

**COMMENTS MADE BY MEMBERS AND OBSERVERS OF THE SCP  
ON DOCUMENT SCP/14/4 (TRANSFER OF TECHNOLOGY)**

**I. 15<sup>th</sup> session of the SCP, October 11-15, 2010  
[Excerpts from the Report (document SCP/15/6)]**

1. Discussions were based on document SCP/14/4.

2. The Delegation of Belgium, speaking on behalf of the European Union and its 27 Member States, acknowledged that development and diffusion of new technologies were fundamentally important to face global challenges such as climate change, health and food security. It considered that facilitating technology transfer was an essential element of the Millennium Development Goals. Noting that the preliminary study highlighted that the recipient's capacity to absorb and apply the technology was fundamental to the successful completion of the transfer of technology, and that both the connection between intellectual property rights and technology transfer as well as the impact of such technology on innovation and development were complex issues, the Delegation was of the view that each country might adopt different parameters for the transfer of technology. In its opinion, some countries would be better placed than others to absorb and further develop the technology received, and others would require extensive investment and capacity building before reaching that point. Therefore, the Delegation agreed that it was not possible to draft a single policy which would maximize technology transfer and its positive impact on every country. Referring to several examples in the preliminary study that illustrated possible mechanisms and strategies to facilitate technology transfer, the Delegation noted that the suitable choice of the mechanisms at disposal would enable each country to establish the policy and legislation that benefited their particular needs within the framework of the current international commitments. The Delegation expressed its willingness to contribute to the development of policies designed to facilitate effective technology transfer. It reiterated its commitment to work towards the creation of new models to promote innovation, based on the close collaboration between the private and the public sectors. It welcomed and encouraged voluntary initiatives to facilitate a flow of technological knowledge on a global scale.

3. The Delegation of Brazil, speaking on behalf of the DAG, stated that the preliminary study narrowly focused on the issue of ensuring the availability of sufficient patent information, skilled IP professionals, and the involvement of public-funded research institutions, and on the role of the patent system in facilitating technology transfer. Referring to paragraph 52 of document SCP/14 which stated that the patent system could make positive contributions to efficient technology transfer only where the system functions in a way for which it is intended, the Delegation observed that it created its own opening for possible areas of interest that could have been developed in the preliminary study. The Delegation was of the opinion that a main weakness of the preliminary study was that it did not discuss how patents could be a barrier to transfer of technology, nor the importance of preserving the public domain for the effective technological development of developing countries and LDCs. In its view, the discussion on transfer of technology ought to be broader and systematic, including issues such as the need for correct disclosure of patents, the use of exceptions and limitations, and the threat of anti-competitive behavior. Similarly, it considered that the important issue of standards of patentability could have a major impact either impeding or promoting technology transfer. The Delegation stated that specific challenges that the preliminary study had addressed included: (i) need for more clarity in respect of ownership of patents and scope of patent claims, rights and obligations of parties in licensing agreements, and an appropriate mechanism for enforcement of patents; (ii) addressing the information asymmetry through clear and complete disclosure of patent information and making them easily accessible to the public, services for matching patent licensors and licensees (match-making), and use of more patent experts for analyzing patent information and negotiating licenses; (iii) devising clear and balanced licensing rules, enhancing the quality of granted patents and financial incentives such as tax exemptions; and (iv) balancing the interests of patent holders and third parties, and preventing abuse of the system through mechanisms within and outside the patent system. While the preliminary study had devoted an entire chapter to the issue of public-private

partnerships, including on the role of universities and public research institutions and the private sector, the Delegation recalled that, in developing countries and LDCs, the level of government support for research in public research institutions was low due to limited resources, in comparison to the level in developed countries. The Delegation, therefore, was of the view that models such as the Bayh-Dole in the United States of America could be a misleading venture to extrapolate on. Furthermore, in its opinion, the narrow focus on licensing of patented inventions ignored the fact that most of the economic contributions of public sector research institutions had historically occurred without patents. The Delegation expressed its belief that the 14 Recommendations of the WIPO Development Agenda provided a guiding framework for development-oriented transfer of technology. They should be demand-driven, transparent, neutral, accountable, and take into account the special needs of developing countries, in particular LDCs. The Delegation reminded the Committee of Article 66.2 and 67 of the TRIPS Agreement, which required Members to implement obligations relating to technical cooperation and transfer of technology. The Delegation considered that the discussion on transfer of technology ought to be broader and systemic, including issues such as the need of a correct disclosure of patents, the use of exceptions and limitations or the threat of anti-competitive behaviors. In its view, the capacity of absorption was paramount for the adaptation and further development of the technology, considering the different technology demands of the countries. Therefore, the Delegation supported a comprehensive assessment of the situation, including providing information on the level of transfer of technology reached, and also a deep understanding of the relation between transfer of technology and innovation. In its opinion, only then could public policies be adjusted to reach the desired level of effectiveness. The Delegation stated that its goal was to reach concrete and verifiable results in a reasonable lapse of time, since one way of spreading the benefits brought by intellectual property rights was by putting into good use the obligations related to technological transfer and cooperation. The Delegation therefore made specific proposals that should follow the preliminary study as follows: (i) further study should analyze barriers to technology transfer arising from patents, i.e., why the Bayh-Dole model might not work in developing countries that were not endowed with similar technological capacity that existed in the United States of America when it was introduced (to foster patenting by universities and linkages to industry); (ii) there was a standing proposal for convening an international commission or experts' group nominated by Member States to address issues pertaining to technology transfer identified above, and particularly, on the use of flexibilities in patent law (i.e., exclusions, limitations and exceptions) for promoting technology transfer; (iii) to organize a forum to exchange countries' experiences on technology transfer in an upcoming session of the SCP.

4. The Delegation of the Russian Federation highlighted the importance for its country of the preliminary study contained in document SCP/14/4 on the issue of transfer of technology, due to its link to the patent system, to trade, to investments and licensing, as well as to various problems that emerged on national and international level, in particular the issues of abuse of patent rights and balancing those rights with the users of those technologies, which were relatively new aspects for consideration in its country. Informing about new legislative activities undertaken in its country in that area, in particular Chapter 77, Part IV of the Civil Code on transfer of joint technologies, the Delegation noted that those laws implemented the strategic national priorities and transition to market economy and reflected the state policy of the Russian Federation in the area of research and development that would create the right economic conditions to bring innovative and competitive products to a market. The Delegation stated that the important issue remained to be resolved was the issue of a balance between the interest of the government and the patent holders in the realization of their rights. In conclusion, the Delegation expressed its interest in continuing the discussions on the issue of transfer of technology in the SCP.

5. The Delegation of El Salvador stressed the importance of questions tackled in the preliminary study, although it was a general study containing no conclusions. Noting the activities carried out in other sectors of WIPO, for example, various projects carried out by the sector headed by Mr. Takagi in which El Salvador had been participating, the Delegation suggested that WIPO carry out concrete joint projects in the area of transfer of technology.

6. The Delegation of India expressed its appreciation to the Secretariat for bringing out the study highlighting the various issues in the world of transfer of technology. The Delegation however observed that there were still some important issues which needed to be examined in greater detail so that patents did not become impediments to seamless transfer of technology. The Delegation also expressed agreement with the concerns expressed by the Delegation of Brazil in that regard. In its view, the sufficient and unambiguous disclosure of an invention in a patent document played a very important role in the dissemination of information and adaptation of technology. However, the Delegation observed that patent holders often did not disclose the required information in a clear and succinct manner to enable third parties to reproduce the patented invention, which directly affected the quality of patents, as well as the diffusion of technology. The Delegation further emphasized that the disclosure alone did not enable technology transfer, as there were other issues which remained to be highlighted. The Delegation explained that often the patent holders, particularly the big players, had been using patent trolls and patent thicket as a strategy to defer a smooth procedure for transfer of technology. Therefore, the Delegation suggested that the study should further examine as to how the patent system could better contribute to the seamless transfer of technology to narrow down the gaps. In addition, the Delegation suggested that a special study could be undertaken as a future work program in critical areas, such as food security and public health, in order to understand how the patent system could be used in a *sui generis* way to allow frequent transfer of technology in developing countries. In its view, the issue of technology transfer was a central point to the Development Agenda which was cross-cutting in WIPO's agenda. Therefore, the Delegation reiterated its proposal to put in place an independent commission to examine that subject in greater detail and come out with specific implementable suggestions and recommendations, taking into account the socio-economic conditions and technological advancement of developing countries. It suggested that such a study examine the flexibilities in the patent law to facilitate the transfer of technology for development.

7. The Delegation of Venezuela stated that transfer of technology was an issue of vital importance. Noting that patents did not necessarily lead to transfer of technology which was an issue particularly related to the implementation of the Millennium Development Goals, to the issues of climate change and food security, the Delegation shared the observations made by the Delegation of Brazil, speaking on behalf of the DAG.

8. The Delegation of Egypt supported the statement made by the Delegation of Brazil on behalf of the DAG. It referred to its intervention made at the previous session of the SCP with regard to paragraph 176 of document SCP/14/10 Prov.1.

9. The Delegation of Burkina Faso supported the statement made by the Delegation of Brazil on behalf of the DAG. Referring to the TRIPS Agreement, in particular Article 66, the Delegation stated that developing countries were still waiting for the materialization of those provisions which had not been achieved since the establishment of the Agreement. The Delegation underlined the importance of transfer of technology for resolving problems in developing countries which were also relevant to developed countries, for example, a clandestine immigration and problems of employment.

10. The Representative of ALIFAR, noting that the issue of transfer of technology was a complex topic, stated that, as indicated in the Report of the Commission on Intellectual Property Rights in 2002, what was important in terms of IP was not whether it promoted trade or foreign investment, but rather how it assisted or hindered developing countries in the process of obtaining access to the technology which it required for its development. The Representative observed that while there were numerous factors relating to technology transfer, an essential aspect was the capacity of developing countries to absorb foreign knowledge and exploit and adapt it to its own needs. To that end, the Representative underlined the importance of the level of local development and capacity through education and investment in R&D to the success of technology transfer. In her view, developing countries should also evaluate certain tools such as the adoption of measures including tax exemptions or reductions for firms which granted licenses for the use of technology in their territories, the creation of appropriate legal framework on competition and incentive programs to promote scientific activities. As regards

developed countries, the Representative observed that they did not appear to have significantly contributed to the transfer of technology, and had not taken steps to promote it in accordance with Article 66.2 of the TRIPS Agreement. The Representative stated that, in some sectors, such as in the pharmaceutical sector, patents functioned like an impregnable barrier which was used effectively to ensure and prolong market exclusivity for as long as possible. The Representative further stated that, not only was there no technology transfer, but in general, patent documents did not enable the reproduction of the invention even for non-commercial purposes. Patents should disclose inventions in a clear and complete manner, which, in her view, was an obvious requirement as a compensation to the exclusive rights. In agreement with what was stated in paragraph 71 of document SCP/14/4, the Representative noted that the quality of granted patents might also have repercussions for the effectiveness of technology transfer, since the proliferation of low quality patents diminished legal certainty as regards the validity of patents and in turn increased the transactions costs concerning the transfer of knowledge. The Representative observed that the increase in the number of patents filed and granted every year, the poor quality of patents and the strategies to prolong the life of patents which hinder the production and marketing of generic medicines were a reality in both developed and developing countries. In her opinion, they were not supportive to the objectives formulated in Article 7 of the TRIPS Agreement which stated that IP rights should contribute to the transfer and dissemination of technology. However, the Representative viewed the study of the issue of transfer of technology by the SCP positively, and considered that further discussions might enlighten the way in which the asymmetries between countries could decrease and encourage industrial development, in particular, in strategic sectors linked to health. She further stated that if countries had a solid pharmaceutical industry with sufficient manufacturing capacity, health needs might be more appropriately met, there would be fewer obstacles for using flexibilities under the TRIPS Agreement and mechanisms as complex as the Decision of August 30, 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health would not be necessary.

11. The Representative of ITSSD stated that the preparation of the preliminary study on technology transfer reflected only the first step in the technology transfer process. To elucidate some of the many steps included within technology transfer, the Representative mentioned the art of contractual licensing between willing buyers and sellers based on most available current information; the need to develop or learn how to develop a triple helix of collaboration between the public sector, the academic and the private sector; the proper use of the federally funded research and the stream through which the research money would flow to the various parties of the triple helix; a commercialization which was named to be very important part of technology transfer transcending basic research and development; and lastly, the role of the market participant in the triple helix and the need to assess the market value in the particular market of the invention both in its early stages and in its market-ready stage. Those issues were the ones to be addressed in order to facilitate efficient technology transfer mechanism based on patents, or, in some cases, based on trade secrets, if that was the better economic choice under the given circumstances. Referring to the statement made by the Delegation of Brazil regarding the Bayh-Dole Act in the United States of America, the Representative stated that the ITSSD had undertaken significant research of the Brazilian technology transfer system and, in his view, that system was the one mirroring the Bayh-Dole Act, except for one main feature which was that the Brazilian Government retained an economic interest in all of the patents, both initial and derivative, which flowed from the federally funded research. In his opinion, that system could be used 'as is' or with adjustments by Brazil as a teaching mechanism for the LDCs, as well as India could use its own emerging mechanism for the same matter for the benefit of LDCs to show how federally funded money could flow properly.

12. The Representative of TWN, stressing that the transfer of technology was critical for the industrial development in developing countries, noted that before the establishment of the global IP regime, free movement of technology allowed the development of industries, particularly in developed countries. He observed that the technology transfer depended on various factors including infrastructure, education etc. However, in his view, intellectual property, especially patent law, was an important barrier to technology transfer. As far as other constraints were concerned, the Member States had a policy space to address them. The Representative stated that there was a very limited

space available to developing countries to negotiate the barriers created by patents. Hence, it was important that the SCP focused on patents and technology transfer. Referring to the preliminary study on transfer of technology contained in document SCP/14/4, the Representative stated that it did not address the role of patents in transfer of technology, the potential and actual threats of patents, nor it provided the analyses of the implications of the TRIPS Agreement on transfer of technology, in particular, the TRIPS flexibilities in facilitating the transfer of technology as well as analysis of constraints faced by developing countries in negotiating voluntary licenses. In his view, the preliminary study also failed to report on the global scene of transfer of technology in a manner that would inform the SCP discussions. Noting that the review of the current state of play required a thorough examination of the historical background, together with a comprehensive analysis of the international legal framework on transfer of technology, the Representative observed that some of the critical UN reports on the issue had been ignored. In that regard, the Representative referred to a report which dated back to 1975 on the role of the patent system in transfer of technology to developing countries, prepared by the United Nations Department of Economic and Social Affairs, UNCTAD, and the International Bureau of WIPO, as well as a Compendium of International Agreements on Technology Transfer published by UNCTAD where it had listed technology transfer provisions in 28 multilateral agreements. The Representative further stated that it was high time to carry out a comprehensive assessment of the situation in order to develop a holistic understanding of the issue and chart the way forward. In that connection, the Representative stated that an independent panel or a commission of experts could be established to examine the issue of technology transfer and patents. In his view, such a commission would be able to fill in the information gap which existed on the issue, particularly, in areas that concerned developing countries, such as pharmaceutical, energy, agriculture and food processing technologies. Unlike one-off researches undertaken by external experts, a commission-led process would ensure comprehensive coverage of the issue that would pave the way forward in a transparent and inclusive manner. It could invite and accept submissions from all relevant stakeholders in all sectors, commission background papers in order to come up with comprehensive analysis and recommendations. In his view, establishing such a commission would be the best way to address the importance and urgency of discussing transfer of technology by the SCP, and a sign of WIPO's commitment to its obligation to facilitate transfer of technology under Article 1 of the Agreement between the WIPO and the UN. Referring to examples of commissions which had had influential results across the globe, such as the Commission on Intellectual Property Rights (CIPR) established by the UK Government in 2001, and the WHO Commission on Intellectual Property, Innovation and Public Health in 2003, the Representative wished to see that example followed in WIPO.

## **II. 14<sup>th</sup> session of the SCP, January 25-29, 2010 [Excerpts from the Report (document SCP/14/10)]**

13. Discussions were based on document SCP/14/4.

14. The Delegation of Spain, speaking on behalf of the European Union and its 27 Member States noted with satisfaction the systematic approach and objectivity shown in document SCP/14/4. The Delegation acknowledged that development and diffusion of new technologies were of fundamental importance to face global challenges such as climate change, health and food security. The Delegation also stated that facilitating technology transfer was an essential element if the Millennium Development Goals were to be achieved. The Delegation noted that the preliminary study also highlighted that the capacity to absorb and apply the technology on the part of the recipient was fundamental to the successful completion of the transfer of technology. The Delegation further observed that the preliminary study noted that both the connection between intellectual property rights and technology transfer, as well as the impact of such technology on innovation and development, were complex issues that might adopt different parameters in each country. Some countries would be better placed than others to absorb and further develop the technologies received, while other countries would require substantive investment and capacity building before reaching that point. The European Union and its 27 Member States agreed that it was not possible to draft a single policy or

law which would maximize technology transfer and its positive impact on every country. The Delegation further noted that the study included several examples that illustrated possible mechanisms and strategies to facilitate technology transfer responding to issues of common concern, such as the unclear definition of the property rights; the asymmetry of information between the patent holder and the potential licensee and the role that an intellectual property expert might exercise in such case; the need to reduce the transaction costs; or the need to prevent abuses by right holders. The Delegation was of the view that a suitable choice of the mechanisms would enable each country to establish the policy and legislation that better fit their particular needs within the framework of the current international commitments. The European Union and its 27 Member States expressed their willingness to contribute to the development of policies designed to facilitate an effective technology transfer, and to that end, reiterated their commitment to work towards the creation of new models to promote innovation based on the close collaboration between the private and public sector. They welcomed and encouraged voluntary initiatives to facilitate the flow of technological knowledge on a global scale, and committed to participate actively and constructively in the debate in order to contribute to the fulfillment of the Committee's objectives.

15. The Delegation of Angola, speaking on behalf of the African Group, expressed the view that it was of great importance to study document SCP/14/4 on transfer of technology, which described and examined the details of the patent system, specifically the aspects of how the patent system could face hindrances in development policies. The Delegation suggested that the preliminary study be updated and include information on how developing countries could overcome those impediments in order to facilitate transfer of patented technology. The African Group also believed that capacity building was needed in order to benefit further from transfer of technology. Moreover, the Delegation hoped to see a study on transfer of technology in least-developed countries (LDCs) in Africa, based on the implementation of Article 66.2 of the TRIPS Agreement, which required countries to provide incentives to their enterprises for the purpose of promoting transfer of technologies to LDC Members of the WTO in that Agreement. The Delegation considered that transfer of technology could take place through joint ventures, investments, personnel reinforcement and collaboration with academia in order to train personnel and to digitalize patent data. The Delegation suggested that the preliminary study be revised in a manner that a link be established between transfer of technology, development and intellectual property, and that the role of the patent system in transfer of technology be defined. The Delegation also stated that multilateral and bilateral agreements on transfer of technology should be examined. The African Group recommended that the preliminary study be discussed in the following session of the SCP in order to examine how the patent system could affect and support transfer of technology. The Delegation hoped that the Secretariat would be able to present a revised study at the following session.

16. The Delegation of the Islamic Republic of Iran requested the Secretariat to further develop the preliminary study and provide concrete and action-oriented solutions for overcoming challenges which impeded transfer of technology to developing countries. The Delegation also requested the Secretariat to further focus on the role of patents in technology transfer for developing countries and to particularly analyze the adverse implication of patents on transfer of technology, including the implications of the TRIPS Agreement. The Delegation pointed out that the preliminary study lacked providing any actual statistics on current technology transfer to developing countries. Finally, the Delegation observed that, in order to have a balanced work program in the Committee, the issue of transfer of technology should be incorporated in the work program of the SCP, since there was a direct link between patents and transfer of technology to developing countries. The Delegation, therefore, considered that the Committee could identify a plan of action to address the major challenges to transfer of technology in relation to patent law and to propose concrete solution from an international law perspective.

17. The Delegation of Sri Lanka aligned its statement with the statement made by the Delegation of Yemen on behalf of the Asian Group, and stated that the preliminary study set the scene at the SCP to initiate meaningful discussions on the subject. The Delegation noted that, according to the preliminary study, the effects of globalization had helped to enhance the technological capabilities in developing

countries but that the reality proved otherwise. The Delegation noted that most foreign industrial enterprises in its country did not transfer technology or know-how for the purpose of local development. The Delegation identified two main reasons, namely, that all the skilled workers and the equipment were imported from the country of origin and that most of the highly skilled staff and the senior management were not from the invested country. Therefore, globalization had not fully contributed to the industrial development in developing countries. The Delegation considered that the elements mentioned in paragraph 34 of document SCP/14/4 needed to be further explored to find reasons why the normative development in UNCTAD and the revisions of the Paris Convention in WIPO had not delivered the expected results. The Delegation stated that better policy coherence could be built with respect to foreign direct investment *vis-à-vis* the poverty alleviation and technological advancement in developing countries through transfer of technology. The Delegation was of the view that, instead of alluding to the fact that transfer of technology might not be possible because of the lack of absorbing capacity in developing countries, the right approach would be to analyze why developing countries could not ascertain absorbing capacity despite many forms of development assistance through multilateral, plurilateral and bilateral agreements. The Delegation considered that such information could lead to identifying the implications of patents on transfer of technology. In the area of other conventions relating to transfer of technology, the Delegation stated that the preliminary study should not be limited to environmental agreements. The Delegation appreciated the fact that the preliminary study reflected the WIPO Development Agenda and its projects concerning transfer of technology. The Delegation noted that such a holistic approach towards development concerns in developing countries was a positive step taken by WIPO. With respect to paragraph 33, which indicated the royalty income collected from the OECD countries by developing countries in the year 2001, the Delegation considered that it would only be fair if the preliminary study indicated the royalty income collected by the OECD countries from the developing world, as the problem laid in the disparity. The Delegation noted that stating the facts would facilitate the countries to have a logical and meaningful debate on the subject under consideration.

18. The Delegation of Burundi associated itself with the statement made by the Delegation of Angola on behalf of the African Group, and stated that transfer of technology should take into account the peculiarities of developing countries regarding their absorptive capacity of technologies. Recalling the Development Agenda and the Ministerial Declaration in July 2009, the Delegation stated that transfer of technology had become an important element with respect to the cooperation between WIPO and the developing world, in particular, LDCs, and that transfer of technology should be user-friendly and development-oriented.

19. The Delegation of Indonesia, in general, welcomed the document, especially the parts on the challenges faced by countries, in particular, developing countries. In relation to paragraph 19, concerning the investment in knowledge creation as a priority under national economies, technological and development policy and strategy in many countries, the Delegation requested further elaboration on that issue in order to obtain a comprehensive picture in the historical context. The Delegation considered that a joint report by the United Nations, UNCTAD and WIPO on patents and transfer of technology published in 1964 could also be mentioned as one of the references in the preliminary study. As regards paragraph 22, which stated that “if the exploitation of the patented invention infringes another valid patent that claims a broader scope of technology covering the said invention, the consent by the owner of such broader patent is required in order to exploit the off-patent invention”, the Delegation sought further clarification as to the invention or innovation that fell into the category of public domain. Concerning paragraph 28, the Delegation requested further clarification on the linkage between FDI and technology spill-over, because technological dissemination by developed countries through FDI was mandated by the TRIPS Agreement. Regarding Chapter IV on policy challenges, paragraphs 39 to 47, the Delegation was of the view that it was a good reference especially for developing countries. On paragraph 40, the Delegation requested further elaboration regarding the difficulty of quantifying the flows of technology transfer, since it had been said by many that transfer of technology was always linked to IPRs and global investment. The Delegation considered that it was a necessity to get a broader picture based on the comprehensive data on trade in technology and the investment on global research and development. The Delegation, therefore,

suggested that WIPO prepare a collaborative study in cooperation with other related organizations such as WHO, UNIDO and UNCTAD. In relation to paragraphs 67 to 72 concerning the challenges faced by developing countries, the Delegation was of the view that technology transfer had two sides: one was that developing countries should improve their absorptive capacity, but the other related to developed countries and how they could facilitate the transfer of their technologies to developing countries.

20. The Delegation of Brazil noted that paragraph 110 of document SCP/14/4, which related to the concerning pros and cons of the *ex-ante* control of technology contracts as opposed to *ex post* control, suggested that there might be advantages in the *ex-post* control or the control after the contract had been signed and come into effect. The Delegation stated that its experience on that issue was different. It explained that its law required the national patent authority to review all intellectual property contracts before they entered into force in order to protect the local recipient of technology against possible abuse of provisions and clauses in the contract, and stated that it did not seem to indicate any problem in the inflow of technology to Brazil. The Delegation, therefore, expressed the view that, at least according to its national experience, such *ex-ante* control was quite successful. The Delegation recalled that, in relation to transfer of technology and technical training, it had been trying, together with several developing countries, to implement Articles 66 and 67 of the TRIPS Agreement and the recommendations of Cluster A of the Development Agenda.

21. The Delegation of the Bolivarian Republic of Venezuela supported the statement of the Delegation of the Islamic Republic of Iran, requesting the Secretariat to focus on the question of how patents affected transfer of technology and recommending the inclusion of the issue in the future work program of the SCP. The Delegation considered that the issue of transfer of technology needed to be related to the TRIPS Agreement and public health. In that regard, it noted that only 28 Members had signed a Protocol amending the TRIPS Agreement, and therefore it requested the Chair to informally undertake consultations to find out why the compulsory license system available under the TRIPS Agreement had been used only by Rwanda and Canada and why transfer of technology to developing countries did not proceed as had been originally planned.

22. The Delegation of Egypt stated that the issue of technology transfer was an issue of a high level of importance. The Delegation expressed its satisfaction with the inclusion of the issue in the agenda of the SCP and delivering a preliminary study on the topic, as the issue had not been discussed at WIPO over the previous years. The Delegation was of the view that, historically, WIPO had done a limited amount of work on the issue, despite the fact that international instruments, particularly the WIPO-UN Agreement, referred specifically to technology transfer. Article 1 of that Agreement stated that the United Nations recognized the World Intellectual Property Organization as a specialized agency, and listed WIPO's responsibilities, one of which was to facilitate the transfer of technology related to industrial property to developing countries in order to accelerate economic, social and cultural development. The Delegation, therefore, considered that WIPO had an institutional role to play on the issue. The Delegation noted that, on the other hand, with regard to the subject matter of intellectual property, Article 7 of the TRIPS Agreement pertained directly to the windfall that should arise from the protection and enforcement of intellectual property, namely, diffusion, transfer and dissemination of technology. In that light, the Delegation appreciated the preliminary study which carried forward a degree of objectivity and set new grounds in terms of WIPO publications. Referring to paragraph 60 of document SCP/14/4 acknowledging that there was no conclusive evidence or limited conclusive evidence with regard to the impact of the patent system on flows of FDI, the Delegation welcomed such observation, as it reflected the objective academic assessments that had been undertaken in that area. The Delegation, however, pointed out some drawbacks to the preliminary study, and suggested a revised version or an Annex to the document for the consideration of the Committee. As regards the lack of definition of the term "transfer of technology" in the document, the Delegation believed that the revision of the preliminary study could be guided by the draft Code of Conduct on the transfer of technology (1985), which had done considerable work with regard to defining that concept. As regards Section 3 of the document, the Delegation was of the opinion that it failed to take into account the historical background. In its view, the preliminary study



had not made legitimate reference to the work undertaken by the United Nations since the publication of the UNCTAD report on technology transfer in 1964. As regards Section 5, the Delegation was of the view that the document did not fully describe the criticism of the patent system with regard to barriers that particular levels of patentability or of protection might represent for technology transfer. While those were contributions that were acknowledged, the Delegation considered that paragraph 56 could be further elaborated with respect to some of the negative impacts on the patent system. Concerning Section 6, the Delegation stressed the importance of the international regulatory framework, and noted that the international regulatory framework should be a key concern. As there had been considerable discussions on the impact of free-trade agreements, economic partnership agreements and plurilateral agreements on appropriate transfer of technology, the Delegation pointed out that these should be reflected in the preliminary study. Further, the Delegation noted that, although the issue of climate change was very important, there was too much focus on that issue. The Delegation hoped that the treatment of technology transfer in WIPO should be more systematic, aiming at broader discussions on what was sometimes referred to as the classical issues of technology transfer, i.e., the classical industries that would have a direct impact on economic development in large parts of the membership. Noting the considerable work done by UNCTAD on international arrangements of technology transfer, the Delegation felt that there should be more collaboration between the two organizations. As regards public-private partnerships in Section 8, the Delegation was of the opinion that the issues of concern in the setting of a multilateral organization were primarily geared to trans-boundary transfer of technology. It noted that, although public-private partnerships could entail a foreign element, the Bayh-Dole Act, for example, essentially geared towards mobilizing national resources in order to promote innovation and transfer of technology, but had less impact on the possibility of developing private-public partnerships in a trans-boundary context. The Delegation further noted that, while it could be interesting to look into the successful models of highly advanced market economies, simulating such a model would be problematic in view of different levels of development. The Delegation recalled that, according to some US officials, implanting the Bayh-Dole Act in a foreign country might cause more problems than benefits. Concerning Section 10, the Delegation requested further expansion of that Section and moving that part to the beginning of the document. The Delegation observed that requests by developing countries in the UN system over the past four decades had been geared towards a transfer of technology that should contribute to development. While the Delegation was pleased with the reference to the Development Agenda, it noted that no analysis on how those recommendations pertained to the issues raised in the document was made. The Delegation was of the opinion that there would be further discussions on that particular issue with regard to future work. The Delegation recommended more collaboration with other UN Agencies, for example, by organizing a briefing session with leading UN Agencies on the issue of technology transfer. It further suggested that setting up an independent commission to consider the issue of technology transfer would be a good way forward, given that the issue of technology transfer was a cross-sectoral issue in WIPO, such as in the SCP and the CDIP. In its view, it would undoubtedly arise in other committees and bodies of WIPO. Finally, the Delegation noted that, following the discussion at the fourth session of the CDIP, a proposal concerning a project to implement the recommendations on technology transfer had been submitted by a like-minded group of developing countries earlier in January 2010. The Delegation believed that such a proposal would contribute to streamlining a broad task that concerned more than one committee. The Delegation stressed the important role the SCP and other committees, most importantly the CDIP, could play on the issue of technology transfer.

23. The Delegation of Guinea associated itself with the statement made by the Delegation of Angola on behalf of the African Group. The Delegation was of the view that the preliminary study should focus more on FDI and the role of intellectual property in that process, since transfer of technology could contribute to capacity building, both in infrastructure and human resources, through mergers and acquisition. The Delegation encouraged developed countries to review their activities concerning transfer of technology in developing countries, as it would allow a better understanding of the impact of the patent system at the multilateral and bilateral levels and its effect on different economies.

24. The Delegation of Guatemala stated that, despite the efforts that had been made in the preliminary study, there was still a gap between theory and practice on the subject of transfer of technology. The Delegation noted its difficulties in implementing public policies and involving private enterprises in its country to facilitate transfer of technology with a view to stimulate local innovation and development of marketable products. The Delegation, therefore, believed that such issues should be discussed by the Committee or by an independent committee as suggested by the Delegation of Egypt. It further considered that the preliminary study could be enriched by documents from other organizations and by adopting practical guidelines. The Delegation noted that, in analyzing the capacity of small developing countries in making use of R&D cooperation agreements or licensing agreements, Guatemala could be a useful example.

25. The Delegation of India stated that a sufficient disclosure of patented inventions played an important role in the processes of dissemination and transfer of technology. However, in its view, the right holders often did not disclose the required information in a clear and succinct manner, which directly affected not only the quality of patents, but also the dissemination and transfer of technology. Further, it considered that patent trolls and patent thickets, which had been a strategy steadily used by right holders, also affected a seamless transfer of technology. Therefore, the Delegation suggested that the document further examine how the patent system could better contribute to a seamless transfer of technology in order to narrow that gap. The Delegation further recommended that a special study be undertaken as to how the patent system might be dealt with in a positive way to allow transfer of technology, in particular, in the areas of climate change, food security and other complex topics. As other delegations had pointed out, the Delegation noted that the issue of transfer of technology, which was a cross-cutting issue in WIPO, was at the center of the Development Agenda. The Delegation supported the creation of an independent commission that would examine the issue of transfer of technology in greater detail and suggest implementable recommendations.

26. The Delegation of Chile stated that transfer of technology was a critical issue, since it was a source of innovation that allowed a third party to make use of the existing technology and to further develop new solutions as the result of the knowledge gained through the transfer of technology. From that standpoint, the Delegation appreciated the document that set out the various dimensions relating to transfer of technology. The Delegation recalled that the incorporation of the issue of technology transfer into the agenda was consistent with the first strategic objective of WIPO and with Recommendation No. 8 and Cluster C of the Development Agenda. As the issue was a matter of great relevance to all Member States, the Delegation stated that the preliminary study should remain open for comments.

27. The Delegation of Pakistan noted that the preliminary study could provide an effective basis for future deliberations of the issue in the Committee. The Delegation believed that the crux of the issue at hand had been handled under paragraph 56 of document SCP/14/4, where it was said that even if patent protection was not an obstacle to the transfer of technology, that did not necessarily mean that the current patent system fully contributed to the promotion of transfer of technology. In its view, those two assumptions could be the starting point for future discussions, and the Delegation suggested further elaboration by the Secretariat. Further, the Delegation was of the opinion that the preliminary study did not discuss the key questions of whether the patent system was functioning effectively and efficiently, and whether the patent system could improve transfer of technology. According to the Delegation, provision of any answers or suggestions on how the patent system could better contribute to technology transfer and narrow the technological capacity gap would add value to the preliminary study. The Delegation further noted that the preliminary study should have acknowledged and analyzed the constraints by developing countries to use the tools for technology transfer, including voluntary and commercial licenses, and referred to paragraphs 14, 18 and 30 of the document. Finally, the Delegation suggested that: (i) a revised version of the preliminary study should identify constraints and adverse implications of patents on transfer of technology within WIPO's framework; (ii) in the light of an enhanced understanding of the adverse implications of patents on transfer of technology, developing countries could identify a plan of action to address the major challenges, which included policy changes, technical assistance, information exchange, norm-setting, etc., covering

domestic and international actions; (iii) in order to develop a thorough understanding of the issue, the following session of the SCP could invite various UN agencies, such as UNCTAD, WHO and UNIDO, to make presentations on the past and present work on technology transfer; and (iv) an independent panel of experts could be established to deal with the question of technology transfer and patents.

28. The Delegation of Bulgaria disagreed with many who believed that the patent system was an obstacle to transfer of technology. The Delegation noted that while it might be an obstacle, patents played, in fact, a minor role in transfer of technology. It stated that a licensing agreement involving goodwill and a wish from the side of both transferor and transferee was always a success. The Delegation considered that WIPO could devise ways in facilitating transfer of technology and removing obstacles by providing relevant information to consenting parties who wished to transfer technology. As examples, the Delegation noted the IBM database, which indicated technologies that were ready for licensing, and the German Patent Law that provided for special reduction of fees for companies who filed patent applications and indicated that they were ready to license their technology. On the other hand, the Delegation did not believe that WIPO could, by shaping the patent system, overcome the issue of the goodwill of the parties involved in the process of transfer of technology. The Delegation considered that one important element which was missing in the document was statistics. While, for many years, statistics on transfer of technology had been discussed, the Delegation observed that there were very few countries that had provided official statistics in the past, for example, some reports in the United States of America, the regular publication of National Center for Intellectual Property in France and statistics on technology transfer and on intangible transfer published every two years in Germany. In its view, that was a matter which should be regulated at the national level and WIPO could provide advice on statistics comprising intellectual property rights and how to oblige companies to report on transfer of technology. The Delegation was of the opinion that such statistics would show where the obstacles were, and would allow developing countries to analyze their own situation. The Delegation further noted that, often, the statistical data on transfer of technology included royalties for copyright, and stressed the need to separate such information from patents. As regards one of the recommendations of the Code of Conduct that developing countries should establish a licensing regime for transfer of technology and each technology transaction should be recorded at the national level, although the Delegation felt positive about the abandonment of such a recommendation in general, it however considered that information for statistical purposes should be integrated into the national system to provide reliable data for further analysis. On the question as to whether a country, not a private enterprise, could be an obstacle to transfer of technology, the Delegation noted that, despite some examples in the past, such as the Coordinating Committee for Multilateral Export Controls (CoCom), no such obstacle existed in the free-trade world. The Delegation concluded that WIPO could be a facilitator by providing tools and means to evaluate the flow of technology, to identify obstacles, and to eventually find remedies to those obstacles.

29. The Delegation of Senegal associated itself with the statement made by the Delegation of Angola on behalf of the African Group. With regard to the definition of the term "transfer of technology", the Delegation suggested that the document properly define that term, as that would be the basis for defining the scope of the issue. The Delegation sought clarification as to whether, with due respect to the flexibilities in the international patent law, there was a possibility of having rules of procedure which would facilitate transfer of technology, make it more efficient and effective and render it more responsive to key developing needs. Further, the Delegation suggested that the Committee consider cases of transfer of technology which had led to the resolution of a public policy issue, thus illustrating experiences from the past. The Delegation concluded by stressing the importance of having an overview of the problem and its background in order to have a clear idea about future actions in reaching the goals with respect to transfer of technology.

30. The Delegation of the Bolivarian Republic of Venezuela stated that the question of patents should not be considered in terms of business. The Delegation was of the view that traditional knowledge, energy and other facets also needed to be considered and, therefore, the best way to regulate transfer of technology should be examined. In addition, it noted that questions to be analyzed

were how transfer of technology could be made effective and how it could be brought in line with ethics and morality.

31. The Delegation of Germany supported the statement made by the Delegation of Bulgaria. It agreed with the analysis provided in paragraphs 53, 56 and 57 of the preliminary study that the IP system *per se* was not to be considered a barrier to technology transfer. The Delegation also supported the idea of collecting more factual evidence on possible barriers to technology transfer which might well lie outside IP. It considered that WIPO should play a leading role in exploring how to facilitate technology transfer.

32. The Delegation of El Salvador, supporting the Delegation of Guatemala, stated that the Committee should develop modalities for transfer of technology. Noting the importance of the issue for developing countries, it also supported some further ideas suggested by the Delegations of Egypt and Indonesia.

33. The Delegation of Algeria aligned itself with the statement made by the Delegation of Angola on behalf of the African Group. The Delegation was of the view that the preliminary study did not sufficiently focus on how the patent system could facilitate transfer of technology. Moreover, looking at the flexibilities allowed under international law, it considered that the preliminary study did not address the hindrances which countries were facing in order to use those flexibilities. The Delegation was of the opinion that the current work in WIPO, specifically the proposal concerning the project on transfer of technology presented by like-minded countries, should be taken into account. It also suggested that a revised version of the preliminary study reflect experiences in transfer of technology in developing countries.

34. The Delegation of Switzerland stressed the importance of focusing on transfer of technology and its links with patents in the Committee. In that connection, the Delegation supported the position stated, and the proposals made, by the Delegation of Bulgaria as a way to move forward on the subject of transfer of technology.

35. The Representative of GRUR stated that the preliminary study was comprehensive and touched upon all important factors which were relevant for the political, economic, social and legal questions arising in the context of transfer of technology policy on a national and international scale, and had no doubt that the role of patent protection was clearly defined in that regard. He further noted that the document was up-to-date and comprehensive in respect of the most recent developments concerning topics ranking high on the agenda of world leaders, namely, the Copenhagen Conference on climate change. The Representative raised the question of why the question of IPRs related to green house technology on the transfer of technology had disappeared from the agenda of that Conference and suggested that WIPO study those developments. Referring to the strong engagement of the Director General demonstrated in his opening report at the previous session of the WIPO Assemblies, the Representative was of the view that that field of technology was particularly fit for a detailed scrutiny and further study, contrary to what had been said by the Delegation of Egypt. The Representative, however, pointed out that the important role of the PCT was missing from the document. According to the preamble of the PCT, as it had been referred to in previous meetings of the Working Group under the PCT, there was a clear reference on the obligation under the PCT legal framework to direct the PCT towards making the legal systems of developing countries more efficient, by providing easily accessible information on the availability of technological solutions applicable to their special needs and by facilitating access to the ever expanding volume of modern technology. In the Representative's view, this was a transfer of technology aspect that was clearly provided in the preamble of the PCT, and he suggested that a chapter on the role of the PCT and its contribution to the international transfer of technology be added, or a special study on that matter be mandated.

36. The Representative of ALIFAR noted that while the document analyzed the relationship between patents and transfer of technology, in reality, the feedback did not always take place in that manner. Referring to paragraph 52 of the document, the Representative agreed that a patent system

could make positive contributions to the efficient transfer of technology only where the system functioned in a way for which it was intended. She stated that the document showed that the exclusive right could be used to promote the exchange of knowledge and collaboration between researchers, and that the patent system aimed to improve the efficiency of the flow of knowledge and facilitate the transfer of technology. In addition, it was stated in the document that the disclosure of inventions also played an important role in the effectiveness of the transfer of technology. However, the Representative further noted that that vision could appear theoretical, at least in some technological areas. She explained that, in general, in the pharmaceutical industry once a patent had been obtained, patent rights were used for exclusivity in the market and that innovative companies were rarely willing to exchange knowledge. The Representative noted that the future of some recent initiatives that promoted patent pools could highlight the ways for exchanging the knowledge and transferring of technology. In her view, quite often, patents were not disclosed in a clear and complete manner, and not all offices sufficiently respected the requirement for clear and sufficient disclosure of inventions so that a person skilled in the art could carry out those inventions. While proper disclosure partly balanced out exclusive patent rights, she noted that such disclosure did not always occur. Referring to paragraph 48 of the document, the Representative clarified that in the pharmaceutical industry, if a product were to be manufactured or sold without the patent holder's consent, but developed and approved in accordance with international standards, it could be considered a case of patent infringement but not of counterfeit medicines. She further stated that counterfeiting medicines was a crime against public health which was not in any way linked to an infringement of intellectual property rights. She felt that the confusion between the two led national systems in some countries, including some countries in Latin America, to prevent the importation of certain materials required for the manufacture of legitimate drugs. The Representative also shared the view expressed in the document regarding the issue that even when patent protection was not an obstacle to the transfer of technology, it did not mean that the current patent system contributed fully to its promotion. The Representative stressed the importance of finding the best way for the patent system to effectively promote transfer of technology and reduce asymmetries in the technological capacities of various countries. She was of the view that the Committee's discussions should be further developed in that regard.

37. The Representative of TWN stated that technology transfer in the context of patents was particularly relevant to the conduct of industrial development of developing countries, and patents had received renewed attention in the context of public health, climate change and food security. Along the history of international deliberations on patents and transfer of technology during the last 50 years, the Representative referred to a report entitled "The Role of the Patent System in the Transfer of Technology to Developing Countries" prepared jointly by WIPO, the United Nations Department of Economic and Social Affairs (UNDESA) and UNCTAD in 1975. The Representative explained that that publication had established some of the basic legal principles on international technology transfer, which essentially had been captured in many multilateral conventions or treaties, and quoted Article 144, paragraph 2 of the Law of the Sea Convention, which casted an obligation on the authority established under the Convention to carry out programs for the transfer of technology to enterprises in developing countries with regard to activities in the area, including *inter alia* facilitating enterprises of developing countries to access the relevant technologies under fair and reasonable terms and conditions. The Representative further noted that the UNCTAD Compendium of International Arrangements on Technology Transfer listed technology transfer provisions in 28 multilateral agreements, including the TRIPS Agreement. The Representative, however, considered that there was little movement to translate such legal obligations into practice. One of the recent studies published by the ICTSD showed that, out of 292 programs reported by developed countries under the obligation under Article 66.2 of the TRIPS Agreement, only 54 programs, that was roughly around 22% of the programs, met the targeting LDCs and WTO member with the program or policy that encouraged technology transfer. The Representative was of the view that the only change since 1975 was the more relentless expansion of the scope of patent protection and carving up of the safeguard, including tools for technology transfer, through the TRIPS Agreement, bilateral and plurilateral treaties and other agreements. He believed that the TRIPS Agreement had taken away one of the most important tools of technology transfer by recognizing the right to import as the exclusive right of the

patent holder, and that developing countries were left with only limited options for venturing technology transfer which included compulsory licensing on local working. The Representative expressed the opinion that the preliminary study fell short of giving a clear picture on the current state of play with regard to technology transfer. He suggested a revision of the preliminary study by including the following: (i) a summary of the history of international deliberations with regard to technology transfer, especially the major findings of the WIPO co-authored report on technology transfer; (ii) inclusion of a robust analysis of technology transfer and its implications for development, precisely at the beginning of the study rather than as a last chapter, providing all the relevant statistics to develop a correct understanding regarding international technology transfer; (iii) analysis of the adverse impact of patents on transfer of technology; (iv) an overview of the licensing provisions which might adversely affect the further transfer of technology or diffusion of technology in developing countries; and (v) an analysis of the international legal obligations on transfer of technology.

38. The Delegation of Thailand stressed the importance of technology transfer in relation to the industrial development of countries. The Delegation, supporting the statement made by the Delegation of Bulgaria, requested the Secretariat to elaborate statistics on the trend of technology transfer in order to grasp the real impact of patents on technology trade.

39. The Delegation of the Dominican Republic stressed the importance of transfer of technology, as it was a tool which supported advancing technological knowledge, and endorsed the promotion of transfer of knowledge and technology in order to meet development goals.

40. The Representative of FSF-Europe agreed with the statement made by the Delegation of Spain on behalf of the European Union and its 27 Member States that efforts to transfer technology must be complemented by the capacity of the recipient to absorb that technology. He also concurred with the European Union and its 27 Member States that businesses and individuals would have a central role to play in increasing the flow of knowledge around the world. He believed that businesses and individuals which formed the global free software development community provided an example which should be studied in more depth. As for topics which were not addressed in the present preliminary study in detail, he considered that the two ways to obtain new technology described in paragraph 19 of the document should be complemented by a third possibility, i.e., to develop a new technology in cooperation with others, which had the advantage that soon all participants in the process would have an equal level of expertise. The Representative agreed with the views of those delegations which considered the patent system as only one tool among others available to encourage technology transfer. He explained that, in the field of free software, also known as open source, recent studies demonstrated that the process of developing and adapting software helped users to make technology truly their own. They became creators of knowledge rather than merely passive consumers of proprietary technologies. He expressed the view that, as many free software projects were developed in open and collaborative processes, that increased the absorptive capacity as discussed in paragraph 42 of the document. He emphasized that, as described in the FLOSS impact report prepared by the United Nations University MERIT Institute in 2007 on behalf of the European Commission, free software works were a free of charge, high quality training environment, and that developers benefited from a type of informal apprenticeship, which was in effect a form of technology transfer between those who paid for formal training and those who did or could not. In his view, knowledge flew from big companies to small ones and from rich countries to poorer ones, and as the necessary skills spread, business activity increased. He considered that the earning capacity of participating developers grew demonstrably even without an explicit investment in formal training and referred to paragraph 22 of the document that gave brief consideration to technologies not covered by patents. Since the Representative believed that those points highlighted the importance and the potential of innovative approaches to put patents and copyright into the service of social and economic development, he encouraged the Committee to consider the enabling effect of those approaches in more depth.

41. The Delegation of Malaysia noted that, as stated by the Delegation of India, insufficient and ambiguous disclosure of patented inventions were deterrent to the success of transfer of technology.

Furthermore, the Delegation supported the suggestion made by the Delegation of Algeria that WIPO played a key role in removing obstacles so as to make transfer of technology successful. In that context, the Delegation was of the view that transfer of technology should also include the precise processes and products for the benefits of the transferees. Referring to paragraph 17 of the document, the Delegation was of the opinion that the element of intellectual asset management on the part of the transferee would play an important role in ensuring success of the transfer of technology. Therefore, bearing in mind that technology transfer was ever evolving, the Delegation suggested the inclusion of intellectual asset management in the discussion at the Committee.

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