



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

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 20 JULY 2021

Chair: H.E. Ambassador Dagfinn Sørli

The present document contains the record of the meeting of the Council for TRIPS held on 20 July 2021. The statements made during the meeting will be circulated in an addendum to the present document.

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

1. The Chair said that the "Proposal for a Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of Covid-19" had been circulated in document IP/C/W/669 by India and South Africa on 2 October 2020 and 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. A revised proposal had been circulated on 21 May in document IP/C/W/669/Rev.1.

2. He said the purpose of this formal meeting was threefold: first, to report on the text-based process the Council had followed since mid-June; second, to adopt the status report to the General Council; and, third, to continue consideration of the proposals on the record, including by sharing views on how to move this discussion forward.

3. The Chair recalled that – following the formal TRIPS Council meeting on 8-9 June 2021 and subsequent consultations – he had set out a calendar and outline of an intensive text-based process in a communication circulated on 16 June 2021. This outline had foreseen an intensive schedule of meetings in various formats, including small group consultations, time for bilateral meetings among delegations, and regular open-ended meeting for all members to share information, exchange views, take stock of the situation and discuss how we should proceed.

4. Following this schedule, he had held four sessions of small-group consultations - on 22 and 28 June, and on 5 and 9 July. Informal open-ended meetings had been held on 30 June, 6 July and 14 July. Discussions at these meetings had focused on key substantive areas of the waiver proposal. These were the questions of 'scope', both from the perspective of products and from the perspective of IP rights; the questions of 'duration' and 'implementation'; and the area of 'regulatory data', which had been mentioned under many of these themes. A proposal for a draft General Council declaration on the TRIPS Agreement and Public Health in the circumstances of a pandemic, issued by the European Union on 21 June 2021 and circulated in IP/C/W/681; had also been discussed in those meetings.

5. The Chair reported that discussions in the small-group sessions had been interactive and that delegations had engaged in detailed exchanges on the substance at hand. In the area of 'scope', the co-sponsors had explained the proposed scope of the revised waiver request by illustrating the range of products and processes, as well as the sections of the TRIPS Agreement they considered relevant for prevention, containment, and treatment of COVID-19.

6. In the area of 'duration', discussions had contributed to clarifying the intended operation of the termination clause in the current text of the waiver proposal, as well as the relationship between the annual review suggested and the foreseen duration of the waiver.

7. In the area of 'implementation', discussions had focused on a number of specific questions, including the transparency of implementation, and provisions to limit the long-term impact of disclosure of confidential data during the waiver period. Delegations had also reflected on what steps would be needed at the domestic level.

8. In the area of 'regulatory data', only a few exchanges had taken place as there had not been enough time available, suggesting that delegations may need to return to this issue at a later stage.

9. The Chair said that these discussions had reflected genuine engagement and had been detailed and substantive in character. While they had helped further illuminate a number of substantive points and nuances, it was clear that disagreement remained on the fundamental question of what might be the most efficient and appropriate approach to address the shortage of vaccines and other COVID-related products. At the same time, delegations had indicated their willingness to continue discussions and had identified several topics that might merit focused discussions going forward.

10. As he had foreshadowed at that informal open-ended meeting on 14 July, he had circulated draft language for an oral status report to the General Council, with an invitation to Members to comment on this language by 16 July 2021.

11. He said that he had held further consultations on 19 July, and had circulated a revised draft status report in document JOB/IP/47 on the same day. After yet further consultations on 20 July in the morning, he had circulated a further revision in JOB/IP/47/Rev.1 which he hoped delegations would be able to adopt at this meeting. He said that the item had also been placed on the agenda of the General Council meeting scheduled for 27-28 July 2021 in the usual fashion.

12. He proposed the Council agree that he would deliver the oral status report to the General Council, circulated in JOB/IP/47/Rev.1, as follows:

At the meeting of the TRIPS Council on 15-16 October 2020, India and South Africa introduced document IP/C/W/669, requesting a waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19, which had been circulated on 2 October 2020 and has 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.

Since the introduction of the document, discussions took place in various formal and informal TRIPS Council meetings. Delegations exchanged views, asked questions, sought clarifications and provided replies, clarifications, and information, including through documents IP/C/W/670, IP/C/W/671, IP/C/W/672, IP/C/W/673 and IP/C/W/674, on the waiver request.

Since the last status report to the General Council on 5-6 May 2021, the co-sponsors issued a revised proposal on 21 May 2021, which was circulated in document IP/C/W/669/Rev.1. The revised waiver request was presented at an informal open-ended meeting of the Council on 31 May, and introduced at its formal meeting on 8-9 June 2021. Following the arrangement of a text-based process, discussions continued in small-group consultations, at informal open-ended meetings on 17 and 30 June, and 6 and 14 July [, and at a formal meeting of the Council on 20 July].

In the context of the text-based process, delegations held focused discussions on the topics of 'scope', both from the perspective of products and of IP rights, on 'duration', 'implementation' and on protection of undisclosed information. Delegations engaged positively and their detailed substantive exchanges helped clarify various aspects and nuances of positions. While delegations remain committed to the common goal of providing timely and secure access to high-quality, safe, efficacious and affordable vaccines and medicines for all, disagreement persists on the fundamental question of whether a waiver is the appropriate and most effective way to address the shortage and inequitable distribution of and access to vaccines and other COVID-related products.

In addition, a proposal for a draft General Council declaration on the TRIPS Agreement and Public Health in the circumstances of a pandemic, issued by the European Union on 21 June 2021 and circulated in IP/C/W/681, has also been discussed in those meetings. Delegations exchanged views, asked questions, sought clarifications and provided replies, clarifications, and information. Disagreement persists on the fundamental question of whether this proposal is the appropriate and most effective way to address the shortage and inequitable distribution of and access to vaccines and other COVID-related products.

This means that the TRIPS Council has not yet completed its consideration of the revised waiver request. The TRIPS Council will therefore continue its consideration of the revised waiver request, including through small-group consultations and informal open-ended meetings, and report back to the General Council as stipulated in Article IX:3 of the Marrakesh Agreement.

In addition, the TRIPS Council will also continue in the same manner its consideration of the other related proposals by Members.

13. The Council so agreed.

14. The Chair thanked all delegations for their support and invited delegations to take the floor to continue their consideration of the revised waiver request and the associated issues, and to share their views on how the work of the Council should be organized on this matter going forward.

15. The representatives of South Africa, Chad, on behalf of the LDC Group, Tanzania, on behalf of the Africa Group, the Maldives, the Plurinational State of Bolivia, Pakistan, Jamaica, on behalf of the ACP Group, the European Union, the United Kingdom, China, Cuba, Switzerland, Brazil, Indonesia, Chinese Taipei, the Kingdom of Saudi Arabia, Japan, Paraguay, the Republic of Korea, Singapore, the Bolivarian Republic of Venezuela, New Zealand, Turkey, the United States and India took the floor.

16. In concluding, the Chair said that he detected a willingness to continue the exchanges on substance, and that delegations had identified a number of topics as potential themes for focused discussions – including continuing deliberations on 'regulatory data', revisiting aspects related to product coverage and issues related to 'technology transfer'. He said he had also noted the co-sponsors' indication that they would submit further documents on this matter. In this context he said he would not want to exclude the opportunity for delegations to exchange views in writing on any of the specific topics under discussion. He once again encouraged delegations to engage in bilateral contacts to further explore common ground in these discussions. It was his conviction that such contacts would be an essential ingredient of any substantial movement towards any solution of this issue.

17. He said the text-based process so far had been intense, and he had taken good note of delegations' comments regarding the limits of such intensity. At the same time, he was conscious of the momentum in these discussions, and the need to work towards a timely conclusion of these discussions. Against that background, it was his intention to invite delegations for an open-ended informal meeting of the TRIPS Council in early September to touch base on the state of play with a view to continuing engagement and focused discussions. He said he would discuss availability of conference facilities with the Secretariat and communicate the date for such a meeting still before the summer break.

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

2 DRAFT GENERAL COUNCIL DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH IN THE CIRCUMSTANCES OF A PANDEMIC

19. The Chair said this item had been put on the agenda at the request of the European Union. Two communications had also been received from the European Union and had been circulated as documents IP/C/W/680 and IP/C/W/681. He invited the European Union to introduce the topic and the submissions.

20. The delegations of the European Union, Chad, on behalf of the LDC Group, South Africa, Switzerland, Paraguay, Singapore and India, took the floor.

21. The Council took note of the statements made.

3 OTHER BUSINESS

22. The representative of WIPO took the floor to inform the Council of recent activities in relation to COVID-19.
