

WORLD TRADE ORGANIZATION

RESTRICTED

IP/C/M/4

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Council for Trade-Related Aspects of Intellectual Property Rights

MINUTES OF MEETING

Held in the Centre William Rappard
on 21 November 1995

Chairman: Mr. S. Harbinson (Hong Kong)

Subjects discussed:

- A. Notification procedures:
 - (1) Notifications under Articles 1.3 and 3.1
 - (2) Notifications under Article 63.2 concerning national laws and regulations
 - (3) Notifications under Article 4(d)
 - (4) Other notification provisions under the TRIPS Agreement
- B. Implementation of Article 70.8
- C. Implementation of Article 65.5
- D. Technical cooperation
- E. Arrangements for cooperation with WIPO
- F. Report to the General Council
- G. Other business

A. Notification procedures

(1) Notifications under Articles 1.3 and 3.1

1. The Chairman informed the Council that, since its meeting in September, two more notifications had been received relating to these Articles, namely from Korea (IP/N/2/KOR/1) and Ireland, of which the latter had not yet been circulated (subsequently distributed as document IP/N/2/IRL/1). In addition, the Council had received from Portugal a correction to its earlier notification (IP/N/2/PRT/1/Corr.1).
2. The Council took note of this information.

- (2) **Notifications under Article 63.2 concerning national laws and regulations**
- (i) **Procedures for giving effect to the obligation to notify implementing legislation under Article 63.2**

3. The Chairman said that he had circulated in documents IP/C/W/6/Rev.1 (basic procedures), IP/C/W/7/Rev.1 (the schedule for 1996/1997) and IP/C/W/8/Rev.1 (the format for the listing of "other laws and regulations") draft decisions which reflected the informal consultations that he had held. With regard to document IP/C/W/9 (the checklist of issues on enforcement), he proposed, on the basis of further consultations held on this matter, the following amendments:

- the insertion in line 2 of the chapeau, after the words "issues below", of the words "as soon as possible after the time that a Member is obliged to start applying the provisions of the TRIPS Agreement on enforcement";
- a new paragraph 2 in the chapeau which would read: "The checklist will be reviewed by the Council, in the light of experience, at the end of 1997, *inter alia* to identify any elements which have proved unduly burdensome in relation to the usefulness of the information provided";
- the substitution of the language in point 13 by that in point 8;
- the substitution of the language in point 17 by that in point 8 together with the phrase "How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?";
- the amendment of the second sentence of point 22 to read "Are they required to do this on their own initiative and/or in response to complaints?"

Turning to document IP/C/W/6/Rev.1, he believed that the proposals that he had made on document IP/C/W/9 had responded to the concerns expressed in relation to paragraph 12. In regard to paragraph 11, he opened the floor for comments.

4. The representative of Egypt said that developing countries still had time to have a second look at the decision in document IP/C/W/6/Rev.1, given the transitional periods applying to them under the Agreement and as the prevailing understanding was that the decision in question would not be set in stone and that the Council would have to consider the entire system of notification procedures again when, in due course, obligations would start applying for developing countries, in the light of experience gained. Therefore, she believed that it would be appropriate to state also in this decision that the procedure in question was open for review. Such a review might also be warranted in the light of an agreement that might be reached on a common register. She proposed to insert a preambular paragraph in the decision with similar language to that proposed for the checklist on enforcement. Her delegation wished to reserve its position on paragraph 11 of the decision with regard to translation of "other laws and regulations". Her delegation fully agreed and concurred with paragraph 10 of Section 3 of the decision, requiring that a listing of these laws and regulations be provided together with a brief description of the relevance of each law and regulation to the provisions of the Agreement, but believed that the onus for any further and additional requests as described in paragraph 11 of the decision should be on the requesting Members. With regard to paragraph 12, she said that her delegation was not going to stand in the way of reaching a consensus on the checklist either, but reserved its right, in accordance with the understanding reached, as an integral part of the decision, to consider that checklist again when, in due course, obligations would start applying for developing countries, not only in the light of the notifications presented by developed countries and the experience gained therefrom

but also on the basis of her delegation's own evaluation and assessment of the importance of such a checklist and its effectiveness, especially in view of the fact that her delegation was going to notify its enforcement law in its entirety. In conclusion, she reiterated that her delegation was not going to stand in the way of a consensus, but wished to stress that it was entitled to renegotiate this checklist, at the appropriate time, so as to adapt it to the needs, requirements and capacity of developing countries to notify while bearing in mind the necessity of lightening the burdens concerned.

5. The representative of India expressed his delegation's support for the Egyptian intervention.

6. The Chairman said that the Council seemed to have reached a consensus with regard to paragraph 12 of document IP/C/W/6/Rev.1 and the checklist of issues on enforcement as contained in document IP/C/W/9 with the amendments which he had read out, while taking note of the views expressed by Egypt and India. As to the Egyptian proposal regarding paragraph 11 of document IP/C/W/6/Rev.1, he suggested that, between the heading and Section 1 of that document, as proposed by Egypt, a general review clause be inserted along the lines of that in the amended document IP/C/W/9. If this was agreeable to the Council, such a chapeau would read: "These procedures will be reviewed by the Council, in the light of experience, at the end of 1997, *inter alia* to identify any elements which have proved unduly burdensome in relation to the usefulness of the information provided." The Chairman asked the delegation of Egypt whether, with such a chapeau, it would be willing to join the consensus on document IP/C/W/6/Rev.1.

7. The representative of Egypt said that her delegation did not stand against a consensus but believed that paragraph 11 necessitated further work, especially for developing countries as regards the translations required by that paragraph.

8. The Chairman suggested that the Council, subject to the changes discussed and agreed, endorse documents IP/C/W/6/Rev.1, IP/C/W/7/Rev.1, IP/C/W/8/Rev.1 and IP/C/W/9.

9. The Council so agreed.¹

(ii) **Notifications of legislation received under Article 63.2**

10. The Chairman informed the Council that, since its meeting in September, the legislation notified under Article 63.2 by Slovenia had been distributed in documents IP/N/1/SVN/1 and Add.1-3. A notification had been received from New Zealand, which was being processed and would be made available to Members as soon as possible.

(3) **Notifications under Article 4(d)**

11. The Chairman said that he had continued his consultations on this matter since the meeting of the Council in September. In the light of these consultations, he drew the attention of Members to the need to make notifications under Article 4(d) by 1 January 1996 if Members wished to have legal cover from that date for any exceptions to m.f.n. treatment that they sought to justify by reference to the provisions of Article 4(d).

(4) **Other notification provisions under the TRIPS Agreement**

12. The Chairman recalled that this sub-item in respect of notification procedures concerned those notification provisions of intellectual property conventions incorporated into the TRIPS Agreement

¹These decisions were subsequently distributed as documents IP/C/2, 3, 4 and 5.

but not explicitly referred to in it. As the Council had agreed at its meeting in September, the Secretariat had prepared a background note (IP/C/W/15), aimed at explaining the nature of the various notification provisions in question. Annex 1 to this document contained a list of those notifications already made pursuant to the relevant provisions of the Berne Convention and the Rome Convention and currently effective, which the Secretariat had compiled with the assistance of WIPO and the United Nations Legal Office. The Annex showed that there were only very few countries that had availed themselves of these provisions under the Berne and Rome Conventions. In fact, there were three countries that had made notifications which were currently effective under the relevant provisions of the Berne Convention: one country under Article 14*bis*(2)(c) of the Berne Convention, one country under Articles 14*bis*(3) and 15(4) of the Berne Convention, and one country under Article I of the Appendix to the Berne Convention. Four countries had notified under Article 17 of the Rome Convention. He also drew attention to paragraph 15 of the document, in which it was pointed out that the Council had already dealt with notification procedures under certain provisions of the Berne and Rome Conventions incorporated into the TRIPS Agreement by reference similar to the provisions discussed in the document, when it had taken the decision concerning notifications under Articles 1.3 and 3.1 of the TRIPS Agreement. If the Council wished to handle questions relating to notifications addressed in the document in the same way, Members wishing to make such notifications under the TRIPS Agreement would be invited to make them to the Council for TRIPS, even if the Member in question had already made a notification under the Berne Convention or the Rome Convention in regard to the same issue. Paragraphs 16 through 21 of the document contained a section which dealt with certain questions relating to the timing of these notifications. Since the Secretariat note had only recently been distributed in English, and French and Spanish texts were not yet available, the Chairman proposed that the Council revert to this matter at its first meeting in 1996.

13. The Council so agreed.

B. Implementation of Article 70.8

14. The Chairman informed the Council that, since its meeting in September, the notification received from Cuba relating to Article 70.8 had been distributed in document IP/N/1/CUB/1. Altogether, the Council had received nine notifications relating to this Article.

15. The representative of the United States, while appreciating the notifications that had already been made, pointed out that almost a full year had passed since the provisions in question had come into effect but that there were still a few countries that had not made the required notification. He looked forward to the moment when all notifications would have been made by those countries that did not provide patent protection for pharmaceutical products or agricultural chemicals.

C. Implementation of Article 65.5

16. The Chairman recalled that, at the Council's meeting in September, he had tabled a proposal on this matter which had been annexed to the minutes of that meeting. That proposal had been an attempt to find as lightweight a procedure as possible consistent with the provision of useful information. Unfortunately, the consultations he had held had not resulted in a consensus on this matter. He proposed that the Council leave the matter as it stood, while noting that it remained open for the Council to revert to it at any time if the Council should so wish.

D. Technical cooperation

17. The Chairman said that informal consultations had been held on the issue of technical cooperation and that a number of interesting ideas had been put forward. He suggested that the Chairman, with the help of the Secretariat, prepare, for the first meeting of the Council in 1996, a short informal

discussion note outlining and structuring the issues which had been raised on the subject of technical cooperation and identifying possible options for carrying forward the Council's work in this area.

18. The representative of Peru, while agreeing with the Chairman's suggestion, expressed his delegation's interest in a note which would cover all aspects of Article 67 of the Agreement and referred, in particular, to the last part of that provision concerning the setting up of domestic offices and agencies competent in the field of intellectual property, including the training of personnel.

19. The Council took note of this statement and agreed to proceed as suggested by the Chairman.

E. Arrangements for cooperation with WIPO

20. The Chairman drew attention to document IP/C/W/17, which contained the draft agreement on cooperation with WIPO that he had drawn up in consultation with the representative of WIPO, Ambassador Loizaga of Paraguay, Chairman of the WIPO Coordination Committee. Both he and Ambassador Loizaga had been assisted by the respective secretariats. The text contained in the document was the result of intensive consultations which had been concluded on 17 November. He underlined the cooperative and helpful spirit in which the consultations had been undertaken. There had been a number of points where the initial positions of the two parties had been different, but both sides had made significant efforts to compromise to close the gap and to find language that would be acceptable. Both sides had taken the view that the agreement should be limited to what was necessary for the purposes of cooperation between the two Organizations. On the WTO side, the fact that WIPO had already gone far in responding to the suggestions of the TRIPS Council when its Governing Bodies had taken a decision on cooperation with the WTO in early October (IP/C/W/14) had been taken into account.

21. Continuing, the Chairman said that each Organization would need to take certain autonomous decisions in response to the agreement. The International Bureau of WIPO had informed him that it would propose to the Assemblies of the Paris and Berne Unions decisions recognizing that requirements under the Paris and Berne Conventions to communicate national laws to the International Bureau could be fulfilled by communication of such laws through the WTO Secretariat. To accompany Article 3 of the draft agreement, concerning the implementation of Article 6^{ter} of the Paris Convention for the purposes of the TRIPS Agreement, he presented to the Council a draft decision of the Council for TRIPS (subsequently distributed as document IP/C/W/18), which would recognize that the communication of emblems and of objections thereto among WTO Members, through the International Bureau, would be considered as communications for the purposes of the TRIPS Agreement; that the existing stock of emblems communicated among WTO Members under the Paris Convention would also be considered communications under the TRIPS Agreement; and that the period of 12 months for objections would start on the date of application of Article 2 of the TRIPS Agreement for the objecting country where either the communicating WTO Member or the objecting WTO Member was not a Member of the Paris Convention. In relation to paragraph 3 of Article 3 of the draft agreement, which concerned the provision of information to the WTO Secretariat about communications of emblems, the International Bureau had informed him that it would propose to the Paris Union Assembly that it abandon its present practice by which it treats as confidential any objection lodged against an emblem.

22. Recognizing that delegations needed time to study the text that had only just been put before them, the Chairman said that it was not his intention to seek endorsement of it at this meeting. The Council would have to meet again before the end of the year for the purpose of endorsing the agreement and also to adopt a decision regarding Article 6^{ter} of the Paris Convention. Since the proposed agreement was one between two organizations, he believed that the text should also be submitted to the General Council, at its meeting of 13-14 December 1995, for its approval, before being signed.

23. The representative of Australia said that, on an initial analysis, Australia already wished to air some difficulties that it had with Article 5(2)(b) of the draft, which called for an amendment of the agreement in the event that there would be a new WTO Member which was neither a Member State of the United Nations nor a Member State of WIPO. These difficulties were both of a general nature, as the provision led to different treatment of a certain category of WTO Members, and of a more specific nature, as the provision would affect a number of countries in the Pacific region, such as Tonga, which was currently in the process of acceding to the WTO and was neither a Member State of the United Nations nor of WIPO.

24. The representative of New Zealand shared the concern raised by Australia, given the possible implications for countries in the South Pacific region.

F. Report to the General Council

25. The Chairman said that the General Council, at its meeting of 15 November 1995, had decided that the sectoral Councils should report in November each year to the General Council on their activities. In order to help to respond to this requirement, the Secretariat had circulated a draft report (IP/C/W/16). He proposed that the Secretariat be requested to update that document in the light of the discussions that had taken place today and recirculate the updated version immediately to Members. Any comments Members might have could be submitted until the end of November to the Secretariat, after which the document would be redrafted, as appropriate, and submitted directly to the General Council, unless comments were controversial in nature. Of course, there would also be an opportunity to comment on the report at the meeting of the General Council of 13-14 December.

26. The Council so agreed.

G. Other business

(i) Next meeting

27. The Council agreed to hold its next meeting on 11 December 1995, to consider the draft agreement between the World Intellectual Property Organization and the World Trade Organization and the draft decision relating to Article 6ter of the Paris Convention.

(ii) Future meetings

28. The Chairman said that procedures had recently been devised which called upon each WTO body to establish a calendar for its 1996 meetings by the end of November this year. He suggested the following dates: 22-23 February, 9-10 May, 22-26 July, 18 September and 4-8 November. At the meetings in July and November the Council would take up the implementing legislation of developed countries. Inevitably, these dates would have to be tentative and subject to modification in the light of events. They also could not exclude the right of countries to seek special meetings in order to consider specific issues.

29. The representative of Egypt expressed her delegation's interest in having a meeting of the Council devoted to the issue of technical cooperation. She suggested that the one-day meeting proposed for September next year be chosen for that purpose, subject to the discussions that would take place on the issue on the basis of the paper to be prepared by the Secretariat for the Council's first meeting next year.

30. The Council took note of this statement and agreed to the schedule of meetings as suggested.