

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

**MINUTES OF MEETING**

HELD IN THE CENTRE WILLIAM RAPPARD ON 8-9 AND 29 JUNE 2021

*Chair: H.E. Ambassador Dagfinn Sørli (Norway)*

The present document contains the record of the meeting of the Council for TRIPS held on 8, 9 and 29 June 2021. The statements made during the meeting will be circulated in an addendum to the present document.

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## 1 NOTIFICATIONS UNDER PROVISIONS OF THE AGREEMENT

1. The Chair invited the Secretariat to report on notifications that the Council had received since its meeting in March 2021.
2. A representative of the Secretariat said that the Council had received the following notifications under Article 63.2 of the TRIPS Agreement:
  - a. The Republic of Korea had notified consolidated versions of its Trademark Act, its Patent Act, and its Design Protection Act. It had also circulated a consolidated version of its Agricultural and Fishery Products Quality Control Act, as well as the corresponding enforcement decree.
  - b. Viet Nam had notified its Criminal Code, its Civil Code, and a number of circulars and laws related to the implementation and administration of its intellectual property system.
  - c. Slovenia had notified new versions of its Copyright and Related Rights Act and its Industrial Property Act, transposing EU Directives into domestic law.
  - d. New Zealand had notified Amendments to its Copyright Act 1994, Patents Act 2013 and Trade Marks Act 2002 to implement New Zealand's commitments under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). It had also notified a revised Geographical Indications (Wine and Spirits) Registration Act, including associated legal instruments, and an amendment to the Copyright Act to implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.
  - e. Ukraine had notified minor corrections to already notified amendments regarding the law establishing its National Intellectual Property Authority.
  - f. The Kingdom of Saudi Arabia had notified licensing rules for providing intellectual property services, as well as a consolidated version of the revised Designs Act.
3. Furthermore, Tonga had notified its contact point for IP enforcement under Article 69.
4. Regarding notifications relating to the Special Compulsory Licensing System, Antigua and Barbuda had made a notification under Article 31*bis* and para. 1(b) of the Annex to the TRIPS Agreement, indicating its intention to use the special compulsory licensing mechanism – also known as the 'paragraph 6' system - as an importing Member. The Plurinational State of Bolivia – following its notification in February of its general intent to use the system – had since notified its need to import an estimated 15 million doses of COVID-19 vaccines under Art. 31*bis* and para. 2(a) of the Annex to the TRIPS Agreement.
5. The Chair encouraged delegations that had notified a new or revised legislative measure, or a new or updated response to the Enforcement Checklist, to inform the Council about the key points of their notification. He invited delegations to share information regarding their own notifications. This had become a well-established practice, followed by many delegations at recent sessions of the Council. It provided valuable insight into the notifications provided and promotes awareness and transparency.
6. The representatives of the Republic of Korea; Japan; the Plurinational State of Bolivia; the Central African Republic; the United Kingdom; South Africa; the European Union; and Canada took the floor.
7. The Chair noted that, while the pace of notifications to the Council had increased in recent years, they were still not keeping up with the actual development of laws and regulations relating to TRIPS. He emphasized that Article 63.2 was not a "one-off" requirement. It was a core element of the TRIPS transparency arrangements, and a central part of the Council's substantive work. It obliged Members to notify any new or amended laws in the area of TRIPS, including those recently adopted to address the COVID-19 pandemic. The requirement included the notification of legislative changes made to implement the special compulsory licensing system to export medicines covered by the new Article 31*bis* of the TRIPS Agreement. The notification of all relevant laws and regulations could assist

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Members in preparing for the potential use of the System – a matter of immediate practical concern at present. It would also help the Secretariat in its efforts to provide informed technical support to Members in this area – again, a very practical need in the context of the current global health crisis.

8. He urged Members to complete any outstanding initial notifications and to keep up to date with notifications on subsequent amendments. The same applied to the Checklist of Issues on Enforcement which was established by the Council as an element of Members' notification obligations.

9. The e-TRIPS submission system was available for Members to notify their laws, and to make other required submissions to the TRIPS Council, through the click of a button. The system facilitated the submission of information by Members and permitted digital access, consultation and analysis of this information through the e-TRIPS Gateway, an easy-to use interface to search and display information related to the TRIPS Council. The Chair asked the delegations to contact the Secretariat if they had any question in that regard.

10. The Council took note of the notifications and the statements made.

## **2 REVIEW OF NATIONAL IMPLEMENTING LEGISLATION**

11. The Chair recalled that the Council had been preparing for the review of the national implementing legislation of Samoa. As noted at the last meeting, Samoa was in the process of reviewing its laws, following its recent accession to a number of WIPO treaties. In light of the substantial revisions that were to be expected as a consequence, the Council had agreed to wait for the notification of the revised domestic laws of Samoa, before commencing the review.

12. He proposed that the Secretariat remain in contact with Samoa on the progress of its new legislation and that the Council revert to the review at its next meeting. He noted that there were currently no reviews pending under this item. Members should feel free to revert to any matter stemming from previous reviews, or to seek further information on implementation of the Agreement in future. Any ideas how to make best use of this agenda item would be most welcome.

13. The Council took note of the information provided and agreed to schedule the arrangements for the review of Samoa's national implementation legislation as proposed by the Chair.

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

14. The Chair recalled that this agenda item had been discussed in the Council since its informal open-ended meeting on 19 June 2020 and had been on the Council's agenda at its formal meetings since then. In light of the broad support for a continuation of these exchanges at the preceding meetings, the item was once again on the agenda to facilitate exchange of views on measures undertaken as the pandemic persists.

15. As one basis for the Council's exchange, he referred to the compilation "COVID-19: Measures regarding trade-related intellectual property rights" that was available from the WTO website<sup>1</sup> and contained a non-exhaustive list of IP-related measures taken in the context of COVID-19, compiled by the Secretariat from official sources and verified by the Members concerned. This list was updated continuously, even if the rate at which new measures are brought to our attention had slowed considerably since the last meeting. He encouraged Members to inform the Secretariat of any measures that should be included on this list, as well as any update or information on the expiry, or end of application, of such measures. He invited Members to inform the Council on their measures.

16. He suggested that, on this occasion, this item also be used to hear from the Secretariat regarding other information it had been asked to compile. He recalled that in earlier meetings of the Council, and in the General Council, a number of Members had asked the Secretariat to provide and compile data on the number of voluntary license agreements regarding COVID-19 vaccine production over time, and on the projected and observed volume of vaccine dose production under these agreements. Given that this request also related to information compiled by the Secretariat the Chair suggested that this be dealt with under this item. It was his understanding that the Secretariat had

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<sup>1</sup> [www.wto.org/english/tratop\\_e/covid19\\_e/trade\\_related\\_ip\\_measure\\_e.htm](http://www.wto.org/english/tratop_e/covid19_e/trade_related_ip_measure_e.htm)

circulated an initial set of data in a room document RD/IP/43 and would be ready to provide a short introduction to this document.

17. The representatives of Chile; the United States; and China took the floor.

18. The Secretariat took the floor to present documents RD/IP/43 and RD/IP/44.

19. The representatives of Sri Lanka and South Africa took the floor.

20. The Chair thanked the Secretariat for the information presented and said that an update of such information would be appreciated and would contribute to the deliberations of the Council.

21. The Chair proposed that, in view of the continued interest on this agenda item, the Council agree to revert to the item at its next meeting, so that the exchanges can once again take place, including on the basis of the updated Secretariat document of COVID-19 related IP measures.

22. The Council took note of the statements made and agreed to revert to this item at its next meeting.

#### **4 REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B)**

#### **5 RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CONVENTION ON BIOLOGICAL DIVERSITY**

#### **6 PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE**

23. The Chair said that the next three agenda items concerned the Review of the Provisions of Article 27.3(b), the Relationship between the TRIPS Agreement and the Convention on Biological Diversity and the Protection of Traditional Knowledge and Folklore. Following past practice, he proposed that these three items be addressed together.

24. He recalled that one tool for the review under agenda item 3 was the information provided by Members in response to a list of questions on Article 27.3(b). The "Annual Report on Notifications and other Information Flows" that had been introduced, under agenda item one, illustrated that responses to this checklist had been rather sparse recently. So far, only 28 Members had responded to the list of questions on Article 27.3(b), with Saudi Arabia being the most recent Members to submit responses. He encouraged delegations to submit responses to this Checklist or update their previous responses, as well as notify any relevant changes in legislation. He invited the delegation of Saudi Arabia to introduce their responses.

25. The Chair recalled that two long-standing procedural issues under these items had also been discussed extensively, on the record, at every regular meeting of the Council for many years:

- a. the suggestion for the Secretariat to update the three factual notes on the Council's discussions on the TRIPS and CBD and related items; these notes were initially prepared in 2002 and last updated in 2006; and
- b. second, the request to invite the CBD Secretariat to brief the Council on the Nagoya Protocol to the CBD, initially proposed in October 2010.

26. Members' positions on these issues were well known and already extensively recorded in the Council's minutes. He encouraged delegations to focus on suggesting solutions, when addressing these procedural questions.

27. The representatives of Tanzania, on behalf of the African Group; Bangladesh; South Africa; China; the United States; Nigeria; Indonesia; Brazil; Egypt; Chile; and India took the floor.

28. The Council took note of the statements made and agreed to hold consultations to resolve the outstanding procedural issues.

## 7 NON-VIOLATION AND SITUATION COMPLAINTS

29. The Chair said the next agenda item was another longstanding issue, i.e. the examination of scope and modalities for non-violation and situation complaints, in line with the initial mandate in Article 64.3 of the TRIPS Agreement, which required recommendations to be submitted to the Ministerial Conference in 1999.

30. The Chair recalled that, on 10 December 2019, the General Council had directed the TRIPS Council to continue its examination of the scope and modalities for non-violation and situation complaints (NVSCs) and to make recommendations to the Twelfth WTO Ministerial Conference (MC12). It was also agreed that, in the meantime, Members would not initiate such complaints under the TRIPS Agreement. The issue had been discussed at each formal meeting of the Council, as well as at informal consultations. He held the most recent informal consultations with a small group of the most active Members on 10 February 2021.

31. He said that, at the formal Council meeting in March, his predecessor had shared her impression that a number of common understandings regarding TRIPS non-violation could in fact be harvested from the past discussions among delegations. In an effort to bring movement into this long-standing and stalled debate, she had reiterated her suggestion for the Council to identify such areas of agreement – either through delegations' suggestions, or through proposals by the Chair on the basis of discussion records – in order to help focus the discussion on areas of disagreement. These suggestions did, however, not attract consensus, and Members reiterated their known positions regarding the applicability of NVSCs in the TRIPS area generally.

32. At consultations he held on this matter on 24 March, Members' appetite for engagement had not changed, and there was no interest in a chair-led process in this regard. Some delegations already anticipated a political linkage of this item with the E-commerce moratorium at the time of MC12. In light of this, he had emphasized that, while he was ready to facilitate process, there would be no outcome without Members' engagement. Against that background, he said, Members were now once again in the familiar situation where a Ministerial Conference was approaching, and delegations' positions remained as polarized as ever.

33. His role as Chair was to recall that the mandate given to the Council is "to examine scope and modalities for such complaints under the TRIPS Agreement, and to make recommendations to the next ministerial conference". He emphasized that MC12 was now only six months away, and there remained only one regular formal TRIPS Council meeting at which the Members could formulate a recommendation as instructed.

34. Against this background, the Chair invited Members to share their views on how to progress the Council's work in this item between now and MC12.

35. The representatives of Brazil; Tanzania on behalf of the African Group; Chile; Bangladesh; Egypt; Australia; Argentina; the Russian Federation; South Africa; the European Union; Nigeria; China; Canada; Indonesia; the Plurinational State of Bolivia; the United States; Sri Lanka; Switzerland; and India took the floor.

36. The Council took note of the statements made and agreed to revert to this matter at its next meeting.

## 8 REVIEW OF THE IMPLEMENTATION OF THE TRIPS AGREEMENT UNDER ARTICLE 71.1

37. The Chair recalled that Article 71.1 required the TRIPS Council to conduct a review once every two years. However, as the Council had not completed its initial review in 1999, no subsequent review had been initiated since then. TRIPS Council Chairs had often highlighted the fact that there were a few long-standing review items on the agenda of the TRIPS Council under which there had been little or no activity for a number of years now.

38. He said that there was notable interest among delegations in discussing intellectual property law and policy matters relevant to TRIPS, for instance in the context of Trade Policy Reviews. Such discussions could easily find a regular home under the broad mandate of the "Review of the Implementation of the TRIPS Agreement under Article 71.1". Revitalizing the mandated reviews of

the TRIPS Council could be very useful for Members to share information and experiences in implementing the TRIPS Agreement.

39. The Council agreed to revert to the matter at its next meeting.

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

40. The Chair said that Article 24.2 of the TRIPS Agreement required the Council to keep under review the application of the provisions on geographical indications (GIs). The principal tool used for the review was the Checklist of Questions.<sup>2</sup> He recalled that, of the 164 WTO Members, only five had responded to the Checklist. Many of the earlier responses were also likely to be outdated. This did not adequately reflect the fact that GI protection had been an active area of legal and policy development at domestic level and in free trade agreements (FTAs). The "Annual Report on Notifications and Other Information Flows" provided a Member-by-Member overview of Members' notifications in this area. He invited delegations to check whether their responses to the GI checklist might merit updating.

41. He encouraged delegations to provide responses to the Checklist or to update earlier responses. The e-TRIPS Submission System provided an easy and convenient online tool to provide responses to the Checklist. In line with the Council's recommendation of March 2010, he also invited Members to share information regarding GI chapters in their bilateral agreements.

42. The Council agreed to revert to the matter at its next meeting.

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

43. The Chair said that the Council had regularly conducted annual reviews of technical cooperation and capacity building activities at its end of the year meeting. These reviews were based on reports submitted by developed country Members, international organizations and the WTO Secretariat. He invited the Secretariat to recall the usual arrangements for such reviews.

44. A representative of the Secretariat said the usual procedure was to invite developed-country Members to submit information on their activities pursuant to Article 67 of the TRIPS Agreement to be reviewed at the last Council meeting of the year. Other Members who also engaged in technical cooperation were also encouraged to share information. Intergovernmental organizations with observer status in the TRIPS Council, as well as the WTO Secretariat, were also invited to report on their relevant activities. The requested written information would usually be made available four weeks prior to the next meeting, in order to allow timely circulation before the meeting. In view of the dates of the next TRIPS Council meeting (13-14 October 2021), this would mean that written information should be submitted by 15 September 2021.

45. The Chair said that documentation on this topic was usually quite extensive. To ensure a streamlined and systematic approach to the management of documentation, members were requested to use the e-TRIPS Submissions System, which allowed the convenient preparation of such submissions, both in capital and at Geneva missions. The Secretariat would be pleased to provide informal support and background to interested delegations.

46. The representatives of Bangladesh; and the World Intellectual Property Organization took the floor.

47. The Council agreed to proceed in the usual manner and to revert to the matter at its next meeting.

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<sup>2</sup> Documents IP/C/13 and IP/C/13/Add.1.

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## **11 INTELLECTUAL PROPERTY AND INNOVATION: SUMMARY ON THE 2020 THEME – MAKING MICRO SMALL AND MEDIUM-SIZED ENTREPRISES (MSMES) COMPETITIVE THROUGH IP AND INNOVATION**

48. The Chair recalled that this item had been put on the agenda at the request of Australia, Canada, the European Union, Japan, Switzerland, Chinese Taipei, and the United States. A communication had also been circulated in documents IP/C/W678 and IP/C/W/678/Rev.1. Since the circulation of the document, the United Kingdom, Chile and Singapore had also co-sponsored this item and the corresponding documents.

49. The representatives of the United States; Switzerland; Australia; the United Kingdom; Singapore; Japan; Brazil; and South Africa took the floor.

50. The Council took note of the statements made.

## **12 INTELLECTUAL PROPERTY AND INNOVATION: INTELLECTUAL PROPERTY FOR INVESTMENT/FINANCING/ FUNDING**

51. The Chair recalled that this item had been put on the agenda at the request of Australia, Canada, Chile, The European Union, Japan, Switzerland, Chinese Taipei, the United Kingdom and the United States, and subsequently co-sponsored by the delegations of Brazil and Singapore. A communication had also been circulated in document IP/C/W/679.

52. The representatives of the United Kingdom; Switzerland; the United States; Australia; Singapore; Japan; Canada; Chinese Taipei; the European Union; Brazil; China; Côte d'Ivoire; the United Kingdom; and Jamaica took the floor.

53. The Council took note of the statements made.

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

54. The Chair recalled that the last formal meeting on 30 April had been dedicated to the "Proposal for a Waiver from Certain Provisions of The TRIPS Agreement for the Prevention, Containment and Treatment of Covid-19" had been circulated by India and South Africa on 2 October 2020.<sup>3</sup> It had since been co-sponsored by the delegations of Kenya, Eswatini, Mozambique, Pakistan, Bolivia, Venezuela, Mongolia, Zimbabwe, Egypt, the African Group, the LDC Group, the Maldives, Fiji, Namibia, Vanuatu, Indonesia and Jordan.

55. Since the formal meeting on 30 April, the co-sponsors had circulated a joint statement on 17 May 2021, which had been circulated in document IP/C/W/677, and a revised decision text for the proposed waiver on 21 May 2021, which had been circulated in document IP/C/W/669/Rev.1.

56. At the request of co-sponsors, the Council had held an open-ended informal meeting on 31 May where the co-sponsors presented the revised proposal, and Members had had a first opportunity to exchange views on the revised proposal. He said that, at the conclusion of the meeting, he had noted that a large number of delegations had called for the commencement of text-based negotiations, and that he had appealed to those Members to come forward with their suggestions regarding practical modalities and formats for such a process. To Members that had indicated that they were still examining the revised proposal, he had expressed his hope that they would be in a position to engage in a more substantive discussion at the formal Council meeting. To Members that had indicated their intention to present concrete proposals in the near future, he had urged them to submit such proposals sooner rather than later in order to enrich the Council's deliberations, and given the urgency of this issue as underlined by most Members.

57. He said that he had also reminded Members that the next regular formal meeting of the Council was scheduled for 13-14 October, and that Members should reflect on how the Council should report to the next General Council meeting scheduled for 21-22 July. In addition to comments related to the substance of the proposal before the Council, he invited delegations to express their views on

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<sup>3</sup> Document IP/C/W/669

how this issue should be taken forward, so that he and the Secretariat could make appropriate arrangements.

58. The representatives of South Africa; Tanzania, on behalf of the African Group; Mongolia; Malaysia; Fiji; Egypt; Pakistan; Sri Lanka; Indonesia; Bangladesh; Australia; Mexico; the Plurinational State of Bolivia; the European Union; the Bolivarian Republic of Venezuela; Paraguay; Maldives; Chinese Taipei; the Republic of Korea; Nepal; Turkey; Canada; Chile; Singapore; Jordan; New Zealand; Vanuatu; Ukraine; Norway; China; Hong Kong, China; Brazil; the United Kingdom; Switzerland; Japan; the Russian Federation; El Salvador; Mozambique; Philippines; Angola; Jamaica; the United States; Peru; Argentina; Chad on behalf of the LDC Group; Viet Nam; Namibia; the European Union; India; and Iran took the floor.

59. The Chair said that while he detected continuing disagreement about certain fundamental questions regarding the issues underlying the waiver – and remaining questions on the revised provisions on scope and termination – he had also not heard any objections to engaging in a text-based process on the waiver proposal. In light of the urgency of the matter, he would consult with Members regarding the timing and format of such a process, which could have the General Council scheduled for 21-22 July as a natural target date. Such a process would always need to respect the principles of openness, inclusiveness and transparency. With this in mind, he was planning to convene an open-ended informal meeting on 17 June 2021 to inform Members on his consultations on the matter until that time, and on the possible process leading up to July.

60. He echoed the Director-General in saying that the issue of equitable access to vaccines, diagnostics and therapeutics was both the moral and economic issue of our time, and an issue which needed to be addressed with urgency. He said that that Members shared the common goal of providing equitable access to these products for the global population as soon as possible, even if they differ on where to place the emphasis of this endeavour. He was hopeful that in continuing urgent and focused discussion on the IP issues relevant to the pandemic, Members could soon agree on pragmatic solutions to any problems that can directly improve Members' pandemic response.

61. The Council took note of the statements made and agreed to revert to the matter at its next meeting.

#### **14 EXTENSION OF THE TRANSITION PERIOD UNDER ARTICLE 66.1 OF THE TRIPS AGREEMENT FOR LEAST DEVELOPED COUNTRY MEMBERS**

62. The Chair recalled that the general transition period for least developed country Members had been extended twice, most recently by the TRIPS Council decision IP/C/64 of 11 June 2013, and was currently set to expire on 1 July 2021 – in less than one month's time. With respect to extensions of this period, he noted that the second sentence of Article 66.1 of the TRIPS Agreement provided that "The Council for TRIPS shall, upon duly motivated request by a least developed country Member, accord extensions of this period."

63. He also recalled that, under a parallel decision concerning specifically pharmaceutical products, the Council had extended the transition period for LDC Members until 1 January 2033 or until such a date on which they cease to be a LDC Member, whichever date is earlier. During this period, LDC Members concerned were not obliged to implement or apply the sections of the TRIPS Agreement regarding patents and the protection of undisclosed information, nor to enforce rights provided under these sections, insofar as pharmaceutical products were concerned.

64. He reminded the council that the LDC Group had circulated its request for an extension in document IP/C/W/668 on 1 October 2020. After having held consultations, at the formal meeting of the Council in March, his predecessor had shared her impression that (1) delegations were in principle favourable to extending the transition period for LDCs, that (2) some delegations had expressed a preference for extending the period for a limited number of years, and that (3) others had raised additional questions on how the request for a transition period for graduated LDCs related to Article 66.1. At that meeting, the Council had requested the incoming Chair to hold consultations on this matter.

65. He said that, since March, he had been in touch with the LDC Group coordinators and a number of delegations in various formats. At the request of the LDC Group he had held a series of intensive

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consultations with the LDC Group coordinators and five developed country delegations which the LDC Group had identified.

66. Based on the interventions by delegations in these consultations, it was his reading that there was broad willingness to grant an extension of the transition period for LDCs on the basis of the 2013 decision. However, regarding the request for additional years of transition after graduation of LDCs there were more questions – and it was the view of a number of delegations that such a request was not covered by the Council's mandate in Article 66.1.

67. Given that the LDC transition period expires on 1 July of this year, and – according to the UN Department of Economic and Social Affairs website – the next LDC graduations of WTO LDC Members were not expected before 2024, it had seemed to him that the most immediate – indeed, pressing – issue was the extension of the transition period for those Members that are currently LDCs under Article 66.1. This affected their status already next month, whereas the status of graduating LDCs would not be a practical issue for at least three years.

68. In light of this scenario, and as a pragmatic approach to address the most pressing issue first, he had suggested during the consultations that these two issues could be discussed separately. He had proposed that delegations could first work towards a decision on extending the LDC transition period under Art. 66.1 based on similar terms as in 2013, so that such a decision could be adopted at present meeting of the Council.

69. As regards the question whether members should be granted additional years of a transition period also *after graduation*, he had suggested that this could become the subject of a focused discussion – in the TRIPS Council or elsewhere – where the systemic issues Members had raised in this regard could be addressed more broadly, and with a somewhat longer time horizon.

70. He said that his suggestion had, however, not been taken up by delegations, and the LDC Group had requested an informal open-ended meeting of the Council on this subject which was then organized on 4 June 2021.

71. At that meeting, Members had had an opportunity to exchange views and listen to each other's concerns. His assessment was that the meeting had confirmed that agreement on extending the transition period for LDCs was within reach, even if the question of duration remained to be solved, while disagreements remained over the proposal to extend the transition period beyond graduation.

72. In short, he said, Members had not been able to make as much progress as he had hoped when he had briefed Members on the consultations on 30 April 2021. His objective had been to have a basis for a decision to be adopted at this Council meeting. Given that this had not been possible and given that the current transition period will expire in three weeks from now, he encouraged delegations to share their thoughts and suggestions on how the Council could possibly address this issue.

73. The representatives of Chad on behalf of the LDC Group; Bangladesh; Tanzania on behalf of the African Group; Nepal; Senegal; Angola; Chile; Uganda; Vanuatu; Pakistan; Malawi; Mongolia; India; Myanmar; Argentina; Brazil; Mozambique; China; South Africa; Australia; Norway; the United States; Canada; Switzerland; Japan; the European Union; the United Kingdom; Turkey; Togo; and Zambia took the floor.

74. The Chair suggested to keep this agenda item open with a view to reconvening the meeting as appropriate when delegations were ready to take a decision on this item.

75. The Council took note of the statements made and agreed to keep the agenda item open.

76. At the Council for TRIPS reconvened formal meeting of 29 June 2021, the Chair proposed that the Council adopt the "Draft Decision on the extension of the transition period under Article 66.1 for least developed country Members", that had been circulated in document JOB/IP/46 on 25 June 2021. He recalled that this decision had been discussed in small group consultations in the previous week, and had been briefly introduced at an informal meeting of the Council the same afternoon, where Members had also been briefed on the consultations that had led to this agreement.

In light of those discussions, he suggested that the Council adopt the decision as contained in document JOB/IP/46.

77. The Council so agreed.<sup>4</sup>

78. The Chair thanked all delegations for their good faith efforts to find a solution to this matter in time before the current transition period expired the following day. He also shared his understanding that the question whether newly graduated LDC members should be accorded additional flexibilities under the TRIPS Agreement after their graduation had not disappeared. It was his understanding that the LDC Group and certain delegations agreed in their contacts that this post-graduation element of the request would best be pursued under the LDC proposal already on the agenda of the General Council. He encouraged all delegations to engage in that discussion constructively and in good faith.

79. The representatives of Chad on behalf of the LDC Group; Bangladesh; the United Kingdom; Nepal; Tanzania on behalf of the African Group; Afghanistan; Malawi; the United States, Japan; Switzerland; Togo; Canada; China; Mauritius; the European Union; Korea; India; Myanmar; Mozambique; South Africa; Australia; the Central African Republic; Egypt; and Pakistan took the floor.

80. The Council took note of the statements made.

## 15 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

81. The Chair said that the delegation of Antigua and Barbuda had deposited its instrument of acceptance on 12 May 2021. This meant that, to date, 133 Members had accepted the TRIPS amendment. Under the General Council Decision of 10 December 2019,<sup>5</sup> the period for acceptance of the Protocol had been extended until 31 December 2021. He had encouraged the remaining 31 Members who are yet to accept the Amendment to do so expeditiously.

82. He invited the Secretariat to provide the regular briefing on IP-related issues considered in the context of individual Members' trade policy reviews, and in the Director-General's Monitoring Report.

83. The representative of the Secretariat took the floor.

84. The Council took note of the information provided.

## 16 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

85. The Chair said that the updated list of pending requests for observer status in the TRIPS Council by intergovernmental organizations<sup>6</sup> was available and that the information provided by the relevant intergovernmental organizations was posted on the Members' website.<sup>7</sup>

86. The Chair recalled that, at its meeting in November 2012, the Council had agreed to grant *ad hoc* observer status on a meeting-to-meeting basis to the European Free Trade Association (EFTA). Since then, the invitation had been renewed at each meeting. He suggested that EFTA be invited to attend the next formal meeting on an *ad hoc* basis.

87. The Council agreed to invite EFTA to attend the next meeting on an *ad hoc* basis.

## 17 OTHER BUSINESS

### 17.1 Annual Review of the Special Compulsory Licensing System

88. The Chair said that, at the meeting that had taken place on 3 February 2017, the Council had taken note of the entry into force of the amended TRIPS Agreement. At that time, Members had said

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<sup>4</sup> The Council's decision on "Extension of the Transition Period under Article 66.1 for Least Developed Country Members" was subsequently circulated in document IP/C/88.

<sup>5</sup> Document WT/L/1081.

<sup>6</sup> Document IP/C/W/52/Rev.14

<sup>7</sup> [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)

this would also be the moment to consider in greater detail how the Special Compulsory Licensing System could be effectively used as a practical procurement tool to respond to public health needs. Members had also proposed several accompanying measures, including legislative advice to implement the mechanism into domestic law and capacity building activities. Since then, as highlighted under item 1 of this meeting, more Members have made efforts to use the system in the context of their pandemic response.

89. The next annual review of the System could be usefully guided by the issues that Members had already identified in the past, as well as more recent experiences of Members that are currently using the system. As part of the annual review, Members might also wish to consider discussing any measures taken to implement and use the Special Compulsory Licensing System under Article 31*bis* of the TRIPS Agreement into domestic law, including in the context of COVID-19.

90. The Chair encouraged Members to make proposals on how to take this issue forward and shared his intention to consult Members in the coming weeks on how to prepare for a meaningful review. He would welcome delegations' active support in preparing for and carrying out substantive discussions.

### **17.2 19<sup>th</sup> Annual Review under Paragraph 2 of the Decision on the "Implementation of Article 66.2 of the TRIPS Agreement"**

91. The Chair said that paragraph 1 of the Decision on the Implementation of Article 66.2<sup>8</sup> provided that developed country Members shall submit annual reports on actions taken or planned in pursuance of their commitments under Article 66.2. For this purpose, they had to provide new detailed reports every third year and, in the intervening years, provide updates to their most recent reports. For 2021, developed country Members were expected to provide new detailed reports. Paragraph 2 of the Decision said the Council would review these updated reports at the last meeting of the year.

92. He proposed that developed country Members be requested to submit their updates by 15 September, i.e. the same date as the deadline for submission of Technical Assistance Reports. The submission date was about four weeks before the last meeting, scheduled for 13-14 October 2021, and would allow timely circulation of the documents.

93. The information to be provided in the reports was specified in paragraph 3 of the Decision. In the past, Members had considered some practical approaches to streamlining their submission and management of this information. He requested reporting Members to use the e-TRIPS Submission System to submit this information. To assist Members, the Secretariat had organized two webinars on the use of e-TRIPS to submit reports, which were available on the e-TRIPS website. The Secretariat was also available to provide informal support and background information in this regard.

94. The Council so agreed.

### **17.3 Other Planned Activities for the Benefit of LDCs**

95. The Chair said that, in connection with Article 66.2, the Secretariat was planning for the 15th Workshop on Technology Transfer. After the success of the arrangements this year, the Secretariat is planning to organize this workshop back-to-back with the Council's meeting in early 2022. The Secretariat will be in touch with the delegations concerned to prepare for the Workshop.

### **17.4 Date of Next Meeting**

96. The Chair recalled that, as agreed by the TRIPS Council in October last year, the next meeting was scheduled for 13-14 October 2021.

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<sup>8</sup> IP/C/28