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**Council for Trade-Related Aspects of
Intellectual Property Rights**

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**IP AND INNOVATION:
THE SOCIETAL VALUE OF IP IN THE NEW ECONOMY - IP AND NEW BUSINESS**

COMMUNICATION FROM AUSTRALIA; THE EUROPEAN UNION; JAPAN; KOREA, REPUBLIC OF;
SWITZERLAND; THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND
MATSU; AND THE UNITED STATES OF AMERICA

The following communication, dated 16 October 2018, is circulated at the request of Australia; the European Union; Japan; Korea, Republic of; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and the United States of America.

1. To what extent does intellectual property (IP) foster new business? When responding to this question, it will be valuable for the TRIPS Council to first consider the topic of *IPR and new business* from an economically wider and more comprehensive perspective than it does currently. Economic literature has used up an enormous amount of paper and ink in analysing the main drivers of attractive conditions, regulatory environments and cross-country cooperation when starting a new business. To give just one such example, the World Bank's Doing Business Report 2018¹ (*World Bank Report*), in its analysis of 190 economies, examines the effectiveness and quality of business regulations, and provides measures for the whole process of starting a new business. In fact, the *World Bank Report* concludes that out of these economies measured in 2016-17, 119 introduced at least one business regulation reform to improve business conditions. These reforms addressed starting a business, accessing finance, and operating in a secure business environment. Furthermore, the *World Bank Report* underlines the importance of the private sector – responsible for an estimated 90% of employment – and its substantial economic, social and developmental impact in low and middle-income countries. The economists Cravo and Piza found evidence in their thorough meta-analysis² that suggests overall business-support interventions (such as governmental training, tax simplification, and innovation policies) in low- and middle-income countries help improve the performance of businesses overall and create jobs. Generally speaking, it can be crucial for governments to implement effective policy and business regulation reforms in both lower and higher income countries to boost the private sector's performance³.

2. In today's world, however, it must be emphasised that the private sector is moving more and more towards having knowledge and technology as its main product and service. This is not only the case in developed countries, however. Data and statistics show that, in recent decades, developing countries and economies in transition have also been moving quickly towards a knowledge-based economy. Several reports, such as the OECD's report, indicate that knowledge is

¹ World Bank (2017), "Doing Business 2018", Available at: <http://www.doingbusiness.org/reports/global-reports/doing-business-2018>, retrieved September 2018.

² Cravo, T. A., and C. Piza (2016), The Impact of Business Support Services for Small and Medium Enterprises on Firm Performance in Low and Middle-Income Countries, Policy Research Working Paper 7664, World Bank Group.

³ Cf. World Bank (2017), "Doing Business 2018", Available at <http://www.doingbusiness.org/reports/global-reports/doing-business-2018>, retrieved September 2018.

the main driver of economic growth and, in fact, intangible assets – or knowledge-based capital – play an important role in the current economy⁴.

3. What is the role of intellectual property in all of this? In the process of creating a new and innovative business, protecting intellectual property is of strategic importance. Take patents, for example: do they help start-ups to grow and succeed in markets? Empirical research presented by the USPTO in 2015 shows that patent approvals help start-ups create jobs, grow their sales, innovate, and reward their investors⁵. As will be further discussed below, the World Intellectual Property Organization (WIPO)⁶ also concludes that all forms of IP ownership may prove essential for technology-based start-ups to secure their innovative assets.

4. It is therefore important to look at policy measures that are successful, and to consider how intellectual property rights (IPR) can support new businesses in coming to life. The following are just three aspects highlighting how IPR can help new businesses drive their success through innovative business cycles.

1. Intellectual property as a catalyst for growth in infant businesses

5. IPR can play a central role from the onset of a young enterprise. Favorable and adequate policy and legal frameworks facilitate new ideas coming to life and turning them into a commercial success. As an incentive mechanism for innovation, the IPR system has proved to be essential in supporting the entry of entrepreneurial companies in markets. For instance, the referenced *WIPO Survey*⁷ notes that technology-based start-ups generally have limited assets and largely depend on their innovative capacity and human capital to start performing in the market. IP rights emerge as a useful tool for *entering* and surviving in the marketplace as well as for obtaining a competitive edge⁸. Similarly, it is notable that patents may not only be the source of a favorable welfare contribution, but may also be helpful with the *creation* of new industries or the *emergence* of specialisation in value chains⁹. Thus, it is worth mentioning that IPRs can act as a catalyst that sets startups on a *growth path*¹⁰, and thus may provide a stimulus and encourage them to enter national and international markets.

2. Overcoming Financing Constraints

6. IP can play a key role in overcoming financing constraints well known to young entrepreneurs. Recent economic literature¹¹ demonstrates that patents function as a mechanism for credibly publicising information for external investors. In fact, this *patent signaling mechanism* motivated a body of economic research examining start-ups' use of patents to signal quality such as R&D success and innovative capabilities, which outside investors would otherwise have difficulty in screening or differentiating. Hence, a start-up's patenting activities can positively shape an investor's estimates of the firm's future value. Bridging this information gap helps start-ups to secure the required financial resources at an early stage of development.

⁴ OECD (2013); Supporting Investment in Knowledge Capital, Growth and Innovation; OECD Publishing; Available at: https://read.oecd-ilibrary.org/industry-and-services/supporting-investment-in-knowledge-capital-growth-and-innovation_9789264193307-en#page1

⁵ Farre-Mensa, J., D. Hegde, and A. Ljungqvist (2015), The Bright Side of Patents. USPTO Working Paper No. 2015-5.

⁶ WIPO (2003), "WIPO Survey of Intellectual Property Services of European Technology Incubators", Available at: http://www.wipo.int/edocs/pubdocs/en/wipo_survey_ip_technologyincubators.pdf, retrieved September 2018.

⁷ Ibid., p. 2, 4, and 10.

⁸ Ibid., p. 2 and 3.

⁹ Hall, B.H. (2007): Patents and innovation. OECD (eds.) Competition, patents (and innovation). Directorate for financial and enterprise affairs, Competition committee. 243-251:

¹⁰ Farre-Mensa, J., D. Hegde, and A. Ljungqvist (2015): The Bright Side of Patents. USPTO Working Paper No. 2015-5.

¹¹ E.g. Hsu, H.D., and R. H. Ziedonis (2006), Patents as quality signals for entrepreneurial ventures. Academy of Management Proceedings, Academy of Management. Conti, A. J. Thursby, and M. C. Thursby (2013): Patents as signals for startup financing. Working Paper 19191, National Bureau of Economic Research.

Hottenrott, H., B. H. Hall, and D. Czarnitzki (2016): Patents as quality signals? The implications for financing constraints of R&D. *Economics of Innovation and New Technology*, 25(3): 197-217.

3. A reliable IP protection framework as part of a secure business environment

7. Another important issue is tackled in the third part of the *World Bank Report: Operating in a secure business environment*. The ICC and WIPO¹² note that in today's world, the abundant supply of goods and services in the markets has made economic activities challenging for any kind of business. The two organisations also mention that in the current knowledge-driven, private sector-oriented economies, a venture's range of intangible assets are frequently more important than its tangible ones. Appropriately protecting those intangible assets may therefore be a fundamental prerequisite for markets being able to function today. To create a secure national and international business environment, therefore, special focus should be put on making IPR available and providing adequate remedies for when they are infringed.

8. Members are invited to share examples of their best practices regarding the above outlined topics at the November 2018 meeting of the WTO TRIPS Council. Guiding questions for the discussion could be:

- a. What country-specific information could Members share on IP and knowledge-based businesses, e.g. the number of new enterprises they have each year, an overview of the start-up landscape in their country or figures relating to their venture capital and venture debt markets, and the particular role IP plays in it?
- b. What IPR-specific regulatory measures, policies and practices do Members consider to be conducive to, or even necessary for, creating new businesses, e.g. how easy is it to create a new business for young entrepreneurs and, in light of that, what is the role of IP in that process? Furthermore, what impact does international cooperation have in promoting a positive new business IP environment?
- c. Do Members have any specific examples of new businesses, their IP-protected innovations and other IP-related assets, or successful governmental IP-related policies that help new businesses integrate into the global economy?

¹² International Chamber of Commerce (ICC), and World Intellectual Property Organization (WIPO) (2012): "Making Intellectual Property work for Business – A Handbook for Chambers of Commerce and Business Associations Setting Up Intellectual Property Services". WIPO, Geneva."