surprised to see that countries seemed to be more concerned about how to protect nation emblems and take them out of the public domain when the theme of the study he had been asked to oversee for WIPO, in the framework of the Development Agenda, had been how to keep signs of cultural heritage, official state symbols and so forth free from protection and how to keep a robust public domain.

TOPIC 6: GEOGRAPHICAL INDICATIONS (GIs) IN THE IMPLEMENTATION OF PUBLIC POLICIES: BEST PRACTICES AND THE SOCIO-ECONOMIC DIMENSION OF GIs.

58. To introduce topic 6, a short video presentation by Mr. Marcus Höpperger, Director, Law and Legislative Advice Division, Brands and Designs Sector, WIPO, was screened. GIs, he stressed, were among the oldest forms of intangible assets, yet a great a number of issues remained. The modern definition of GIs dated back to 1994 with the adoption of the TRIPS Agreement and the conclusion of the Uruguay round. Before then, GIs had been dealt with under indications of source or appellations of origin, and these definitions continued to co-exist, which made the debate on GIs more complex. At the international level, the legal framework for GIs included the Paris Convention, the Lisbon Agreement and the Madrid Agreement. At the national level, GIs could be protected under a wide number of legal means and mechanisms such as sui generis protection systems for appellations of origin or registered GIs, certification marks, collective marks, and protection under unfair competition. There were also certain protection schemes under national administrative laws for particular products such as wines and spirits. It also had to be kept in mind that GIs were collective brands and that they were therefore not owned by a single owner but by a collectivity which could be an entire nation. This raised a number of challenging issues when it came to determining who had the right to use a GI and under what conditions. Finally there were also a number of enforcement-related challenges. All these issues, he stressed, were being debated in various fora and in WIPO in particular, working on the revision of the Lisbon agreement for the registration of appellations of origin. In this regard, he brought to the attention of participants a recent WIPO publication entitled “Introduction to GIs” as a good introduction to GIs. GIs, he concluded, were powerful policy instruments but they needed to be applied in the right manner, and WIPO was providing assistance to all its Member States to find suitable national approaches in this regard.

59. Mrs. María de los Angeles Sánchez Torres, Director General, Cuban Industrial Property Office, Ministry of Science, Technology and Environment, Cuba, started her presentation by underlining the fact that it was important for IP and GI-related policies to be integrated into other national development and sectoral policies in the fields of, *inter alia*, agro-industry, public health, food security, the environment, science, technology and innovation, and trade. With regard to the different systems of GI protection, GIs could be protected under trademark law, particularly but not exclusively in the form of certification marks or collective marks, under laws against unfair competition, and so on. GIs, she stressed, could enhance the strategic competitiveness of a product by adding value to it, linking it to a territory and highlighting special features that made the product unique and distinctive. By increasing the value of local products and thus improving the local economy, GIs, she underlined, promoted local traditions and culture and facilitated the penetration of products in new markets. In terms of best practices for the management of GIs, Mrs. Sánchez Torres highlighted the importance of adequate national institutions and legislation, in line with international treaties, as well as appropriate strategies to ensure quality control and access to the market. Countries could also benefit from linking GIs with different economic sectors such as culture or tourism. The main socio-economic benefits of GIs, she stressed, were economic (e.g. localized production, increase of offer and demand, positive impact on tourism, increase of employment and reduction of rural emigration, cultural

benefits). A practical example of a successful designation of origin in a developing country in Latin America under the Lisbon Agreement was Mexican Tequila, which had had an annual growth close to 9 percent in the last 12 years with over 137 producers and exports to over 100 countries. In Peru, the “*Maíz Blanco Gigante Cusco*” was also being successfully exported to many countries. As far as Cuba was concerned, IP had been integrated into Cuba’s economic and social policy framework, including for instance in its industrial policy which had as one of its main objectives the strengthening of technological capabilities through appropriate IP protection in Cuba and abroad. Clear links to IP could also be seen in Cuba’s investment policy, science, technology, innovation and environmental policy, and trade policy. As far as GIs were concerned, Cuba had a specific Decree-law 228 from 2002 protecting GIs, appellations of origin and indications of source (25 appellations of origin, mostly Tobacco). “*Habanos*”, a well-known appellation of origin of Cuban cigars protected since 1967 referred to Cuban cigars weighing over 3 grams which complied with specific quality standards set by the Cuban cigar industry, with varieties of Cuban black snuff type, grown in specific regions of the Cuban archipelago, also protected as appellations of origin. The quality of the product was based on a combination of four main factors, namely snuff type, soil quality, weather, and traditional method of production. “*Habanos*” had been registered in 26 countries (25 members of the Lisbon Agreement plus the Dominican Republic) and registered as a trademark in 62 countries. In conclusion, Mrs. Sánchez Torres pointed out the importance of an adequate political and regulatory framework to support the process. GIs, she stressed, were an important tool which developing countries could benefit from. By increasing the value of selected origin-based products, GIs could boost trade through appropriate promotion and marketing strategies and could greatly enhance rural development.

60. Mr. Getachew Mengistie, IP Consultant and Attorney, Ethiopia, then took the floor to present the Ethiopian experience on the subject. Defined as an “indication that identifies a good as originating in the territory of a country; or a region or locality in that territory, where a given quality, reputation or other characteristics of the good is essentially attributable to its geographical origin” (Article 22(1) of the TRIPS agreement), the concept of GIs, he stressed, included three important elements: a defined territory, a certain quality, and a direct link between the product’s quality and its geographical origin. GIs could be protected, amongst others, by a sui generis law, trademark law or unfair competition law. GIs conferred a collective right to the producers that were engaged in producing the product in the region, provided that they met set quality requirements and standards. Public policies of developing countries and LDCs, he pointed out, aimed at fostering socio-economic and cultural development, poverty reduction, improvement of living standards, export increase and strengthening of their competitiveness abroad. Some of the policies also aimed at preserving and promoting the use of traditional knowledge. These policies, he stressed, could be effectively supported by using GIs. By differentiating products from similar products and strategically positioning them on the market, GIs helped capture and further build good will and reputation around the product and its geographical origin and empowered local communities. In fact, a number of studies had shown that consumers were willing to pay a higher price for a product that was marketed with a GI compared to non-GI products. A number of successful examples included Darjeeling tea in India, Pingu peach from China, Blue Mountain Jamaican coffee, Colombian coffee and so on. In Africa, Moroccan Argan Oil and Ethiopian Fine Coffee could also be cited as success stories. Argan oil, he stressed, was produced by Moroccan women who extracted the oil from the fruit of the Argan tree which only grew in Morocco. The oil had distinctive characteristics which had resulted in an increased demand and premium price on the international market. In order to take advantage of this, stakeholders had registered Argan oil as a GI, organized producers into cooperatives and established an umbrella association at the national level. This initiative, he stressed, had not only increased the revenues of local producers but had also led to an improvement in quality standards and to increased protection of the environment and of the Argan tree in particular. In the case of Ethiopian Fine Coffee, Ethiopia, he pointed out, produced some of the finest coffee in the world, yet only 5 to 10 percent of the retail price was coming back to Ethiopia, with the rest being divided between importers, retailers and others in

the chain. In order to address some of these challenges, coffee stakeholders in Ethiopia had developed an IP and branding strategy which had resulted in a number of achievements, including asserting ownerships over three coffee brands, and strengthened partnerships with coffee importers and retailers. There had also been a positive change in the marketing positioning of Ethiopian coffee growers and improved income and living standards had been noted. With regard to the main challenges that developing countries could face in using GIs, Mr. Mengistie mentioned for instance lack of awareness of the significance of GIs, lack of capacities in identifying the distinctive characteristics of products and to understand the supply and value chain, or to develop and implement specific GI strategies, lack of or inadequate resources in protecting, managing and promoting GIs, costs involved in the protection, management and promotion of GIs, as well as lack of capacity to monitor infringements and enforce IP rights. In conclusion, he stressed the fact that developing countries and LDCs had huge potential to benefit from GIs to help them achieve some of their socio-economic development objectives. To do so, they however needed to address various challenges and learn from others' best practices in developing and implementing IP and GI strategies.

61. Ms. Nisachol Sasanon, Head of Encouraging Utilization Group, IP Management Office, Department of Intellectual Property (DIP), Ministry of Commerce, Thailand, started her presentation by pointing out the difference between trademarks and GIs. Trademarks, she stressed, were individual rights, whereas GIs were community rights. In this regard, trademarks were used by one company while GIs were used by a group of producers or a community. Trademarks had to be renewed annually and could be transferred, unlike GIs which were unlimited in time and could not be transferred. GIs also indicated a specific quality linked to a specific geographical area. Thailand, she stressed, had a GI Protection Act since 2003. Essentially, a GI implied a specific geographical origin, know-how and quality. In Thailand, only goods could be protected, not services. Eligible goods included agricultural products, industrial products and handicrafts. Other goods such as generic names or goods deemed contrary to public order, morality or public policy could not be protected. Relevant government agencies, producers and consumers (groups or organizations) could request GI protection. Foreign GI registration was also possible but there had to be explicit evidence that the GI was also protected under the law of that country and that it had been used continuously until the date of filing an application in Thailand. In Thailand, she pointed out, there were 50 registered GIs (42 Thai GIs and 8 foreign registered GIs), including handicrafts such as silk and pottery, and agricultural products such as rice, pineapple and coffee. At the bilateral level, Thailand cooperated with Vietnam and Laos and had also engaged in FTA negotiations with a number of countries such as Peru, Chile and the EU, which included GI protection under their scope. At the level of WIPO, Thailand had been selected as a pilot country for the IP and Product Branding Project and three products had been selected, namely Mae Jaem Teen Jok Fabric, Lamphun Brocade Thai Silk and Bang Chao Cha Wicker. At the national level, a number of initiatives had also been carried out to promote GIs and to raise awareness of the importance of GIs as a tool for development in Thailand's provinces. To support Thai GIs on the international market, there were also so-called "twinning products projects" such as for instance a twinning project combining Champagne and Lamphun Brocade Thai Silk. The first Thai GI to be registered abroad, she stressed, was the "*Khao Hom Mali Thung Kula Rong-Hai*" rice, registered in March 2013 in the EU. GIs added value to existing products, created job opportunities, and promoted sustainable rural development. In this regard, she concluded, it was important to further develop the use of this tool in developing countries and LDCs.

62. Mr. Emmanuel Sackey, Chief Examiner, ARIPO, Zimbabwe, then took the floor to present ARIPO's regional perspective and initiatives in this field. For a continent like Africa, so rich in traditional knowledge, traditional cultural expressions and biodiversity, the benefits to be derived from the GI system, he stressed, were immense. There were, in Africa, a number of examples of successful GIs such as Marula oil from Namibia and the miracle sweet berry in Ghana. Sheanut butter production in neighboring Ghana and Burkina Faso was also an interesting example. The butter was processed by local communities in a geographical area bordering the

two countries and this was a case where GI protection, he stressed, would enhance cooperative work and protect traditional technology essential for the survival of these communities. To further promote the use of GIs in the region, ARIPO, he pointed out, had started carrying out a number of initiatives in partnership with WIPO, WTO and the EU, and had for instance signed an MoU with the EU to generate empirical evidence regarding the benefits that ARIPO's Member States could derive from enhanced multilateral GI protection. Another initiative had consisted in creating awareness on the importance of GI protection for economic development and to develop a regional policy and legal framework, assisting Member States in enacting appropriate national legislations. There was, in particular, a need to develop a layer at the regional level to manage transboundary GIs emanating from Africa. ARIPO was also in the process of developing a comprehensive database which would contain information on genetic resources, traditional knowledge and African GIs. In this regard, Mr. Sackey reiterated the interest of ARIPO in learning from India's TKDL experience. A major challenge in the field of GIs, he pointed out, was the issue of quality standard requirements. If for instance a product was protected in one country and wanted protection abroad through bilateral arrangements, how could the quality standards be guaranteed? Another issue was the lack of a multilateral system and incoherence in the system. These issues needed to be addressed at the international level. Another concern had to do with enabling national legislations. ARIPO, he stressed, had 18 Member States and not a single one had so far registered GIs. Some of them had drafted national legislations but still lacked the instruments or regulations to operationalize them. The question of exports of primary commodities was finally also an important issue in Africa and one had to ask the question whether countries in Africa should be developing policies to add value to their primary commodities.

63. Referring to the fact that, in many cases, GIs had brought added value to products which were already well-known on the market, the Delegate of Senegal mentioned the fact that in Africa, the situation was such that many products with the potential to be protected by a GI were not known or had no reputation and asked how this issue could be addressed.

64. Reacting to the Delegate of Senegal's comment, Mr. Mengistie pointed out the fact that there were already a number of products on the African market, some of which had good market potential and a good reputation. Here, he stressed, it was important to adopt a pragmatic approach, taking into account the fact that developing a GI strategy involved resources and that resources were limited in the region. In this regard, one could start with products that were already known on the market and that had an intrinsic value which differentiated these products from others. In this regard, he suggested developing a national inventory of products that were already known on the international market with little intervention or resources needed to increase their competitiveness.

65. In response to the Delegates of Cameroon and Burkina Faso's comments concerning Thailand's approach in ensuring an appropriate marketing and promotion of GI-protected products, Ms. Sasanon pointed out the fact that the Department of Intellectual Property had organized a number of initiatives to raise awareness among consumers of the difference in the quality of products protected by a GI and had targeted different market niches in the marketing strategies for each product. Thai GI-protected products had also been promoted in a number of exhibitions abroad, in particular in Japan and in Vietnam.

ROUNDTABLE: SOUTH-SOUTH EXCHANGES ON BEST PRACTICES FOR THE
DEVELOPMENT OF IP AND BRANDING STRATEGIES IN
DEVELOPING COUNTRIES AND LDCs

66. In order to introduce the roundtable, a video presentation by Mrs. Francesca Toso, Senior Advisor, Special Projects Division, Development Sector, WIPO, was screened. Presenting the Secretariat's perspective from the point of view of the experience of the WIPO Development Agenda Project on *IP and Product Branding for Business Development in Developing and*

Least-Developed Countries, a project implemented since 2010 in 3 countries, Panama, Thailand and Uganda, Mrs. Toso pointed out the fact that the objective of the project had been to develop for each of the selected products (3 per country, 9 in total) a strategy that could accompany the commercialization of the products from their place of origin to the market using the most appropriate IP tools. When talking about the branding of origin-based products, she stressed, the IP tools that were most commonly used were GIs, appellations of origins (AOs), as well as collective and certification marks. Since the topic of the roundtable was best practices in the use of IP and branding, it was important to point out the fact that the WIPO project had focused on collecting best practices from the 9 pilot projects. These best practices had been consolidated into a framework for action for the design and implementation of IP and branding projects and in doing so, the project had been able to go beyond the actual delivery of specific branding strategies for the nine selected products and had taken a broader view on the complex process of branding. Sharing the main elements of the framework for action, Mrs. Toso pointed out that the document offered a step-by-step guide to all interested stakeholders that were willing to embark on a process of branding. The first important area was the identification of products, i.e. an inventory of the existing products. The second important aspect was the assessment of the products and the selection of those products which had the potential for branding. The third stage concerned the actual involvement and mobilization of the stakeholders. This, she stressed, was where capacity-building was particularly important. Based on these elements, the strategy, she underlined, would consider the best IP tool to be used, the marketing options that could accompany the IP protection, the assessment and response of the value-chain, and options for the mobilization of resources. One lesson learned from this experience, she stressed, was the fact that branding was a long process in which IP was only one key aspect. While WIPO was responsible for providing support in the field of IP, the successful process of branding and marketing a product therefore involved the expertise of a number of other partners and organizations. The approaches used in the framework of the WIPO project, she stressed, had been collected into case studies. The framework for action, which would be made available to Member States in the course of the year, she added, would be a practical and valuable tool to support those interested in carrying out IP and branding projects for specific origin-based products. Further to the Mrs. Toso's video presentation, a short video documentary highlighting the experiences of the three pilot countries was screened.

67. After a brief introduction by the moderator who highlighted the importance of branding strategies which not only provide a number of important social benefits but also stimulate the commercialization of local goods, thereby strengthening local communities, Mrs. Maria de los Angeles Sánchez Torres, Director General, Cuban Industrial Property Office, Cuba, took the floor to share the experience of Cuba in this regard. As far as IP strategies were concerned, she stressed, it was very important to ensure that they were linked to national development goals and aligned with other national sectoral strategies and that they included all the main national stakeholders such as other relevant national institutions, universities, research and development institutes, enterprises, inventors and the private sector. The main objectives of the national IP system, she stressed, were to foster an IP culture and ensure compliance with IP legal frameworks and IP enforcement (IP protection), strengthen national institutions/IP offices, encourage the use of IP and ensure that IP was integrated into other areas of work and sectors. With regard to the management of trademarks, general principles included: 1) the importance of differentiating through marks or other distinctive signs products that were introduced into the domestic or international market, 2) knowing the requirements for legal protection in the domestic and foreign law, 3) including in the country's trade policy the issue of the protection of trademarks and other distinctive signs, 4) promoting partnerships to ensure that brands were exploited for the benefits of the community, 5) providing data that would enable the market to determine the value of a brand as an intangible asset with real value and potential, 6) determining the value of a brand in the framework of negotiations for acquisition by foreign entities to ensure that it corresponded to the terms and conditions that were proposed, 7) planning on an annual basis expenses linked to the protection and maintenance of IP rights acquired in the country and abroad, and 8) avoiding the use of distinctive signs that could create

confusion or mislead consumers about certain products or commercial activities. With regard to Cuba's legal and regulatory framework, the regulatory framework for trademarks and other signs was contained in Decree Law 203 and its regulations. The IP Office, she pointed out, provided examination guidelines, manuals on best practices for the management of IP (e.g. manual for exporters), a specialized database of trademarks and other specialized branding services. It also had programs to raise awareness of IP through, for instance, awards for enterprises, international events and participation in the World Day of IP, and actively promoted international and regional systems for the protection of trademarks and provided advice on commercial negotiations. Finally, the Office also had a teaching program on IP and promoted the insertion of IP into institutional strategies of export of goods and services. In conclusion, Mrs. Sánchez Torres stressed the importance of the overall framework, namely the need for a national IP strategy, implemented in a coherent national IP system, and its translation into different sectoral and institutional strategies.

68. Ms. Nisachol Sasanon, Head of Encouraging Utilization Group, IP Management Office, DIP, Thailand, provided additional information about what had been done in the framework of the WIPO project for product branding in Thailand, one of the 3 pilot countries under the project. The project, she stressed, which had started in 2010 and which had been implemented Panama, Thailand and Uganda, aimed primarily at supporting SMEs, and especially those resulting from the association of local groups of farmers and producers in developing countries and LDCs, in the design and implementation of strategies for the appropriate use of IP in product branding. The project, she stressed, aimed to promote the development of local communities and strengthen capacities, both at the community and institutional levels, by focusing on the promotion and the strategic use of IP, particularly geographical indications, and trademarks. The target groups for the project had been the local community, producers, SMEs and related authorities. In Thailand, a number of workshops had been organized to raise awareness of the use and importance of IP and community signs including a workshop on marketing and product design which, she stressed, was very important for export purposes, and a workshop on how to set up business plans. Three distinctive products presenting unique characteristics linked to their place of origin and method of production had been selected under the project: Mae Jaem Teen Jok Fabric (protected as a GI), Lamphun Brocade Thai Silk (protected as a GI), and Bang Chao Cha Wicker (protected as a collective mark). With regard to the lessons learned and specific case studies of each country, Ms. Sasanon pointed out the fact that these, along with other information about the project, would be shared with Member States on the WIPO website once the report would be concluded and the project completed.

69. As the main consultant for Uganda under the WIPO project, Mr. Getachew Mengistie, IP Consultant and Attorney, Ethiopia, highlighted the fact that the three products which had been selected in Uganda following a consultation process at the national level had been cotton, sesame and vanilla. Under the project, the main stages had included 1) trying to identify the distinctive characteristics of each product as well as their link to their geographical origin, and 2) developing appropriate IP strategies and branding proposals on the basis of an analysis of a number of important criteria, which had been endorsed by the main stakeholders and were now at different stages of implementation. In selecting the products, a number of important criteria had been taken into account, including relevant government development policies and priorities (i.e. whether the products fell within the priority area of the government and whether the strengthening of the competitiveness of the products would serve the objectives of the country), their potential contribution to socio-economic development in terms of generating foreign exchange and employment opportunities, whether the products had distinctive characteristics linked to the geographical origin, and whether stakeholders were willing and ready to use IP and branding tools. Key stakeholders in the process had included relevant government authorities, producers, processors, and those engaged in marketing and exporting the products. The first product, cotton, had been chosen as it had a number of characteristics that differentiated Ugandan cotton from other types of cotton: its fiber characteristics were in the premium range of any given parameter (free of neps from cots, which made it very good for spinning, high

quality yarn, no need for chemicals to get its bright white color). These characteristics, he stressed, were well-known in the international market and Ugandan cotton had in fact been used as a blend to market inferior cotton products of other countries. The second product was vanilla. Ugandan vanilla had the highest vanillin content (between 2 and 3.2 percent) and this was clearly linked to its geographical origin. There had been an increasing demand on the international market for vanilla from Uganda and consumers were willing to pay higher prices for this product. The third product that had been selected was sesame. In the case of sesame, a number of studies had shown that Uganda produced the best sesame in the world and that it had very distinctive features such as its white color and high oil content (between 56 to 76 percent). The product was also well-known on the market but despite an increasing demand for Ugandan sesame, producers appeared to benefit very little from these products. In an endeavor to add value to these products, specific IP strategies and branding proposals had been developed for each product. The strategies, he stressed, had been developed based on, first, an assessment and review of the IP legal and institutional framework in Uganda and in ARIPO, secondly, a literature review, thirdly, a review and analysis of relevant national development policies, strategies and laws to ensure that the strategies for cotton, sesame and vanilla would contribute to broader national development priorities, fourthly, a review of other countries' experiences (including China, Colombia, Ethiopia, India, Italy, Kenya, Mexico, Morocco and the USA), and finally, feedback from the main stakeholders throughout the process. The strategies, which included evaluation and monitoring mechanisms, he added, had been presented and approved by the stakeholders. While there were many common features between the three products and strategies, there were also a number of important differences. The main stakeholders for instance were different (private company, producer association and government body). In the case of sesame, the main stakeholder was a private institution named Farmnet, a small community of family farmers; in the case of vanilla the main stakeholder was the Mukono vanilla producers' association; and in the case of cotton it was a government body known as the Cotton Development Organization. Taking into account each product's characteristics, three different strategies and IP tools had been proposed. In the case of sesame, the trademark "Nilotica", in the case of vanilla a certification mark to identify its geographical origin, Mukono district, and in the case of cotton, the protection of Uganda as a geographical origin and umbrella brand to market cotton growing in different parts of the country. In the course of developing the three strategies, a number of challenges had been identified. The first one, he highlighted, was the lack of prior experience. Ugandan law for instance had a provision dealing with certification marks, but no applications for certification marks had been filed with the Ugandan Registration and Services Bureau. In other cases, the producers were not organized, or when they were organized they were not necessarily inclusive, such as in the case of cotton and sesame. Different and conflicting interests between stakeholders involved in the value chain such as producers and exporters could also constitute a challenge. Inadequate capacities and resources were another challenge, as well as the need for a multidisciplinary approach and team of experts in developing the strategies, which included elements of IP as well as elements of design and marketing. Another challenge that had been encountered was the fact that expectations were high and that immediate changes were expected. The lessons that could be drawn from this experience, he stressed, were, firstly, the fact that government leadership and support and donor support from the onset were essential. The support of WIPO in the implementation of the project had been significant. Another important lesson to be learned was the fact that stakeholder ownership and commitment in the process was crucial. When protecting and branding a product, one also needed to consider potential market destinations. Indeed, some destinations did not recognize GIs. The EU for instance limited GI protection to agricultural products, while in Brazil, a wide range of products, including IT products, could be protected by GIs. In conclusion, he underlined the fact that it was essential for governments to tailor the law to meet the needs of their country.

70. Opening the floor to a general discussion on the topic, the moderator summarized the main issues which had been highlighted by the speakers, namely the importance of focusing on

the local context, the importance of mobilizing all the stakeholders, the central role of the IP office in the process, and finally the importance of promoting awareness of IP in local contexts.

71. Further to a question by the Delegate of Senegal regarding the mobilization of stakeholders in Uganda and the choice of products, Mr. Mengistie pointed out the fact that in the case of Uganda, the government had requested the support of WIPO for the three products following an assessment mission organized by WIPO, during which consultations had been organized with all the main stakeholders (including bilateral and multilateral consultations with producers, exporters and government authorities) asking them to identify three products which could benefit from the WIPO project.

72. The Delegate of Colombia used the opportunity to highlight the case of *Café de Colombia*. Representing over 40 percent of Colombia's exports, coffee production, she highlighted, greatly influenced national policies in Colombia and had an important socio-economic impact on the country. Approximately one million families lived from the production of coffee and from its reputation worldwide. Colombia, she stressed, had a robust IP system and a branding and exporting/marketing strategy for the appellation of origin *Café de Colombia*. One crucial point to note in this regard however was the importance of taking into account protection abroad. In China for instance, Colombia had encountered many problems as many brands were being registered with the name Colombia while they did not possess the same qualities as real Colombian products. Misuse of the appellation of origin had been an important challenge for Colombia in this regard.

TOPIC 7: PROTECTING INDUSTRIAL DESIGNS: CURRENT ISSUES AND FUTURE TRENDS

73. Introducing topic 7, a short video presentation by Mr. Markus Höpperger, Director, Law and Legislative Advice Division, Brands and Designs Sector, WIPO, was screened. While for a long time industrial designs had been considered as the poor relative of IP, policymakers around the globe had started recognizing the important contribution of industrial design to innovation and economic growth, which could be seen in the rise of industrial design registrations worldwide. Effectively, he stressed, design registrations had doubled over the last ten years, reaching 600,000 registrations in 2011. These registrations occurred either in the form of design patents or individual and sui generis design registration and deposit systems. These systems presented a number of procedural challenges which were being addressed by the SCT. In particular, the SCT was trying to make it easier, faster and less expensive for designers to register a design. In this regard, he highlighted, the SCT was concentrating on a draft design law treaty, which he hoped would materialize in the form of a new international instrument. WIPO, he added, also administered the Hague System for the international registration of industrial designs, which allowed designers from across the world to obtain design registration and protection through one single administrative act to be carried out with WIPO. In conclusion, Mr. Höpperger stressed the fact that there had been very encouraging and interesting developments in respect to the Hague System and, in particular, that the accession of two new big economies to the system, China and the USA, was expected and would be an important step forward.

74. Mrs. Rasha Magdy Talaat, Examiner, Industrial Designs, Egypt, then took the floor to share the experience of Egypt. In Egypt, she stressed, an emergence of intellectual theft had taken place as a result of, mainly, a lack of awareness of IP. Appropriate laws and sanctions were therefore essential. Protecting the moral and economic right of designers by preventing reproduction by third parties without permission was very important, not only in terms of protecting the designers' rights but also in terms of encouraging fair competition and encouraging innovative minds to develop new products more versatile and aesthetically attractive, thus raising their commercial value. Adequate enforcement also contributed to protecting the domestic market and consumers from low-quality counterfeit products. With

regard to the scope of protection, protection was only provided to the exterior design of the product, without taking into account its utilitarian function. Lack of awareness of applicants, she stressed, was one of the main problems in Egypt. Confusion between industrial designs, patents and trademarks, confusion between industrial designs and non-scalable designs for industrial application, confusion between design protection and protection of the product itself, or confusion between the protection of heritage and design elements occurred frequently. In order to ensure a more systematic and effective registration process, it was therefore essential to increase awareness among designers and manufacturers of IP rights and the different options available to them in terms of protecting their inventions. In this regard, she concluded, further capacity building and the development of guidelines were needed. Likewise, it was important for IP offices to exchange experiences and to amend the legal framework in line with industrial developments and requirements.

75. Presenting the experience of the Republic of Korea with regard to industrial design protection, Mr. Ji-hoon Kim, Deputy Director, Design Examination Policy Division, Korean Intellectual Property Office (KIPO), Republic of Korea, focused in his presentation on developments in the design industry, jurisdictional differences with regard to design protection, and design protection in the future. Sharing some examples of new designs, Mr. Ji-hoon Kim underlined the fact that in terms of design protection, it was the design of the product rather than its function that was important, i.e. what the product looked like. What made the subject matter so complex and challenging was the fact that designs could be protected under a number of laws, including in some cases patent law, copyright law and trademark law. For design protection, he stressed, the design had to be distinctive and novel. There were however a number of jurisdictional differences and different points of view in this regard. In some cases, such as in Japan, the EU, the USA and the Republic of Korea, partial claiming was used as a means to enhance design protection and only parts of the product which represented its “heart and soul” could be protected. Another example was the case of design protection of a combination of different elements which made a unique design. Multiple design protection was another type of design protection. As long as each design belonged to the same class, one could combine multiple designs into a single application using this technique. The main challenge, he stressed, was the lack of uniformity in the scope of design protection laws among countries. To facilitate design protection in the future, there was also a strong need for a more user-friendly framework for design protection and for a more user-friendly process for design filing and examination with the help of digital and information technology techniques. Currently, he stressed, most of the design work was done digitally, using 3D modeling techniques, yet in order to file their designs under the current regime, designers had to submit their design in traditional form, i.e. on paper, which was not a sensible approach. In conclusion, Mr. Ji-hoon Kim pointed out the need for a more user-friendly process for international design filing.

ROUNDTABLE: INDUSTRIAL DESIGN, INNOVATION AND IP PROTECTION:
NATIONAL STRATEGIES. EXPERIENCES OF DEVELOPING
COUNTRIES AND LDCs

76. Following a brief introduction by the moderator who pointed out the fact that industrial design figures had been growing at a very high rate (between 2004 and 2011, the number of international registrations had increased from around 345,000 to 775,000 registrations), with China leading the way in international design protection, Mr. Ji-hoon Kim, Deputy Director, Design Examination Policy Division, KIPO, Republic of Korea, took the floor to share the experience of the Republic of Korea with regard to the growth of the design industry and the emergence of design as an IP right in the Republic of Korea. At the government level, he pointed out, there were three organizations dealing with design: the Ministry of Industry (design as a tool for industrial development and as a business tool to enhance the efficiency of industry), KIPO (design as a powerful IP tool for industry), and the Ministry of Culture, Sports and Tourism (design as an artistic activity in the field of education, exhibitions and promotional

activities). In addition to the above, the Department of Industry also had its own specialized institution dealing with design known as the Korean Institute for Design Promotion. In the Republic of Korea, he stressed, the starting point for design had been mainly industrial (promotion of art and design for industrial exports). Before the 1960s, there had practically been no designs in the Republic of Korea. In the 1960s and 1970s, industry had started considering designs as valuable styling tools, and in the 1980s and 1990s many organizations and companies had started to understand the value of design as an important element to be included in the full development lifecycle and process. From then on, companies had started developing their own internal design teams. Nowadays, he stressed, design had become a major element in the product development lifecycle and process and was seen as an indispensable tool for innovation. Designers had become even more important than engineers, shifting the traditional relationship which placed engineers before designers. Government leadership was no longer needed as companies were also much more aware of the importance of design for the Korean industry. Nevertheless, there was still a need for so-called design heroes from SMEs, which, he stressed, represented an important workforce of the Korean design industry with around 99 percent of the workers being employed in SMEs. With regard to the registration of designs in the Republic of Korea, he pointed out the fact that there had been a strong increase in the number of filings for designs, in particular for housing products, public environmental products and electronics. Partial claiming had been introduced in 2001, and graphic user interfaces had fallen under the scope of protection since 2003. In 2010, the Republic of Korea had also initiated the 3D computer modeling file application system and aimed to start using the Hague System for international registration of designs by 2015, taking into account the fact that the bill had been passed at the end of April 2013. As far as KIPO was concerned, he stressed, protection and promotion strategies went hand in hand. From the point of view of promotion, KIPO had developed a number of web pages on design for designers and industry, with, for instance, information about successful design case studies and a design search database. The filing, examination and publication of designs were now fully supported on-line. KIPO also had a strategic relationship and partnership with the national procurement service office in the Republic of Korea and had developed a wide range of programs to support designers who wanted to use their designs abroad. In total, there were 31 regional IP centers in the Republic of Korea with experts on design. In conclusion, Mr. Ji-hoon Kim highlighted a quote which summarized, in his opinion, the complexity of design in today's world: "design (implies relevant IP policies) is to design (implies a strategic and user friendly process) a design (implies support to designers) to produce a design (implies a successful business result)". Further to a comment by the Delegate of Senegal regarding the importance of IT technologies for the future of the industrial design sector and the gap in this regard between developed and developing countries, Mr. Ji-hoon Kim concluded that information technology played a critical role in the field of industrial design as it made the process of design creation much more efficient and less costly with no need for physical prototypes. This was therefore an important area to take into account in future developments in this field.

77. Mr. Girma Bejiga Sen Beta, Director, Patent and Technology Transfer, Ethiopian Intellectual Property Office (EIPO), Ethiopia, then took the floor to share the experience of Ethiopia. Prior to the establishment of the EIPO in 2003, which gave mandate to EIPO to administer patents, copyright, trademarks and industrial designs, IP rights, he stressed, had been organized in a scattered manner (patents were being administered by the Science and Technology Commission, trademarks by the Ministry of Trade, and copyright by the Ministry of Culture). The first application in the field of patents in Ethiopia had been filed on May 25, 1997, the first patent of introduction application on February 25, 1997, and the first utility model application on August 29, 1996. The objectives of EIPO, he pointed out, were, first, to facilitate the provision of adequate legal protection for and exploitation of IP in the country, secondly, to collect, organize and disseminate technological information contained in patent documents and encourage its utilization, thirdly, to study, analyze and recommend policies and legislations on IP to the government, and fourthly, to promote knowledge and understanding of IP among the general public. EIPO had started administering three important proclamations: proclamation

No. 501/2006 for trademark registration and protection, proclamation No. 123/1995 concerning inventions, minor inventions and industrial designs, and proclamation No. 410/2004 to protect copyright and neighboring rights. In this regard, EIPO was composed of three main bodies: a patent protection and technology transfer directorate, a trademark, industrial design protection and development directorate, and a copyright and community rights directorate. The patent protection and technology transfer directorate was responsible for the following services: registration and protection, patent information collection, organization and dissemination, and technology transfer. The registration process in EIPO in the field of patents, he stressed, included the following steps: patent application, formality examination, substantive examination, grant and publication. In the field of utility models, the steps included examination, cautionary notice, substantive examination, grant and publication. A patent of introduction, he highlighted in this regard, could be issued for an invention which had been patented abroad and had not yet expired but had not been patented in Ethiopia. This, he stressed, was to encourage the inflow of patents to the country. As far as the duration of protection was concerned, protection of utility models was granted for a period of five years and could be renewed for further five year periods. A patent of introduction on the other hand could be valid for a period that could extend up to ten years. With regard to patents, patents were granted for an initial period of fifteen years starting from the date of the filing for protection and could be extended for a further period of five years. Around 57 patents had been granted since 2006, 78 patents of introduction and 368 utility models. In the field of trademarks and industrial design, the Trademark, Industrial Design Protection and Development Directorate had two branches dealing, respectively, with trademarks and industrial designs. The duration of registration for a trademark, he pointed out, was 7 years and the protection granted to an industrial design was valid for a period of five years and could be extended twice (five year periods each time) if proof was furnished that the design was being used. 1989 industrial design applications had been received out of which 524 had been granted. This, he stressed, highlighted a certain problem in the application process. Another service for which EIPO was responsible was to provide patent information, and in particular to collect, organize and disseminate patent information based on priority areas as defined by the government. In this regard, the areas identified by the government as priority areas were the following: metal technology, textile technology, leather and leather products technology, agricultural technology, agro-processing technology, biotechnology, construction technology, chemicals and pharmaceuticals, and information and electronics technology. The main sources of patent information, he highlighted, were amongst others, the US Patent and Trademark Office (USPTO), the Japan Patent Office (JPO), SIPO, patent lens, IPC green and the WIPO website. Patent information was disseminated, amongst others, to universities, industries, SMEs and research institutes. Last but not least, the technology transfer section of EIPO focused on documenting profiles of patent and utility model holders, providing support and advice to assist them in the commercialization of their products, facilitating the dissemination of inventions and facilitating collaboration among inventors, transfer of technology centers, financial institutions and so on. As far as training needs were concerned, EIPO had identified a number of challenges including high-turnover of office staff, lack of expertise, lack of resources, limited knowledge and awareness of IP rights, lack of a national IP policy and lack of coordination among stakeholders at the national level. Based on this situation, EIPO had organized an important number of training sessions and discussion forums on IP, including training sessions for stakeholders and inventors in different administrative regions, and discussion forums with inventors, enforcement bodies and financial institutions. As far as Ethiopia's membership to international treaties was concerned, Ethiopia, he concluded, had been a member of WIPO since 1998 and had also joined the 1981 Nairobi Treaty on the Protection of Olympic Symbol in 1982.

TOPIC 8: IP RIGHTS INFRINGEMENTS AND ENFORCEMENT: ACCOUNTING FOR SOCIO-ECONOMIC, TECHNICAL AND DEVELOPMENT VARIABLES, INCLUDING IN THE CONTEXT OF RECOMMENDATION 45 OF THE WIPO DEVELOPMENT AGENDA

78. Presenting the experience of Cambodia, an LDC, Mr. Sovicheat Penn, Deputy Director General, General Directorate of Domestic Trade, Ministry of Commerce, Kingdom of Cambodia, started his presentation by pointing out to the new dimension of enforcement in relation to Recommendation 45 of the Development Agenda which underlined the importance of taking into account development and social concerns. Recommendation 45, he highlighted, urged to “approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations, in accordance with Article 7 of the TRIPS Agreement”. In Cambodia, he stressed, IP was handled by a number of institutions: the Ministry of Commerce handled trademarks, trade names, acts of unfair competition, GIs and trade secrets, the Ministry of Industry, Mines and Energy handled patents, industrial designs, layout designs of integrated circuits and plant varieties protection, and the Ministry of Culture handled copyright and related rights. The Government of Cambodia had also created an umbrella institution known as the “National Committee on IP Rights” as a platform for discussions at the policy level and a focal point for technical assistance in the field of IP. The Secretariat was located in the Ministry of Commerce. With regard to the existing IP legal framework, Cambodia, he stressed, had laws on patents and utility models, trademarks, and copyright and related rights. Cambodia was also a member of a number of international instruments in the field of IP. It had been a member of WIPO since 1995, a member of the Paris Convention since 1998 and a member of WTO since 2004. Cambodia had been granted a phase-in period up to 2007 to fully implement TRIPS and had been granted a further extension until 2013 as an LDC. It was also considering joining other international instruments in the field of IP. In order to achieve Recommendation 45 of the Development Agenda, the National Committee for IP Rights had carried out a number of initiatives, starting with the development of an appropriate IP institutional and legal framework to adequately protect and enforce IP rights. In this regard, the National Committee on IP Rights had set up two sub-committees. The first one, known as the “Sub-Committee on IP Enforcement” had been set up to provide a platform for comprehensive cooperation between enforcement agencies including customs, police forces, enforcement agencies and relevant Ministries. The second one, known as the “Sub Committee on IP Education and Dissemination” had been set up to promote IP knowledge and to build an IP culture among students and the public. Building an IP culture and awareness, he stressed, was critical in the field of enforcement. In this regard, cooperation with the private sector to educate consumers and businesses on IP rights and on the importance of IP commercialization for business development had been essential. Another important development had been the creation of an IP information center, a platform for patent information and hub of knowledge, as well as the development of an IP curriculum for education purposes, mainly for universities and vocational training institutes. Linkages between universities and industry were also being encouraged with the support of the government to promote innovation and creativity in Cambodia. Currently, he pointed out, there were no funds for research and development but this had been proposed in the budget. With the support of WIPO, Cambodia had also developed a national IP strategy focusing on four main objectives. The first objective, he pointed out, was to improve the capability and capacity of Cambodian institutions to strategically use the IP system to support Cambodia’s economic development and sectoral objectives. The second objective was to improve the capability and capacity within the Cambodian Government to deliver IP policy, services and enforcement to support Cambodia’s agricultural, commercial, industrial and cultural sectors as well as its tourism industry. The third objective was to improve IP awareness, and the fourth one to align Cambodia’s existing IP legislation with international

standards. The strategy identified six key sectors where IP could play an important role: agriculture (access to technologies, plant varieties, strategic use of IP and branding strategies to boost the competitiveness of local products), health (use of flexibilities to ensure access to medicines, promotion of traditional medicine), education and training, industry and commerce, culture, and tourism (use of branding and other IP tools to promote the development of the touristic sector in Cambodia, taking into account for instance that Angkor Wat received around four million tourists every year). The main challenges in the field of enforcement, he stressed, were consumer attitude and awareness. Counterfeit and pirated goods could be found everywhere and were often endorsed by consumers. The reluctance of right holders to take action taking into account the cost of destruction of counterfeit products was also a challenge. In terms of the IP environment, challenges included limited research and development due to lack of resources and support, low IP commercialization, limited knowledge of IP rights among the general public and enforcement agencies, limited cooperation of the private sector and of rights holders in identifying counterfeit products, lack of information-sharing on counterfeiting and piracy in the region, and lack of IP expertise. As far as cooperation in the region was concerned, Mr. Penn highlighted the work of ASEAN in the framework of the ASEAN Work Plan, a platform that could be further enlarged under South-South cooperation. In order to strengthen South-South cooperation in the field of IP, he suggested that more advanced developing countries like Brazil, China and India provide assistance to LDCs (China for instance could assist in the field of traditional medicine and TK, IP protection and commercialization, India in the field of compulsory licenses and TK and so on). The support of WIPO and other regional and international organizations was also very important, and in this regard, he called for a strengthening of technical assistance and support to the South-South process. In conclusion, Mr. Penn mentioned the important role of governments. It was important for each government, he stressed, to develop its own IP policy, strategy and work plan to realize the protection and enforcement of IP rights in a manner conducive to national social and economic development objectives, in line with Recommendation 45.

79. Mrs. Amanda Lotheringen, Director, Monitoring and Complaints IP, Companies and IP Commission (CIPC), Department of Industry and Trade, South Africa, then took the floor to share the experience of South Africa. In South Africa, she stressed, the balance of rights and obligations in line with Recommendation 45 of the Development Agenda was being pursued through a strategy of cooperation. South Africa, she highlighted, was in the process of implementing an innovation plan to promote the development of a knowledge economy. This innovation plan placed an important emphasis on further exploiting indigenous knowledge, traditional medicines and indigenous and cultural expressions. This was not a task that one department or institution alone could accomplish. Cooperation was essential. In South Africa, she stressed, cooperation was structured between three government departments, firstly the CIPC which had a direct responsibility for implementing IP legislation, secondly the customs services which prevented infringing products from entering the country, and thirdly the South African police services which also played an important role in combating infringements that appeared on the domestic market. Finally, municipal enforcement and local government authorities also played an important role. As highlighted by Mr. Penn, the involvement of the private sector and the commitment of right holders were also essential. The internal working relationship between the three government departments had been restructured into a working group known as the Intergovernmental Enforcement Committee which fostered close working relations with IP right holders and the general public. In the field of enforcement, she stressed, it was all about finding the right balance. It was important for all the stakeholders involved to be aware of the importance to get this balance right. Without enforcement, and if one only concentrated on the protection and registration of IP rights, then the infiltration of counterfeit and pirated products was inevitable. IP theft, she said, created an enormous drain on the global economy depriving governments of revenues for vital public services, forcing higher burdens on tax payers and legitimate businesses, dislocating hundreds of thousands of legitimate jobs, exposing consumers to counterfeit and potentially dangerous products, and hampering foreign investment and trade. In this regard, it was very important to get the balance between the

public interest and protecting the rights of right holders right. The credibility of the IP system, she added, also strongly relied on effective enforcement mechanisms. A well-functioning IP enforcement mechanism was in this regard the best way to limit IP rights' infringements and to make sure that right holders and society as a whole could reap the benefits from the IP system. The responsibility to create the balance between rights and responsibilities, she added, was the main responsibility of the government. In South Africa for instance, the government had taken steps to make sure that the private sector was engaged and fully involved in the campaigns the government was running. In conclusion, Mrs. Lotheringen reiterated the importance of creating a balance between an adequate protection of IP rights to encourage creativity and innovation and the public interest to ensure access to knowledge in the interest of sustainable development.

80. Presenting a different point of view, Mrs. Nagla Rizk, Associate Professor of Economics and Founding Director, Access to Knowledge for Development Center (A2K4D), The American University in Cairo, Egypt, then took the floor to share the perspective of the A2K4D based on research carried out as part of the Access to Knowledge Global Academy network and field work carried out in the framework of the Open African Innovation Research (AIR) project. Discussions on IP, she stressed, should focus more on IP as a development issue and should in particular focus on the role of knowledge for development and on what could be done to harness knowledge for this objective. Development, she stressed, was more than simply economic growth. It also implied freedom, freedom of choice, freedom to participate in the political agenda, freedom in the creation of knowledge, and freedom in technological advancements. In this regard, the developmental gap, she pointed out, could be seen as a knowledge gap, i.e. a knowledge gap between developed and developing countries, but also a knowledge gap within regions. As a cornerstone of development, wider access to knowledge was critical. Knowledge, she added, could be defined as a quasi-public good in the sense that, like a public good, it was non-rival and non-excludable, but could sometimes also be excluded by technological or economic means. The creation of a public good, she stressed, involved a high cost of production of the first unit but zero marginal cost of reproduction. In simple economics, this meant that the optimal price for the product was zero. In such a case, there was no incentive to invest and produce a good sold at zero value and the market failed. This, she pointed out, was the access versus incentives debate. Optimally, one wanted to provide free access to a public good but on the other hand no-one wanted to produce it. This was the tension that appeared in Recommendation 45. Knowledge, she stressed, could be monopolized by closure and access limited. In view of the weak market structure of developing countries, this was not advisable. Developing countries, she underlined, needed to be able to access knowledge and education freely to achieve their development goals. To harness knowledge and encourage the creation of and access to knowledge for development, it was important to take into account socio-economic and cultural circumstances and needs. In Egypt in the field of copyright for instance, research had shown that a top-down model imposing restrictions was not necessarily the best way forward. An analysis of the music industry in Egypt had indeed shown that informal and underground economies could also have a positive impact on development and be an engine for growth. Here it was important to weigh the costs and benefits. Taking into account Egypt's culture of music and weddings where musicians were getting paid generously for their performances, illegal copying of their music contributed for instance to promoting their work to a wider audience. The entity that was really affected in this regard, she stressed, was the middleman. In today's digital economy, the role of the middleman had been tremendously altered and modified. Given the fast changes in people's practices and in technological developments, laws needed to be reviewed and adapted accordingly. Policing and enforcement alone, she stressed, was not always the best solution for some developing countries. In Brazil for instance, tecno brega music was another model which completely thrived outside the IP system. In this case, musicians played their songs live and sold CDs containing the most appreciated songs during the event. One therefore had to start thinking differently and look at practices in developing countries to see how the law could best respond to each country's particular situation. Quoting Lawrence Lessig, there was a "need to decriminalize the copy,

[and a] need to decriminalize the youth". If the choice in developing countries was between the expensive and the illegal, then one had to rethink the definition of what was considered to be illegal. In conclusion, Mrs. Rizk underlined the importance of looking at grassroots practices to identify the best way forward for each country. Alternative approaches to "one size fits all" were strongly needed in the field of enforcement. Last but not least, Mrs. Rizk pointed out the fact that the A2K4D was also the northern hub of the Open AIR Project, a project carried out in cooperation with the University of Cape town in South Africa and other hubs in Africa (Kenya and Nigeria). The project, she stressed, focused on analyzing, through a number of practical case studies, how IP could be harnessed for the development of Africa, providing potential development scenarios in this regard. The outcome of this research project, she pointed out, was expected to be available by the end of 2013.

81. Reacting to Mrs. Rizk's presentation, the Delegate of Ghana highlighted the importance of adequate enforcement to encourage creativity and innovation and pointed out the fact that flexibilities, exceptions and limitations were available under the current IP regime to provide, for instance, access to works for educational and other purposes.

82. In reaction to the Delegate of Ghana's comment, Mrs. Rizk pointed out the fact that her argument was not that enforcement was ineffective, but that one needed to look at possible alternatives to the current system. The Open AIR project publication for instance, she stressed, would be made available both for sale in hard copy at a low price in the Middle East and North African region and would also be freely accessible on the creative commons. In the end, she concluded, it was a question of providing alternatives.

83. The Delegate of Cameroon took the opportunity to reiterate the importance of finding the right balance between protection, repression and knowledge transfer, pointing out in particular the importance of technology transfer for developing countries.

TOPIC 9: EXPERIENCES AND LESSONS LEARNED OF THE CONTRIBUTION OF RIGHT HOLDERS TO IP ENFORCEMENT AND THE COST THEREOF

84. In a short video presentation by Mr. Xavier Vermandele, Deputy Director, Building Respect for IP Division, Global Issues Sector, WIPO, setting the stage for the discussions on enforcement, Mr. Vermandele highlighted the importance of effective IP protection and respect for IP to promote economic growth and development through innovation and creativity. This implied not only a sound legal system of protection of IP rights, but also that IP rights' infringements and, in particular, trademark counterfeiting and copyright piracy, were effectively dealt with. Without adequate protection, the IP system, he stressed, would be undermined, to the detriment of right holders, public authorities and the public interest. This is why the enforcement of IP rights was a crucial component of any sound system of IP protection. In addition to enforcement, it was also important to build respect for IP among, in particular, end-users and consumers, through a range of awareness-raising activities. Driven by Recommendation 45 of the Development Agenda, building respect for IP was one of WIPO's main strategic goals and aimed at creating an enabling environment promoting respect for IP to the mutual advantage of right holders, consumers and society at large, both through adequate enforcement of IP rights and through awareness-raising. Awareness-raising, he stressed, more than punitive enforcement, was critical to ensure effective respect for IP. The work of the Secretariat in this field was carried out in the framework of the Advisory Committee on Enforcement (ACE). The mandate of the ACE, he stressed, covered coordination with partner organizations and the private sector to combat counterfeiting and piracy, technical and legal assistance, capacity-building activities and exchange of information. Taking into account Recommendation 45 and the mandate of the ACE, WIPO was pursuing a balanced approach between the interests of right holders and those of the public interest, with a view to promoting socio-economic development. The Secretariat, for instance, could be requested to provide legal assistance to Member States to ensure that their national or regional legal framework met the

standards and obligations under the TRIPS Agreement. In providing such assistance, the Secretariat systematically indicated the flexibilities and options contained in the TRIPS Agreement and emphasized the broader development-oriented concerns to be taken into account in the implementation of enforcement-related provisions. Ensuring effective enforcement of IP rights, he stressed, was a difficult task taking into account, in particular, the polymorphism and growing sophistication of counterfeiting and piracy. Stakeholders were confronted to many challenges in this regard, some of which were directly linked to the development of new technological tools and the internet. Some of these challenges, he highlighted, included the distribution of counterfeit and pirated goods through the internet, the infiltration of infringing goods in the legitimate supply chains, the determination of jurisdiction in cross-border cases, how to deal with the storage and disposal of infringing goods, and so on. Taking into account the fact that the enforcement of IP rights implied human and financial resources which could constitute a heavy burden, the challenges for developing countries in the field of enforcement were even higher. The ACE, he stressed, was working on a number of these issues. In the past three years, the ACE's work program had included an analysis of the various types of infractions and motivations for IP rights infringements, methodologies to measure the social, economic and commercial impact of counterfeiting and piracy, and alternate models to address counterfeiting and piracy. During the eighth session of the ACE held in December 2012, he highlighted, Member States had agreed upon the future work program of the ACE, embracing both alternative dispute resolution practices in the field of IP enforcement and preventive actions to complement enforcement measures. With regard to the contribution of right holders to IP enforcement and the cost thereof, he pointed out the fact that the fifth session of the ACE, held in December 2009, had been dedicated to this topic and that a number of publications on this topic had been made available on the WIPO website. Cooperation between right holders and public authorities, he stressed, was an important aspect of IP enforcement in order, for instance, to assist enforcement agencies in identifying counterfeit or pirated goods or to assist them in the storage and disposal of infringing goods. It had also been recognized that right holders could play a vital role in the context of awareness-raising programs and in the establishment of a constructive dialogue with consumer groups. Cooperation between public authorities and right holders was therefore a crucial element to achieve effective IP enforcement and, more broadly-speaking, to build respect for IP.

85. Looking at the contribution of right holders to IP enforcement from a legal perspective, Mr. Hassan Badrawi, Vice-President, Court of Cassation, Egypt, and former Vice-President of the Constitutional Court of Egypt, highlighted the fact that IP protection and enforcement were two sides of the same coin. In Egypt, IP protection had been included under Egyptian law since February 1912. In the TRIPS Agreement, he stressed, approximately 30 percent of the provisions concerned enforcement. For IP protection to be effectively enforced in national legislations, one had to take into account national circumstances. Challenges in this regard included, amongst others, lack of awareness and lack of effectiveness of bodies and institutions responsible for enforcing IP rights. Egypt, he stressed, had adopted a legislative policy in line with TRIPS as far as industrial property was concerned. In the field of copyright however, it was facing a number of challenges. There were numerous entities and authorities involved and awareness was a major challenge. In this regard, the Government of Egypt had initiated a number of initiatives to raise public awareness among the main enforcement authorities (judicial authorities, prosecution authorities, police, customs and so forth). A number of judges had also been trained on IP and there were now specialized Courts dealing with IP law. IP, he stressed, had to be integrated in educational programs from a very early stage in order to promote IP awareness at all levels and not only in the legal field, but also in science, technology and so on. In conclusion, he pointed out the fact that the lack of financial resources constituted one of the main challenges for developing countries in the field of enforcement.

86. Mr. Ahmed El Saghir, Judge, Council of State, Egypt, then took the floor to present the case of the software industry in Egypt. In Egypt, he stressed, software could be protected either under patent law or under copyright law. Under the TRIPS Agreement, there was no obligation

to protect computer programs using patents. On the other hand, computer programs had been added to the list of artistic works which could be protected under the Berne Convention. In the USA, he pointed out, computer programs could be protected under patent law provided that they were useful, concrete, and that they led to tangible results. In Europe, computer programs could be protected only when they constituted an element of an invention. The 2009 EU Directive for computer programs defined a computer program as a program in any format, i.e. both in electronic and paper format. With regard to the criteria to be applied in determining whether or not a computer program was an original work, no tests as to the qualitative or aesthetic merits of the program were applied; it just had to be genuine. The EU Directive also defined the user interface as the function of the program that was responsible for the interoperability (i.e. the function that made the computer program work with other programs and users). Under the Directive, only the expression of a computer program was protected and not the ideas and principles underlying any element of the program and of its interfaces. Ideas and principles behind a computer program could therefore be further exploited and used to develop other programs. With regard to exceptions and limitations under the EU Directive, backup copy for the user and copy for error correction were authorized. In Australia, the list of exceptions included amending or modifying the original copy to make interoperable products, copying the program to study the idea behind the program and the way it functioned, having a backup copy, a copy for error correction, and testing for security reasons. In the USA, a fair use doctrine in this field did not list specific exceptions but only defence mechanisms to ensure that one's usage was not infringing another's legitimate interest, taking into consideration the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used in relation to the copyrighted work as a whole, and the effect of such use on the value of the copyrighted work on the market. In Egypt, he stressed, computer programs were defined as a set of instructions and orders that were expressed by any language, sign or signal that could be used directly or indirectly in a computer to perform a function or execute a result either in its original form or in any other form that appeared through the computer. There was no requirement that the computer program be in electronic format. The law however remained vague and did not set out the elements of protection. By applying the principles of copyright that only the expression of the idea was protected, not the idea itself, and that the work should be original, ideas underlying a computer program or non-literal components of a computer program could not be protected, while literal components such as the source code could be protected. If an element of a computer program was the only means of accomplishing a certain result, then it was classified as embodying an idea rather than the expression of this idea, and in this case, it could not be protected. Preparatory and design materials could be protected if they satisfied the originality requirement. With regard to limitations and exceptions, the only allowed exception was the backup copy. In conclusion, Mr. El Saghir stressed the fact that a flexible approach like the USA's approach was better for developing countries. In this regard, the Egyptian law, which had very limited exceptions, clearly needed to be amended so as to achieve a better balance between the interests of right holders and the public interest.

87. Mr. Mohy Hafez, President, Committee on Health and Pharmaceuticals, 10th Ramadan Investors' Association, and member of the Board of the Pharmaceuticals Committee of the Federation of Egyptian Industries, took the floor to share the perspective from the point of view of the pharmaceutical industry, the second largest industry in the world after the weapons industry. Research-based companies were the leaders in terms of discovering new chemical entities, a costly process which could reach 500 million United States dollars per molecule to discover just one new chemical entity. Prior to the TRIPS Agreement, protection of the method of manufacturing new chemical entities was granted for 10 years and had been extended to 20 years under the TRIPS Agreement. Under TRIPS, both the process and the product itself could be protected, which led to a certain monopoly in the industry. Worldwide, the pharmaceutical industry, he stressed, had reached one trillion United States dollars in 2012 with the Middle East sales representing about 3 percent of this amount. In Egypt, the total amount of per capita pharmaceutical spending reached about 40 United States dollars, a small amount compared to other countries worldwide. China was the leading country in terms of introducing new drugs to

the market, followed by Brazil, Russia and India. Local manufacturing had also grown worldwide with an increase in generic drugs. In the Middle East and North African (MENA) region, Egypt and Saudi Arabia were the biggest players in the manufacturing of generic drugs with an average growth rate, in Egypt, of about 18 percent. About 82 percent of Egypt's consumption was covered by local manufacturing and the rest was imported. The imported drugs represented mainly the most complex drugs such as anti-cancer drugs, bio-technology products and technology products from genetic engineering, while the other 82 percent covered mostly traditional pharmaceutical drugs. There were, in Egypt, over 124 manufacturing facilities. With regard to scientific research in the pharmaceutical sector, he pointed out, trials were the most cumbersome process (on average, 1 in 10,000 trials succeeded in creating a new molecule). Trials for parent molecules were more likely to succeed (1 in 1,000). In the case of developmental research works such as new drug delivery systems or new drug combinations, the ratio went down to 1 in 100. In the field of generic drugs, the ratio went down to 1 in 2. Egypt, he underlined, had signed the TRIPS Agreement in 1995. The main problem in this regard, he concluded, was how to enforce the agreement in light of the Doha Declaration regarding parallel importation, bolar exceptions, compulsory licensing, and so on.

ROUNDTABLE: FIGHT AGAINST PIRACY AND COUNTERFEITING IN DEVELOPING
 COUNTRIES AND LDCs: PROGRESSES AND CHALLENGES.
 NATIONAL STRATEGIES

88. Mrs. Amanda Lotheringen, Director, Monitoring and Complaints IP, CIPC, South Africa, started her presentation by stressing the fact that South Africa had had many strategies to fight piracy and counterfeiting. South Africa had been implementing a Counterfeit Goods Act since 2000 and had been leading anti-piracy, education and awareness-raising campaigns for a number of years. In 2013, she stressed, a new approach had been pursued focusing more on the importance of IP rights and their contribution to socio-economic and cultural development than on the negative elements associated with enforcement and punitive measures. With a focus on the creative industries, an area of national importance for South Africa, the campaign had been launched on April 26, 2013, in conjunction with World IP Day. A unique public-private partnership both in terms of human and financial resources, the campaign had brought together private actors such as Proudly South African, a local promotion agency for South African products, the South African Copyright Protection Unit (SAFACT), the South African Federation against Copyright Theft, and other key actors such as customs, police services, departments of arts and culture, and so on. Instead of focusing on anti-piracy, the campaign focused on raising awareness of the importance and value of creativity, which tied in perfectly with this year's WIPO IP Day theme: "Creativity: the Next Generation". Quoting the CEO of Proudly South African, she stressed the fact that South Africa could not allow the industry to "continue bleeding while criminals illegally benefit[ed] through stealing the work of artists and creative minds". Pirated goods not only robbed original creators of their future but also robbed governments of tax revenues and ultimately had a negative impact on South Africa's economy. Partnering with the private sector and NGOs had been very important in this initiative to join forces and resources. A specific website and logo "be your own, buy your own" had been developed targeting in particular students to raise their awareness of the impact of copyright infringement on their own work and in their own lives. IP festivals had been held on April 26 in many universities. The commercialization of IP rights was also an important element which the campaign had focused on to show how creators and innovators could commercially exploit and benefit from their creations. Although the campaign focused mainly on positive behavior, rewarding creativity, it also included the enforcement perspective. Both aspects were needed to ensure an appropriate balance. In 2012, she stressed, 692 criminal cases had been opened in South Africa, over 800,000 pirated films seized, and over 58,000 pirated music CDs seized. From January 2013 to date, another 131 criminal cases had already been opened. Effective physical enforcement was therefore also very important. Mrs. Lotheringen concluded her presentation by pointing out that while previous anti-piracy campaigns in South Africa had not delivered the expected results, the new campaign which had mainly targeted students and had

been launched in April 2013 would be evaluated by the end of the year and that she would be happy to share the results of the campaign in due course so that other countries could learn and benefit from this experience, if shown to be successful.

89. Mrs. Maha Bakhiet Zaki, Minister Plenipotentiary, Director, IP and Competitiveness Department, LAS, then took the floor to present the perspective from the point of view of Arab countries. Arab countries, she stressed, had paid great attention to combating commercial fraud and protecting IP rights, to the extent that a number of countries in the Arab region had contributed to international efforts to strengthen the protection of IP and had ratified a number of international agreements in this regard. While Arab governments had exerted tremendous efforts to fight piracy, counterfeiting and trade fraud, one of the most important issues however remained the development of an adequate legal framework. International cooperation remained essential to ensure the implementation of appropriate border measures to control the flow of counterfeit and pirated goods. In the last ten years, she highlighted, Arab countries had exerted huge efforts in developing appropriate legislations in compliance with their commitments under the TRIPS Agreement and other international agreements and IP instruments. The TRIPS Agreement, she stressed, was particularly important as it contained a great number of provisions pertaining to the enforcement of IP rights, setting substantive rules providing a minimum level of protection for IP rights. Under TRIPS, the role of custom authorities in combating infringements had been strengthened. Article 69 of the TRIPs Agreement for instance stipulated that “Members agree[d] to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods”. In this regard, Egypt, she stressed, had issued a Ministerial Decree in 1997 for the establishment of an IP rights’ protection contact point to provide a link between WTO and the Egyptian institutions responsible for enforcing IP conventions in the country and to assist customs authorities to take appropriate border measures. Many Arab countries, she pointed out, had clearly defined the role of customs and identified custom procedures to be taken upon suspension of custom clearance as well as judicial procedures after custom clearance suspension. Most customs administrations in Arab countries, she added, cooperated with Regional Intelligence Liaison Offices, the World Customs Organization and other countries exchanging information related to commercial fraud in order to take necessary action. In this regard, she pointed out, a number of customs administrations in Arab countries had also established specific units to combat commercial fraud and to protect IP, which in itself represented an important development in the fight against piracy and counterfeiting in the region (e.g. Bahrain, Egypt, Jordan, Sudan). With regard to the LAS’ efforts in the field of enforcement, Mrs. Zaki pointed out that a number of activities, meetings and workshops had been organized to combat counterfeiting in the region, in conjunction with, amongst other partners, Interpol (e.g. Regional Arab Conference on National Custom Efforts for Combating Counterfeiting and Fraud and IP Rights Protection). In Resolution 911 issued on February 2012, the Council of Arab Ministers had also issued a recommendation to incorporate a full chapter on border measures within the text of the Arab Guidance Act for the protection of IP Rights (included in chapter 8 of the Act, under articles 153 to 157). In conclusion, Mrs. Zaki reiterated the importance of awareness-raising and pointed out that a number of efforts were needed to ensure more effective enforcement. In particular, she mentioned the need to enhance the legislative framework through accession to international treaties, cooperation among agencies in combating piracy, counterfeiting and commercial fraud both at the national, regional and international level, through for instance the establishment of a common database and the sharing of information, the need to reinforce human and financial capacities and to intensify training of customs and other important actors, the importance of raising awareness and developing educational programs and campaigns, and the importance of strengthening cooperation with the private sector and civil society.

90. Mr. Sovicheat Penn, Deputy Director General, General Directorate of Domestic Trade, Ministry of Commerce, Kingdom of Cambodia, then took the floor to share the experience of Cambodia. Reiterating the importance of awareness, capacity building, physical enforcement, and the building of partnerships, as mentioned by previous speakers, Mr. Penn pointed out the main enforcement agencies in Cambodia, which included the Department of IP Rights, the Department of Industrial Property, the Department of Copyright, national Courts, customs, a litigation bureau, an arbitration centre, the Inter-Ministerial Committee for Copyright Piracy Suppression, the Economic Police and Camcontrol. In case of infringement, the most common methods employed in Cambodia, he pointed out, were cease-and-desist letters, the issuing of public notices or warnings), mediation and litigation, and border measures implemented by customs and Camcontrol. If infringement occurred on the internal market, action could be taken by the Economic Police and/or Camcontrol. Possible measures included injunction and civil and criminal prosecution. In addition to a Supreme Court, Court of Appeal, Municipal Court and Court of First Instance, Cambodia was also in the process of establishing a Commercial Court which would also handle IP cases. Counterfeit medicines, he pointed out, were a particularly big challenge for developing countries where the high cost of drugs often led to the development of cheaper counterfeit drugs. In addition to physical enforcement, awareness-raising among consumers was therefore also very important. Another main challenge was the lack of resources and cost to right holders when it came to disposing of counterfeit products. Important players such as large multinational companies for instance could support such enforcement and awareness-raising activities. Another emerging challenge, he stressed, was the increasing presence of counterfeit goods on the Internet. Identifying counterfeit goods was also a challenge and in this regard it was important to encourage partnerships and cooperation among all the stakeholders. While the State could provide the legal framework and institutions, right owners could also assist the State in identifying where infringement occurred. Exchange of information between right holders and enforcement agencies was critical. In this regard, he pointed out to an ASEAN initiative to document and share information in the region through the establishment of a database gathering information on counterfeit products. In summary, capacity building, building of an IP culture, and coordination among institutions were critical elements to ensure effective enforcement.

GENERAL DISCUSSION: WRAP-UP AND THE WAY FORWARD

91. Thanking all the participants and speakers for their contributions, Mr. Adel Ewida, Head, Egyptian Patent Office, Egypt, gave the floor to Mr. Mokhtar Warida, Counselor, Permanent Mission of the Arab Republic of Egypt to the UN and specialized institutions in Geneva and other international organizations in Switzerland, to share a summary of the ideas gathered during the meeting and proposals on the way forward with regard to South-South cooperation in the field of IP and in particular in the field of patents, trademarks, GIs, industrial designs, and enforcement.

92. Mr. Mokhtar Warida started by pointing out that participants had unanimously expressed the need for WIPO to continue playing an important role in promoting South-South cooperation in the field of IP and development and in supporting inter-regional initiatives in this regard. Participants, he stressed, had acknowledged the importance of South-South cooperation as a complement to North-South cooperation, taking into account the fact that the main objective thereof was for developing countries to achieve their national development objectives and to realize the MDGs. As an international organization specialized in the field of IP, WIPO had a comparative advantage and had the power to act as a convener and knowledge broker to build partnerships with different actors and to continue to gather information, analyze, and monitor progress made in the field of South-South cooperation. With regard to possible activities in this area, the importance was stressed, first, for WIPO to complete the activities of the first phase of the South-South project, and, secondly, for WIPO to implement some of the proposals and ideas put forward during the two inter-regional meetings on South-South cooperation held in Brazil and Egypt in the framework of a possible second phase. It was also important to ensure

that adequate resources and initiatives for South-South cooperation be included in the next Program and Budget for 2014/2015. In this respect, it had also been mentioned that different bilateral and regional development activities and partnerships could be used to generate the resources required for increased cooperation amongst developing countries and LDCs. Taking into account the fact that many countries had shared their national experiences, good practices and lessons learned in the framework of the inter-regional meetings, it was also important, he stressed, to collect such information and ensure that WIPO activities in the area of cooperation for development were fully informed and guided by the experiences of developing countries. Such experiences and lessons learned, including successful South-South cooperation initiatives in the field of IP, he stressed, could be compiled into case studies, publications, handbooks, policy guides or any other type of relevant material. A first step in this regard, he stressed, had been to ensure that all the meeting presentations would be compiled and made available to participants. Another important area in terms of South-South cooperation was networking and matchmaking. It was important, in this regard, and as identified under the first phase of the project, to enhance networking and matchmaking between different actors including research centers, civil society, academic institutions, IP authorities, private actors and so on operating at the national or regional level in developing countries and LDCs. The establishment of a web portal whereby each country could provide information on the national and/or regional actors engaged in South-South cooperation would, in this regard, be a positive step forward. Additionally, the suggestion was put forward and supported by a number of countries that WIPO continue to organize such inter-regional meetings to facilitate South-South exchanges and cooperation. In order to allow for more in-depth discussions on specific areas of IP, a more thematic approach could be adopted and pursued in future meetings. Other ideas and proposals put forward during the meeting included the importance of ensuring that assistance provided in the field of national IP strategies be guided by national development and public policy objectives, as well as the importance of incentivizing grassroots' and community-based innovation initiatives and of mobilizing necessary financial resources through South-South cooperation initiatives. Several participants had also stressed the importance of increasing awareness in developing countries and LDCs of the potential contribution of utility models to innovation and creativity, and of ensuring that access to the international IP system and related documents and information be facilitated through availability in official languages used in developing countries and LDCs. In terms of coordination, the need for enhanced coordination between the WIPO focal point for South-South cooperation, WIPO's Regional Bureaus and other Divisions was important to ensure a more coherent and coordinated approach in the provision of legal assistance, training and capacity-building to developing countries and LDCs. Last but not least, and as specified in the project document, it was important for WIPO to strengthen its institutional structure to continue to promote South-South cooperation and to liaise with the UN Office for South-South Cooperation (UNOSSC) to follow developments in this field. A possible partnership in this regard, he stressed, was that WIPO could consider hosting the Global South-South Development (GSSD) Expo organized by UNOSSC in 2015. Each year, a different specialized agency hosted the Expo. In conclusion, Mr. Warida pointed out that participants had stressed their commitment to continue South-South cooperation and to share information, good practices and lessons learned, and that they had emphasized the importance of initiating or deepening joint collaboration technical assistance and capacity-building activities in all areas of IP and development. Opening the floor for discussion, Mr. Warida concluded by pointing out the fact that the list of proposals was non-exhaustive and that it mainly intended to capture some of the essence of the discussions held during the three days.

93. Presenting some concluding remarks in light of the discussions that had taken place over the last three days, Mr. Alejandro Roca Campaña, Senior Director, Access to Information and Knowledge Division, Global Infrastructure Sector, WIPO, and Project Manager, Development Agenda Project on *Enhancing South-South Cooperation on IP and Development among Developing Countries and LDCs*, noted the fact that participants had overwhelmingly expressed the importance of South-South cooperation and of exchanges of experiences and lessons learned in such fora. A number of successful South-South cooperation examples had been

showcased such as for instance Brazil's cooperation with other Latin American and Arab countries and India's cooperation with developing countries and WIPO in the field of TK. Participants had also highlighted, in the course of the discussions, the importance of focusing on the development needs and priorities of developing countries and LDCs and for South-South cooperation to be demand-driven. A number of countries had also mentioned their willingness to strengthen cooperation in different fields of IP, including Brazil, China, Egypt, India, the League of Arab States, ARIPO, and so forth. It had also been mentioned that more efforts were needed to strengthen cooperation among developing countries and LDCs with the assistance of WIPO and other international partners to achieve the recommendations of the Development Agenda. WIPO, it had been said, could help "connect the dots" in this regard. It had also been stressed that South-South cooperation was important at all levels, and that in order for it to be effective it had to be inclusive and involve not only government actors but also academia, civil society networks, research institutes, and so forth, with the support of credible facilitators such as IGOs and NGOs. In the field of patents and innovation strategies, many had raised the need for better infrastructure, national strategies and action plans with in-built review and monitoring mechanisms. In this regard, there was also a need to strengthen collaboration among and within regions and to build networks for the dissemination of information and knowledge, reaching out to all the stakeholders. In the field of GIs and branding strategies, an area where the development potential of developing countries and LDCs had been greatly showcased, a number of challenges had been raised including lack of or inadequate capacities and resources, lack of awareness and experience, lack or inadequate organization of producers at the local level, diverging interests of stakeholders involved in the value chain, and high expectations to see immediate changes. Among the lessons learned in this field, participants had raised the importance of government and donor support, as well as the need for guidance and support from international partners such as WIPO and other organizations in the process of protecting, marketing and commercializing origin-based products. In the field of enforcement, the need for enhanced cooperation and exchange of experiences and lessons learned in order to fulfill Recommendation 45 of the Development Agenda had also been expressed by a number of participants. This, he stressed, was a very brief summary of some of the main points which had been raised and the Secretariat would also prepare a detailed report of the discussions which would be made available to Member States in due course. The report of the inter-regional meeting, he added, would be reviewed in the framework of the *Second WIPO Annual Conference on South-South Cooperation*, which would be held in conjunction with the November session of the CDIP (CDIP/12), taking into account the fact that the main purpose of the Annual Conference was to review the outcome of the Inter-Regional Meeting and discuss the way forward with regard to the future of the Development Agenda Project on South-South Cooperation, a decision which was in the hands of Member States.

94. Thanking the Government of Egypt and WIPO for having organized the meeting, the Delegate of Peru underlined the importance of following-up on the suggestions and proposals expressed during the meeting through further meetings and networking opportunities. In this regard, he suggested the creation of a dedicated group which would meet on a regular basis to follow-up on these aspects and take the process forward.

95. Referring to the list of proposals put forward, the Delegate of Chile pointed out the importance of the proposal on utility models. Most developing countries and LDCs lacked capacities in this field and would greatly benefit from a better understanding of this tool. It was also important, as mentioned by the Delegate of Peru, to follow-up on the proposals made during the meeting and in particular to make use of the future web platform for networking and experience sharing. In conclusion, the Delegate of Chile reiterated INAPI's willingness to cooperate with other IP offices in developing countries and LDCs and to share, for instance, its experience in establishing the "*INAPI proyecta*" platform. In this regard, the Delegate of Chile mentioned the fact that there was a plan to translate the platform into French and English so that other countries could also benefit from it.

96. Before passing the floor to WIPO, Mr. Warida welcomed Chile's offer demonstrating that countries themselves could also take the initiative to engage in South-South cooperation activities and reiterated the importance of strengthening networking and matchmaking among developing countries and LDCs with the support of WIPO.

97. Pointing out the fact that the documents of the First and Second Inter-Regional Meeting on South-South Cooperation had been and would be made available on the WIPO website (final program, presentations, video recordings and so on), Mr. Roca Campaña took the opportunity to thank the ASRT for having facilitated the live webcasting and video recording of the meeting. As far as the web platform on South-South cooperation was concerned, he highlighted the fact that WIPO was in the process of building the virtual platform and that, in this context, the Secretariat would shortly be sending a questionnaire to all relevant Member States to gather information on, in particular, institutions responsible for South-South cooperation in the field of IP at the national level, which would help build the content for the web page. The objective, he stressed, was to launch the portal by the end of the year. In this regard, he added, cooperation from Member States in responding to the questionnaire and providing relevant information would be greatly appreciated. With regard to facilitating matchmaking among countries, Mr. Roca Campaña also pointed out the existence of the WIPO IP Development Matchmaking Database (IP-DMD) in which an additional functionality for South-South cooperation would be included so as to highlight what countries of the South could specifically offer to other countries in the South.

98. Reaffirming Brazil's willingness to strengthen South-South cooperation, the Delegate of Brazil took the opportunity to reiterate the fact that a specific MoU establishing a special fund to enhance South-South cooperation in the field of IP had been signed between Brazil and WIPO in 2012. The first South-South meeting to be organized under this special fund, he stressed, would take place the following month and would bring together the Heads of IP Offices of South American and Arab countries (i.e. around 30 to 35 countries in total). He concluded by emphasizing the fact that such inter-regional meetings enabling the sharing of information and experiences between developing countries and LDCs were crucial and should become permanent, and also highlighted the importance of virtual networking and sharing.

99. Thanking the Government of Egypt and in particular the Ministry of Foreign Affairs, the ASRT, and WIPO for having organized this event, the Delegate of India pointed out the fact that South-South cooperation was a very important stream of cooperation and that the Government of India attached a great importance to South-South cooperation, taking into account, in particular, the impact it could have on improving livelihoods and ultimately helping developing countries and LDCs achieve their development goals.

100. Last but not least, the interpreters were also thanked for having facilitated the exchange of experiences during the three days.

[Annexes follow]



MINISTRY OF FOREIGN AFFAIRS



ACADEMY OF SCIENTIFIC RESEARCH AND
TECHNOLOGY



INTERREGIONAL MEETING

WIPO/SSC/CAI/13/1
ORIGINAL: ENGLISH
DATE: MAY 6, 2013

Second WIPO Inter-Regional Meeting on South-South Cooperation on Patents, Trademarks, Geographical Indications, Industrial Designs and Enforcement

organized by
the World Intellectual Property Organization (WIPO)

in cooperation with
the Ministry of Foreign Affairs of the Arab Republic of Egypt

and
the Egyptian Academy of Scientific Research and Technology (ASRT)

Cairo, May 6 to 8, 2013

PROGRAM

prepared by the International Bureau of WIPO

Monday, May 6, 2013

8.30 – 9.00 Registration

9.00 – 9.30 Opening Ceremony

Prof. Dr. Maged Al-Sherbiny, President, ASRT, Ministry of Scientific Research, Egypt

H.E. Ambassador Amr Ramadan, Deputy Assistant Minister for Non-Aligned Movement, Organization of Islamic Cooperation and Specialized Agencies, Ministry of Foreign Affairs, Egypt

Mr. Yo Takagi, Assistant Director General, Global Infrastructure Sector, WIPO, Geneva

9.30 – 11.00 **Roundtable Formulation and Implementation of Intellectual Property (IP) Strategies and WIPO's Development Agenda. National Experiences**

Moderator: Prof. Dr. Maged Al-Sherbiny

Panelists: Mr. Alejandro Roca Campaña, Senior Director, Access to Information and Knowledge Division, Global Infrastructure Sector, WIPO, Geneva

Mr. Georges Ghandour, Senior Program Officer, Development Agenda Coordination Division, Development Sector, WIPO, Geneva

H.E. Ambassador Amr Ramadan

Mr. Vinicius Bogéa Câmara, Director, Directorate of Trademarks, National Institute of Industrial Property (INPI), Ministry of Development, Industry and Foreign Trade, Rio de Janeiro, Brazil

Dr. Zhicheng Zhang, Deputy Director General, Protection and Coordination Department, State Intellectual Property Office (SIPO), Beijing, People's Republic of China

Mr. Zakir Thomas, Project Director, Council of Scientific and Industrial Research (CSIR), New Delhi, India

Mr. Kenji Shimada, Director for Intellectual Property, Japan External Trade Organization (JETRO) Düsseldorf, Germany

Mr. Ahmed Abdel Latif, Senior Programme Manager, Programme on Innovation, Technology and Intellectual Property, International Centre for Trade and Sustainable Development (ICTSD), Geneva

11.00 – 11.30 Coffee Break

11.30 – 12.30 **Topic 1 The Interface between IP Policy and Competition Policy: Exploring Potential Tensions and Complementarities**

Speakers: Prof. Dr. Maged Al-Sherbiny

Mr. Hebert Tassano Velaochaga, President of the Board, National Institute for the Defense of Competition and Intellectual Property Protection (INDECOP), Lima, Peru

12.30 – 14.00 Lunch Break

14.00 – 15.00 **Topic 2 Patent-Related Flexibilities in Multilateral Treaties and their Importance for Developing Countries and LDCs**

Speakers: H.E. Ambassador Amr Ramadan

Mr. McLean Sibanda, Chief Executive Officer, The Innovation Hub, Pretoria, South Africa

Ms. Thu-Lang Tran Wasescha, Senior Counsellor, Intellectual Property Division, World Trade Organization (WTO), Geneva

Dr. Mohammed El Said, Reader, Lancashire Law School, University of Central Lancashire, Preston, United Kingdom

15.00 – 16.00 **Topic 3 Patent Systems in Developing Countries and Least Developed Countries (LDCs). The Need for Coherence between Patent Law and Public Policies: Innovation, Health and Trade**

Speakers: Prof. Dr. Hossam A. El Saghir, Director, Regional Intellectual Property Institute, Helwan University, Cairo, Egypt

Dr. Mohammed El Said

Dr. Mohamed Gad, Counselor, Minister's Office, Ministry of Foreign Affairs, Egypt

16.00 – 16.30 Coffee Break

- 16.30 – 17.30 **Topic 4** **Supporting Innovation, Technology Transfer, Patent Information and Knowledge Dissemination. National and Regional Experiences**
- Speakers: Mrs. María José García, Deputy Director, Transfer of Knowledge Division, National Institute of Industrial Property (INAPI), Santiago, Chile
- Mr. Zakir Thomas
- Mr. Emmanuel Sackey, Chief Examiner, African Regional Intellectual Property Organization (ARIPO), Harare, Zimbabwe
- Mr. McLean Sibanda
- 17.30 – 18.30 **Roundtable** **South-South Exchanges on Best Practices for the Development of National Patent and Innovation Strategies in Developing Countries and LDCs**
- Moderator: Dr. Mokhtar Warida, Counselor, Permanent Mission of Egypt to the United Nations and other International Organizations in Geneva
- Panelists: Dr. Zhicheng Zhang
- Mrs. María José García
- Mr. Ahmed Abdel Latif

Tuesday, May 7, 2013

- 9.00 – 10.15 **Roundtable** **South-South Exchanges on Infrastructure and Institutional Capacity for an Effective Use of the Patent System in Developing Countries and LDCs**
- Moderator: Mr. Adel E. Ewida, Acting President, Egyptian Patent Office, Cairo, Egypt
- Panelists: Dr. Maha Bakhiet Zaki, Minister Plenipotentiary, Director, Intellectual Property and Competitiveness Department, Economic Sector, League of Arab States (LAS), Cairo, Egypt
- Mr. Zakir Thomas
- Ms. Heba Wanis, Researcher, Egyptian Initiative for Personal Rights, Cairo, Egypt
- 10.15 – 10.45 **Coffee Break**

- 10.45 – 12.00 **Topic 5** **Trademarks and Other Distinctive Signs and the Public Domain: Main Policy Issues Facing Developing Countries and LDCs**
- Speakers: Prof. Martin Senftleben, Professor, VU University of Amsterdam, Senior Consultant, Bird & Bird LLP, The Hague, Kingdom of the Netherlands
- Mrs. Mona Ahmed Zaki, Supervisor, General Administration of Trademarks and Industrial Designs, Egypt
- Mr. Vinicius Bogéa Câmara
- 12.00 – 13.30 Lunch Break
- 13.30 – 14.30 **Topic 6** **Geographical Indications (GIs) in the Implementation of Public Policies: Best Practices and the Socio-Economic Dimension of GIs.**
- Speakers: Mrs. María de los Angeles Sánchez Torres, Director General, Cuban Industrial Property Office, Ministry of Science, Technology and Environment, La Habana, Cuba
- Mr. Getachew Mengistie Alemu, Intellectual Property Consultant and Attorney, Addis Ababa, Ethiopia
- Ms. Nisachol Sasanon, Head of Encouraging Utilization Group, Intellectual Property Management Office, Department of Intellectual Property (DIP), Ministry of Commerce, Nonthaburi, Thailand
- Mr. Emmanuel Sackey
- 14.30 – 14.45 Coffee Break
- 14.45 – 16.00 **Roundtable** **South-South Exchanges on Best Practices for the Development of IP and Branding Strategies in Developing Countries and LDCs**
- Moderator: Mr. Vinicius Bogéa Câmara
- Panelists: Mrs. María de los Angeles Sánchez Torres
- Ms. Nisachol Sasanon
- Mr. Getachew Mengistie Alemu
- 16.00 – 17.00 General Discussion

Wednesday, May 8, 2013

- 9.00 – 9.45 **Topic 7** **Protecting Industrial Designs: Current Issues and Future Trends**
- Speakers: Dr. Ji-hoon Kim, Design Expert, Korean Intellectual Property Office (KIPO), Daejeon Metropolitan City, Republic of Korea
- Mrs. Rasha Magdy Talaat, Examiner, Industrial Designs, Egypt
- 9.45 – 10.30 **Roundtable** **Industrial Design, Innovation and IP Protection: National Strategies. Experiences of Developing Countries and LDCs**
- Moderator: Prof. Dr. Hossam A. El Saghir
- Panelists: Dr. Ji-hoon Kim
- Mr. Girma Bejiga Sen Beta, Director, Patent and Technology Transfer, Ethiopian Intellectual Property Office, Addis Ababa, Ethiopia
- 10.30 – 11.00 Coffee Break
- 11.00 – 12.30 **Topic 8** **IP Rights Infringements and Enforcement: Accounting for Socio-Economic, Technical and Development Variables, including in the Context of Recommendation 45 of the WIPO Development Agenda**
- Speakers: Mr. Sovicheat Penn, Deputy Director General, General Directorate of Domestic Trade, Ministry of Commerce, Phnom Penh, Kingdom of Cambodia
- Mrs. Amanda Lotheringen, Director, Monitoring and Complaints IP, Companies and Intellectual Property Commission (CIPC), Department of Industry and Trade, Pretoria, South Africa
- Prof. Nagla Rizk, Associate Professor of Economics and Founding Director, Access to Knowledge for Development Center (A2K4D), The American University in Cairo, Egypt
- 12.30 – 13.45 Lunch Break

- 13.45 – 14.45 **Topic 9 Experiences and Lessons Learned of the Contribution of Right Holders to IP Enforcement and the Cost Thereof.**
- Speakers: Dr. Hassan Badrawi, Judge, Egyptian Constitutional Court, Egypt
- Dr. Ahmed El Saghir, Judge, Council of State Courts, Egypt
- Dr. Mohy Hafez, Chairman, DELTA PHARMA Bio, Egypt
- 14.45 – 15.00 Coffee Break
- 15.00 – 16.30 **Roundtable Fight Against Piracy and Counterfeiting in Developing Countries and LDCs: Progresses and Challenges. National Strategies.**
- Moderator: H. E. Ambassador Amr Ramadan
- Panelists: Mrs. Amanda Lotheringen
- Dr. Maha Bakhiet Zaki
- Mr. Sovicheat Penn
- 16.30 – 17.30 General Discussion: Wrap-Up and the Way Forward
- 17.30 Closing

[Annex II, follows]



MINISTRY OF FOREIGN AFFAIRS



ACADEMY OF SCIENTIFIC RESEARCH AND
TECHNOLOGY



INTERREGIONAL MEETING

WIPO/SSC/CAI/13/1
ORIGINAL: ENGLISH
DATE: JANUARY 25, 2013

Second WIPO Inter-Regional Meeting on South-South Cooperation on Patents, Trademarks, Geographical Indications, Industrial Designs and Enforcement

organized by
the World Intellectual Property Organization (WIPO)

in cooperation with
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the Egyptian Academy of Scientific Research and Technology (ASRT)

Cairo, May 6 to 8, 2013

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prepared by the International Bureau of WIPO

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[End of Annex II and of document]