

## ANNUAL REPORT (2020) OF THE COUNCIL FOR TRIPS

### 1 GENERAL

1. Since the period covered by its 2019 report<sup>1</sup>, the Council for TRIPS has held three formal meetings, on 6 February, 30 July and 15-16 October 2020. The minutes of these meetings are to be found in documents IP/C/M/94, IP/C/M/94/Add.1, IP/C/M/95 and IP/C/M/95/Add.1 and IP/C/M/96 and IP/C/M/96/Add.1.<sup>2</sup> An open-ended informal meeting was held on 19 June 2020.

2. The meeting in February was chaired by Ambassador Lundeg Purevsuren (Mongolia). The open-ended informal meeting in June and the formal meeting in July were chaired by Ambassador Xolelwa Mlumbi-Peter (South Africa).

3. The meetings of the Council were open to all WTO Members, other governments with observer status in WTO bodies and certain international intergovernmental organizations granted observer status in the Council. The Cooperation Council of the Arab States of the Gulf (GCC), the African Regional Intellectual Property Organization (ARIPO), the African Intellectual Property Organization (OAPI), the Food and Agriculture Organization (FAO), the International Monetary Fund (IMF), the International Union for the Protection of New Varieties of Plants (UPOV), the Organisation for Economic Co-operation and Development (OECD), the United Nations (UN), the United Nations Conference on Trade and Development (UNCTAD), the World Bank (WB), the World Customs Organization (WCO) and the World Intellectual Property Organization (WIPO) enjoy regular observer status in the TRIPS Council. The World Health Organization (WHO) has *ad hoc* observer status in the Council. At its meeting in March 2002, the Council agreed to a request from the Joint United Nations Programme on HIV/AIDS (UNAIDS) for observer status during the Council's discussions on the TRIPS Agreement and public health at that and future meetings. At its meeting in November 2012, the Council agreed to grant *ad hoc* observer status on a meeting-by-meeting basis to the European Free Trade Association (EFTA). Pursuant to this decision, EFTA was invited to attend each formal meeting on an *ad hoc* basis. Decisions on requests for observer status from 13 other organizations are pending.<sup>3</sup>

### 2 NOTIFICATIONS UNDER THE PROVISIONS OF THE AGREEMENT

4. The Council took note of notifications of new or revised legislative measures made under Article 63.2 of the TRIPS Agreement. At the Council's meetings, the delegations of Australia; Brazil; Canada; China; European Union; Hong Kong, China; Japan; the Republic of Korea; Mexico; Myanmar; Pakistan; Russian Federation; Saudi Arabia, Kingdom of; Slovenia; South Africa; Chinese Taipei; Thailand; Ukraine; United Kingdom and United States provided further background to the notifications they had filed. To date, 138 Members have notified, pursuant to Article 63.2, all or part of their implementing legislation relating to all provisions of the Agreement. 112 Members have provided responses to the Checklist of Issues on Enforcement. During the reporting period, a number of Members updated their earlier notifications of laws and regulations, and several of them provided explanations of the significance of this new and amended legislation. 145 Members have notified contact points pursuant to Article 69, for the purposes of cooperating with each other with a view to eliminating international trade in goods infringing intellectual property rights.

<sup>1</sup> Document IP/C/85.

<sup>2</sup> Documents IP/C/M/95/Add.1, IP/C/M/96 and IP/C/M/96/Add.1 to be circulated.

<sup>3</sup> The organizations in question are listed in document IP/C/W/52/Rev.14. For more information, see also [https://www.wto.org/english/tratop\\_e/trips\\_e/xtrips\\_e/igo\\_observer\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/xtrips_e/igo_observer_e.htm).

### **3 REVIEWS OF NATIONAL LAWS AND REGULATIONS**

5. The Council began preparations for the review of the national implementing legislation of Samoa. The Chair also invited delegations to consider how to make best use of this agenda item, including by reverting to any matter stemming from previous reviews and by proposing further reviews in the future.

### **4 REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B); RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CONVENTION ON BIOLOGICAL DIVERSITY; AND PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE**

6. Following the practice in its past meetings that delegates address these three agenda items together, the Council continued to discuss them together on the basis of contributions by Members, including as regards the patentability of life forms and the introduction of a mandatory disclosure requirement in the TRIPS Agreement. This discussion also covered the earlier suggestion that the Secretariat of the Convention on Biological Diversity (CBD) be invited to brief the Council on the outcome of the tenth meeting of the Conference of the Parties to the CBD held in Nagoya, Japan in October 2010, and on the suggestion that the WTO Secretariat be requested to update the three factual notes<sup>4</sup> that summarized the points delegations had made in the Council's past discussions on these three agenda items.

### **5 NON-VIOLATION AND SITUATION COMPLAINTS**

7. As mandated by the Ministerial Decision taken at the eleventh Ministerial Conference in Buenos Aires<sup>5</sup>, and as decided by the General Council in December 2019<sup>6</sup>, the Council continued to consider the application of non-violation and situation complaints under the TRIPS Agreement at each of its three formal meetings, including by reference to earlier communications.<sup>7</sup>

### **6 REVIEW OF IMPLEMENTATION OF THE TRIPS AGREEMENT UNDER ARTICLE 71**

8. At the Council's meetings in February, July and October, the Chair recalled that the Council was required under Article 71 to review the Agreement, having regard to the experience gained in the implementation, and that it had not discharged this obligation. Delegations were encouraged to consider how to take forward this mandated review.

### **7 REVIEW OF THE APPLICATION OF THE PROVISIONS OF THE SECTION ON GEOGRAPHICAL INDICATIONS UNDER ARTICLE 24.2**

9. At the Council's meetings in February, July and October, the Chair invited delegations that had not yet provided responses to the Checklist of Questions on the application of the TRIPS Agreement in the area of geographical indications<sup>8</sup> to do so, and also called upon delegations that had already provided responses to provide updates to the extent there had been any significant changes to the way they provided protection to geographical indications.

10. In line with the Council's recommendation made in March 2010, Members were also encouraged to share information on bilateral agreements related to the protection of geographical indications into which they had entered.

### **8 REVIEW OF THE SPECIAL COMPULSORY LICENSING SYSTEM**

11. At the Council's meetings in February, July and October, the Chair updated delegations on the status of acceptances of the Protocol Amending the TRIPS Agreement.

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<sup>4</sup> See documents IP/C/W/368/Rev.1, IP/C/W/369/Rev.1 and IP/C/W/370/Rev.1.

<sup>5</sup> See document WT/L/1033.

<sup>6</sup> See document WT/L/1080.

<sup>7</sup> See documents IP/C/W/599, IP/C/W/385/Rev.1, IP/C/W/385/Rev.1/Add.1 - IP/C/W/385/Rev.1/Add.3.

<sup>8</sup> Circulated in documents IP/C/13 and IP/C/13/Add.1.

12. At the meetings in February, July and October, the Chair encouraged Members that were yet to notify their acceptance of the Protocol to ensure that necessary measures were being taken at domestic level in order to proceed in a timely fashion.

13. At its meeting in October, the Council took up the annual review of the functioning of the System, pursuant to paragraph 7 of the Annex to the amended TRIPS Agreement and paragraph 8 of the Decision of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health respectively. The Council's report to the General Council on the operation of the System has been circulated as document IP/C/86.

## **9 IMPLEMENTATION OF ARTICLE 66.2**

14. At its meeting in February, the Council followed up its seventeenth annual review of developed country Members' reports on their implementation of Article 66.2.

15. At the Council's meeting in July, developed country Members were invited to submit updates to their most recent reports on actions they had taken or planned in pursuance of their commitments under Article 66.2 for consideration at the Council's meeting in October.

16. At its meeting in October, the Council took up its eighteenth annual review of developed country Members' reports on their implementation of Article 66.2. For this review, the Council reviewed the second set of updates to the sixth set of new detailed reports presented by the following developed country Members: Australia, Canada, European Union, Japan, Switzerland, United Kingdom and United States.<sup>9</sup>

## **10 TECHNICAL COOPERATION AND CAPACITY-BUILDING**

17. At its meeting in February, the Council followed up its annual review of technical cooperation held at its meeting in October 2019.

18. At its meeting in July, the Council invited developed country Members to supply information on their activities pursuant to Article 67 of the TRIPS Agreement prior to the annual review of technical cooperation at its meeting in October. Intergovernmental organizations that have observer status in the TRIPS Council were invited to provide information on their activities of relevance and, further, the WTO Secretariat was requested to report on its activities. In preparation for the annual review it held at its meeting in October, the Council received updated information from the following developed country Members: Australia, Canada, European Union, Japan, Norway, Switzerland, United Kingdom and United States.<sup>10</sup> Updated information was also received from the GCC, UNCTAD, WHO and WIPO, as well as from the WTO Secretariat.<sup>11</sup>

## **11 DRAFT CODEX ALIMENTARIUS STANDARDS – DEFINITION OF "CROSS PROMOTION"**

19. At the request of Mexico, the Council had on the agenda of its meeting in February an item on "Draft Codex Alimentarius Standards – Definition of "Cross-Promotion". It had before it a communication from Mexico on this topic.<sup>12</sup>

## **12 INTELLECTUAL PROPERTY AND INNOVATION: SUMMARY OF THE 2019 THEME—PUBLIC-PRIVATE COLLABORATIONS IN INNOVATION; AND 2020 IP AND INNOVATION THEME: MAKING MSMEs COMPETITIVE – FEBRUARY 2020 SUBTHEME MAKING MSMEs COMPETITIVE THROUGH TRADEMARKS**

20. At the request of Australia; Canada, Chile; European Union; Japan; Singapore; Switzerland; the Republic of Korea; Chinese Taipei and the United States of America, the Council had on the agenda of its meeting in February an item on "Intellectual Property and Innovation: Summary of the 2019

<sup>9</sup> Circulated as documents IP/C/R/TTI/AUS/1, IP/C/R/TTI/CAN/1, IP/C/R/TTI/EU/1, IP/C/R/TTI/JPN/1, IP/C/R/TTI/CHE/1, IP/C/R/TTI/GBR/1 and IP/C/R/TTI/USA/1.

<sup>10</sup> Circulated as documents IP/C/R/TC/AUS/1, IP/C/R/TC/CAN/1, IP/C/R/TC/EU/1, IP/C/R/TC/JPN/1, IP/C/R/TC/NOR/1, IP/C/R/TC/NOR/1/Corr.1, IP/C/R/TC/CHE/1, IP/C/R/TC/GBR/1 and IP/C/R/TC/USA/1.

<sup>11</sup> Circulated as documents IP/C/R/TC/GCC/1, IP/C/R/TC/UNCTAD/1, IP/C/R/TC/WHO/1, IP/C/R/TC/WIPO/1 and IP/C/R/TC/WTO-OMC/1.

<sup>12</sup> Circulated in document IP/C/W/660.

Theme – Public-Private Collaborations in Innovation"; and "2020 IP and Innovation Theme: Making MSMEs Competitive – February 2020 Subtheme Making MSMEs Competitive Through Trademarks". It also had before it two communications, one on "Summary on the 2019 Theme – Public Private Collaborations in Innovation"<sup>13</sup>, co-sponsored by Australia; Canada; Chile; European Union; Japan; the Republic of Korea; Singapore; Switzerland; Chinese Taipei and the United States of America, and the second on "2020 Theme of Making MSMEs Competitive – Making MSMEs Competitive Through Trademarks"<sup>14</sup>, co-sponsored by Australia; Canada; Chile; European Union; Japan; the Republic of Korea; Singapore; Switzerland; Chinese Taipei; and the United States of America.

### **13 INTELLECTUAL PROPERTY AND INNOVATION: MAKING MSMEs COMPETITIVE – MAKING MSMEs COMPETITIVE THROUGH INCLUSIVE PROTECTION OF VARIOUS IPS**

21. At the request of Australia; Canada; Chile; European Union; Japan; the Republic of Korea; Singapore; Switzerland; Chinese Taipei; United Kingdom; and the United States of America, the Council had on the agenda of its meeting in October an item on "Intellectual Property and Innovation: Making MSMEs Competitive – Making MSMEs Competitive Through Inclusive Protection of Various IPs". At the October meeting, it also had before it a communication on the topic co-sponsored by Australia; Canada; Chile; European Union; Japan; the Republic of Korea; Singapore; Switzerland; Chinese Taipei; United Kingdom; and the United States of America.<sup>15</sup>

### **14 INTELLECTUAL PROPERTY AND THE PUBLIC INTEREST: THE WTO TRIPS AGREEMENT AND THE COPYRIGHT THREE-STEP TEST**

22. At the request of South Africa, the Council had on the agenda of its meeting in February an item on "Intellectual Property and the Public Interest: The WTO TRIPS Agreement and the Copyright Three-Step Test". It had before it a communication from South Africa on this topic.<sup>16</sup>

### **15 IP MEASURES IN THE CONTEXT OF COVID-19**

23. At the request of South Africa, the Council had on the agenda of its meeting in July an item on "IP Measures in the Context of COVID-19", referencing the list of "COVID-19: Measures regarding trade-related Intellectual Property Rights" prepared by the Secretariat.<sup>17</sup> At the request of the Chair, the Council continued discussions under this agenda item at its meeting in October.

### **16 LDC GROUP PROPOSAL ON THE IMPLEMENTATION OF ARTICLE 66.2 OF THE TRIPS AGREEMENT**

24. At the request of Chad, on behalf of the LDC Group, the Council had on the agenda of its meeting in July an item on "LDC Group Proposal on the Implementation of Article 66.2 of the TRIPS Agreement". It had before it a communication from Chad on behalf of the LDC Group.<sup>18</sup>

### **17 INTELLECTUAL PROPERTY AND THE 1998 WORK PROGRAMME ON ELECTRONIC COMMERCE**

25. At the request of South Africa, the Council had on the agenda of its meeting in July an item on "Intellectual Property and the 1998 Work Programme on Electronic Commerce". It had before it a communication from South Africa on this topic.<sup>19</sup> At the request of the Chair, the Council continued discussions under this agenda item at its meeting in October.

<sup>13</sup> Circulated as documents IP/C/W/661, IP/C/W/661/Add.1 and IP/C/W/661/Add.2.

<sup>14</sup> Circulated as documents IP/C/W/662, IP/C/W/662/Corr.1, IP/C/W/662/Add.1 and IP/C/W/662/Add.2.

<sup>15</sup> Circulated in document IP/C/W/667.

<sup>16</sup> Circulated in document IP/C/W/663.

<sup>17</sup> Available from [https://www.wto.org/english/tratop\\_e/covid19\\_e/trade\\_related\\_ip\\_measure\\_e.htm](https://www.wto.org/english/tratop_e/covid19_e/trade_related_ip_measure_e.htm).

<sup>18</sup> Circulated in document IP/C/W/664.

<sup>19</sup> Circulated in document IP/C/W/665.

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## **18 INTELLECTUAL PROPERTY AND THE PUBLIC INTEREST: BEYOND ACCESS TO MEDICINES AND MEDICAL TECHNOLOGIES TOWARDS A MORE HOLISTIC APPROACH TO TRIPS FLEXIBILITIES**

26. At the request of South Africa, the Council had on the agenda of its meeting in July an item on "Intellectual Property and the Public Interest: Beyond Access to Medicines and Medical Technologies Towards a More Holistic Approach to TRIPS Flexibilities". It had before it a communication from South Africa on this topic.<sup>20</sup>

## **19 LDC GROUP PROPOSAL TO EXTEND THE TRANSITION PERIOD FOR LDC MEMBERS UNDER ARTICLE 66.1**

27. At the request of Chad, on behalf of the LDC Group, the Council had on the agenda of its meeting in October an item on "Duly Motivated Request by LDCs to Extend the Transition Period under Article 66.1 of the TRIPS Agreement for Least Developed Country Members". It had before it a communication from Chad on behalf of the LDC Group.<sup>21</sup>

## **20 PROPOSAL FOR A WAIVER FROM CERTAIN PROVISIONS OF THE TRIPS AGREEMENT FOR THE PREVENTION, CONTAINMENT AND TREATMENT OF COVID-19**

28. At the request of India and South Africa, the Council had on the agenda of its meeting in October an item on "Proposal for a Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID-19". It had before it a communication on the topic from India and South Africa, co-sponsored by Eswatini and Kenya.<sup>22</sup> The Council agreed to keep open this agenda item and to reconvene the meeting once further developments were sufficiently mature, with a view to the Council agreeing on a report on its consideration of this request.

## **21 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO**

29. At the Council's meetings in February, July and October, the WTO Secretariat provided an overview of the wide range of trade-related measures and experiences in the field of intellectual property rights that had been raised by Members in recent WTO Trade Policy Reviews. The Council was also informed about new acceptances of the Protocol amending the TRIPS Agreement at its meetings in February and July.

30. At the Council's meeting in July, the Chair informed Members that on 29 June 2020, the Dispute Settlement Body (DSB) had adopted two Appellate Body Reports on *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* (WT/DS435/AB/R and Add.1, and WT/DS441/AB/R and Add.1). The DSB also had adopted the corresponding Panel Reports as upheld by the Appellate Body Reports. This information had been circulated in documents IP/D/31/Add.1 and IP/D/32/Add.1.<sup>23</sup>

## **22 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS**

31. At each regular meeting, the Council continued its consideration of the pending requests for observer status from international intergovernmental organizations.

## **23 OTHER BUSINESS**

32. At its meeting in February, the Council considered how best to give appropriate follow-up to the Ministerial Decision to continue the work under the Work Programme on Electronic Commerce<sup>24</sup>, including a proposal to update an earlier Secretariat background note on the topic that had been last revised in 2003.<sup>25</sup> The Chair recalled that the General Council Decision adopted on

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<sup>20</sup> Circulated in document IP/C/W/666.

<sup>21</sup> Circulated in document IP/C/W/668 and IP/C/W/668/Corr.1.

<sup>22</sup> Circulated in document IP/C/W/669, IP/C/W/669/Corr.1 and IP/C/W/669/Add.1.

<sup>23</sup> Also circulated with document symbol WT/DS435/28 and WT/DS441/29.

<sup>24</sup> See document WT/L/1032.

<sup>25</sup> See document IP/C/W/128/Rev.1.

10 December 2019<sup>26</sup> instructed the General Council to reinvigorate the Work Programme on Electronic Commerce, based on the existing Mandate, and report to MC12. He informed Members that, if so requested, it would be reported accordingly to the General Council during its review of the Work Programme.

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<sup>26</sup> See document WT/L/1079.