



Council for Trade-Related Aspects of Intellectual Property Rights

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 12-13 OCTOBER AND 15-16 DECEMBER 2022

Chair: H.E. Ambassador Dr Lansana GBERIE

The present document contains the record of the meeting of the Council for TRIPS held on 12-13 October and 15-16 December 2022. 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 update delegations on the notifications under various provisions of the TRIPS Agreement that had been submitted since the meeting in July 2022, and said he would then offer the floor to delegations wishing to introduce their notifications.

2. The representative of the Secretariat said that the Council had received the following notifications, under Article 63.2 of the TRIPS Agreement:

- a. Thailand had provided a Notification of the Ministry of Commerce on the Determination of Counterfeit Goods and Pirated Goods as Goods Prohibited from Export;
- b. Saudi Arabia, Kingdom of had notified its Competition Law and the corresponding implementing Regulations;
- c. Tonga had notified consolidated 2020 versions of its Industrial Property Act and Regulations, its Copyright Act, its Protection of Layout Designs Act and Regulations, its Protection of Geographical Indications Act and Regulations, and its Customs and Excise Management Act;
- d. The Seychelles had notified its 2022 Fair Trading Act;
- e. The European Union had notified three EU Regulations pertaining to the quality schemes for agricultural products and foodstuffs, to the establishment of Union Symbols for PDOs, PGIs and TSGs, and to the GIs for aromatized wines;
- f. Brazil had notified an amendment to its Patent Statute;
- g. Ukraine had notified a law concerning the Protection of Interests of Persons in the Sphere of Intellectual Property during the Martial Law in connection with the Military Aggression of the Russian Federation against Ukraine;
- h. Chinese Taipei had notified consolidated versions of its Patent Act, its Copyright Act, and its Copyright Collective Management Organization Act;
- i. Italy had notified Decrees relating to the Prohibition of Ambush Marketing ahead of the organization of the 2026 Olympic Games in Italy, to Design protection, and to establishing specialized intellectual property divisions of tribunals and courts of appeals. It had also notified amended procedural rules relating to plant varieties, to patent applications that designate Italy, and to the setting up of an online platform for fee payment;
- j. France had notified legislation relating to genetic resources and associated traditional knowledge, to ensuring compatibility with the Unified Patent Court jurisdiction, to trademarks, trade secrets and to the transformation of utility model applications into patent applications, among others.

3. Bulgaria, Austria, Lithuania and Greece had notified a contact point for IP enforcement under Article 69. Austria had also notified a contact point under Art 67.

4. The Chair invited delegations that had provided new or revised notifications to the Council to introduce those notifications. The representatives of Thailand, Seychelles, the European Union, Chinese Taipei, Brazil, Ukraine, Saudi Arabia, the Kingdom of, Tonga, the Russian Federation, and the United States of America took the floor.

5. The Chair thanked delegations for the information provided on their notifications. He noted that notifications to the Council were not keeping up with the actual development of laws and regulations relating to TRIPS and emphasized that Article 63.2 of the TRIPS Agreement 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. 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. He pointed out that the e-TRIPS platform made fulfilling these transparency obligations much easier.

6. The requirement included the notification of legislative changes made to implement the special compulsory licensing system to export medicines covered by Article 31*bis* of the TRIPS Agreement. More than 50 WTO Members, including most of the world's major exporters of medicines, had adopted implementing legislation that allowed them to use the System as exporters and/or importers. But only 21 Members, including the European Union, had formally notified such measures to the TRIPS Council. The notification of all relevant laws and regulations could assist Members in preparing for the potential use of the System, which was a matter of immediate practical concern at that moment. It would also help the Secretariat in its efforts to provide informed technical support to Members in this area.

7. A more comprehensive picture of how the special compulsory licensing system had been implemented in Members' domestic law could also help Members' on-going discussions about how this particular TRIPS flexibility worked in practice, and about the causes of any potential delays or hindrances in using the system.

8. The Chair recalled that all these notifications could be made through the e-TRIPS Notification Submission System (NSS). E-TRIPS not only facilitated the submission of information by Members – it also 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 Secretariat was available to respond to any question in that regard. He also referred to the latest "Annual Report on Notifications and other Information Flows" issued by the Secretariat in March 2022 in document [IP/C/W/687/Rev.1](#), which summarized submission rates and identifies trends for each of the primary TRIPS transparency mechanisms and would be updated ahead of the first formal meeting of the TRIPS Council in 2023.

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

## **2 REVIEWS OF NATIONAL IMPLEMENTING LEGISLATION**

10. The Chair recalled that the Council was preparing for the review of the national implementing legislation of Samoa. As had been agreed at the end of last year, the Council would wait for the notification of Samoa's revised legislation following their 2018 accession to a number of World Intellectual Property Organization (WIPO) treaties<sup>1</sup> before commencing the review. He proposed that the Secretariat remain in contact with Samoa on the progress of its new legislation; and that the Council revert to the arrangements for Samoa's review at its next meeting. While there were no current reviews pending, he said Members should feel free to revert to any matter raised in past reviews, or to make suggestions regarding further reviews. He would further welcome ideas on how to make best use of this agenda item.

11. 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 AND COVID-19**

12. The Chair recalled that, at its last formal meeting, the Council had agreed to discuss the following three topics under this agenda item:

- a. IP-related domestic measures taken by Members in the context of the COVID-19 pandemic. In light of broad support, in principle, for a continuation of the exchanges of views on measures undertaken as the pandemic persisted. The Chair once again referred to the compilation "COVID-19: Measures Regarding Trade-Related Intellectual Property Rights" on the WTO website which 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. That the list was being updated continuously, even if

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<sup>1</sup> Samoa acceded to the WIPO Madrid Agreement and Protocol in 2018, and to the Patent Cooperation Treaty, the Geneva Act of the Hague Agreement, and the Geneva Act of the Lisbon Agreement in 2019.

there had been no recent changes to the document. He encouraged Members to inform the Secretariat of any measures which should be included on the list, as well as any update or information on the expiry – or end of application – of such measures.

- b. Under paragraph 24 of the Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics the Council was mandated to continue or initiate work to analyse lessons learned and challenges experienced during the COVID-19 pandemic. Given that the Council had already initiated discussions on COVID-19-related experiences in the field of IP under this agenda item since June 2020, delegations continue these exchanges, as directed by paragraph 24 of the Declaration, and that the Council would treat any proposals that Members might make in this regard under this item.
- c. Paragraph 5 of the Decision on the TRIPS Agreement required Members to "communicate to the Council for TRIPS any measure related to the implementation of the Decision, including the granting of an authorization" as soon as possible after the adoption of the measure. It had been agreed at the last meeting that, to the extent that such communications were not already covered by notifications of laws and regulations under item 1, the Council would provide an update on such communication under this agenda item. In this regard, he noted that no communications under paragraph 5 of the Ministerial Decision had been received to date.

13. The Chair opened the floor for any intervention on the three aspects treated under this agenda item.

14. The representatives of South Africa, Switzerland and Sri Lanka took the floor.

15. The Chair proposed to revert to the item at the next meeting to ensure that the exchanges could continue, including on the basis of the following:

- a. the updated Secretariat compilation of COVID-19 related IP measures,
- b. any communications that might be received from Members under paragraph 5 of the MC12 TRIPS Decision, and
- c. any proposals Members might wish to make in the context of paragraph 24 of the WTO Declaration on Pandemic Response.

16. 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**

17. The Chair proposed to address these three agenda items together. He recalled that one tool for the review under item 4 was the information provided by Members in response to lists of questions on Article 27.3(b). He said that the latest Annual Report on Notifications and other Information Flows circulated by the Secretariat illustrated that responses to that checklist had been rather sparse recently. So far, only 28 Members had responded to the lists of questions on Article 27.3(b). The Chair thus encouraged Members to submit responses to these checklists, and to update their previous submissions if they were out of date.

18. The Chair noted that two long-standing procedural issues had been discussed extensively on the record at every regular meeting of the Council for almost ten years. The first was the suggestion for the Secretariat to update 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. The second was the request to invite the CBD Secretariat to brief the Council on the Nagoya Protocol to the CBD, initially proposed in October 2010.

19. The Chair noted that the delegations' positions on these issues were well-known and had already extensively recorded in the Council's minutes and therefore suggested that delegations focus their interventions on suggestions on how to resolve the differences and on how make progress on substantive issues.

20. The representatives of South Africa; India; Bangladesh; Sri Lanka; Indonesia, Brazil; Nigeria; Peru; United States of America; Japan; South Africa; Korea, Republic of and China took the floor.

21. The Council took note of the statements made and agreed to revert to these matters at its next meeting.

### **7 ANNUAL REVIEW OF THE SPECIAL COMPULSORY LICENSING SYSTEM (PARAGRAPH 7 OF THE ANNEX TO THE AMENDED TRIPS AGREEMENT AND PARAGRAPH 8 OF THE DECISION ON THE IMPLEMENTATION OF PARAGRAPH 6 OF THE DOHA DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH)**

22. The Chair recalled that, paragraph 7 of the Annex to the amended TRIPS Agreement and paragraph 8 of the 2003 Waiver Decision required the Council to review the functioning of the System annually, with a view to ensuring its effective operation. They also required the Council to report annually on the System's operation to the General Council. In the case of the Waiver Decision, this review was also deemed to fulfil the requirements of Article IX:4 of the WTO Agreement.

23. The Chair updated Members on the status of acceptances of the TRIPS Protocol. The current period for accepting it ran until 31 December 2023. To date, 136 WTO Members had accepted the amendment to the TRIPS Agreement. In other words, 28 Members were yet to accept the Protocol Amending the TRIPS Agreement. He encouraged those Members to complete their domestic procedures and deposit their instrument of acceptance with the WTO Director-General as soon as possible.

24. When the TRIPS Amendment had entered into force in January 2017, Members had noted that it would be useful to consider how to make this new procurement tool work effectively in practice. He therefore encouraged Members to engage in a constructive discussion which could also build on earlier reviews, as recorded for instance in the Council's Annual Review of 2016 (circulated in document [IP/C/76](#)), as well as the Secretariat's 2016 *Report on Technical Cooperation Activities* (circulated in document [IP/C/W/618](#)).

25. The Chair turned to the Council's report to the General Council. A draft report had been prepared by the Secretariat (circulated in document [JOB/IP/62](#)). It had been modelled on previous years' reports and contained factual information on the implementation and use of the system. Under the section on the Amendment to the TRIPS Agreement, it also included a list of Members who were yet to accept the Protocol Amending the TRIPS Agreement. As with past reports, an extract from the Council's minutes on this agenda item would be attached to the report in Annex 1 and Appendix 1.

26. The Council agreed to adopt the draft report and to attach the record of the discussion.

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

27. The Chair recalled that the examination of scope and modalities for non-violation and situation complaints under TRIPS was in line with the initial mandate in Article 64.3 of the TRIPS Agreement, which had required recommendations to be submitted to the Ministerial Conference in 1999.

28. He recalled that at the 12<sup>th</sup> Ministerial Conference, Ministers had adopted a Decision on TRIPS non-violation complaints (document [WT/MIN\(22\)/26](#)), which directed the TRIPS Council to continue its examination of the scope and modalities for non-violation and situation complaints, and to make recommendations to the 13<sup>th</sup> Ministerial Conference. The Decision also provided that, in the meantime, Members would not initiate such complaints under the TRIPS Agreement.

29. He said that, during recent meetings of the TRIPS Council, a few delegations had signalled openness to return to substantive discussions in this area. In March 2021, his predecessor had suggested that Members could identify areas of agreement in the non-violation discussions. Identifying such areas or elements of agreement regarding the nature of non-violation and situation

complaints could help delegations focus their engagement on the areas of disagreement and thus make at least some progress in framing the relevant questions for discussion.

30. The Chair inquired whether delegations were more at ease now to consider this or any other approach that might help identify common ground, in order to get some movement in this long-standing debate.

31. The representatives of India; Switzerland; Argentina; Sri Lanka; Brazil; Canada; Bangladesh; South Africa; United Kingdom; Nigeria; Indonesia; Chile; United States of America; Peru; the Russian Federation; Bolivia, Plurinational State of; Korea, Republic of; Panama; Hong Kong, China; and the European Union took the floor.

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

## **9 REVIEW OF THE IMPLEMENTATION OF THE TRIPS AGREEMENT UNDER ARTICLE 71.1**

33. The Chair recalled that under this provision, the Council was required to conduct a review of the implementation of the Agreement once every two years. However, as the initial review in 1999 had not been completed, no other review had been initiated subsequently.

34. The Chair reiterated that this review item had long been dormant on the TRIPS Council's agenda, while in other WTO agreements, similar general review mandates had regularly served as an opportunity to pursue in-depth discussions of particular aspects of implementation, as agreed by Members – often taking place in dedicated thematic sessions.

35. He recalled that the recent intensive discussions on the role of intellectual property in the pandemic response, and on the practical application of TRIPS flexibilities in different WTO Members, was only one example of delegations' keen interest in discussing these and other aspects of the implementation of the TRIPS Agreement. Equally intensive engagement on national IP systems was noticeable in the context of Trade Policy Reviews, where Members discussed detailed questions of individual approaches to implementation. He said that other aspects of implementation – such as enforcement had also been requested as *ad hoc* agenda items in the TRIPS Council in the past, and that all this indicated that there was considerable interest in such implementation-related discussions among delegations.

36. The Chair said that the review mandated in Article 71.1 seemed to have been intended as a forum for exactly this type of discussion. He wished to once again explore whether delegations would be ready to consider resuming this review which was, in fact, mandated by the text of the treaty, as this would give a more structured and inclusive home to these and similar discussions on the Council's agenda, and could establish a more permanent discussion-culture around examples and experiences from implementing the Agreement.

37. He said that, taking other practices in the house – such as the SPS or TBT reviews – as an example, resuming the review of the TRIPS Agreement under this item could mean for Members to identify, and agree on, selected topics relevant to TRIPS implementation. These could then be discussed in dedicated sessions over a two-year period as foreseen in Article 71.1.

38. The Chair said that, having chaired the TRIPS discussions in the last few months, he took the view that such regular discussions of concrete aspects of TRIPS implementation would be extremely useful to delegations. He said that they would not only illustrate Members' understanding of the scope of individual TRIPS obligation but would also help share concrete technical approaches to their implementation in different domestic legal systems and economies.

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

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

40. The Chair recalled that Article 24.2 of the TRIPS Agreement required the Council to keep under review the application of the TRIPS provisions on geographical indications. The principal tool used

for the review was the Checklist of Questions (document [IP/C/13](#) and [Add.1](#)). He said that, of the 164 WTO Members, only 52 had responded to the Checklist and most of the responses were likely to be out of date, because they were submitted well over 10 years ago. This was despite the fact that protection of Geographical Indications (GIs) was an active area of legal and policy development in a number of countries, as well as in a number of FTAs.

41. He encouraged delegations to consider submitting responses, or updating initial responses, so that important developments were duly reflected in Members' contributions. The e-TRIPS Submission System was available as an easy and convenient tool to prepare and submit these responses and updates.

42. The Chair suggested that Members, in line with the Council's recommendation made in March 2010, also share information on bilateral agreements related to the protection of GIs which they were party to. He stated that this was an area of considerable activity with direct bearing on the issue, and the sharing of updated information would be very helpful in promoting transparency.

43. The Council agreed to revert to that matter at its next meeting.

### **11 TWENTIETH ANNUAL REVIEW UNDER PARAGRAPH 2 OF THE DECISION ON THE IMPLEMENTATION OF ARTICLE 66.2 OF THE TRIPS AGREEMENT**

44. The Chair turned to the Council's 20<sup>th</sup> annual review of developed country Members' reports on their implementation of Article 66.2 of the TRIPS Agreement. Under a Council decision of February 2003, developed country Members are to submit annual reports on actions taken or planned in pursuance of their commitments under Article 66.2 of the TRIPS Agreement. New detailed reports are required every third year, and updates in the intervening years.

45. He recalled that in July 2022, the Council had requested developed country Members to submit updates to their seventh set of new detailed reports in time for the present meeting, and the Secretariat had since circulated a reminder.<sup>2</sup> He also noted that the LDC Group had submitted a proposal of a template for the submission of reports on commitments of developed countries under Article 66.2.

46. He noted that the Council had received new reports from Switzerland, New Zealand, Australia, Norway, Japan, the United Kingdom, Canada, and the United States. Since the circulation of the revised draft agenda the European Union had also submitted its report. This documentation was being circulated under the new dedicated document series with the symbol [IP/C/R/TTI/\[Member\]/ -](#) where "R" stands for "Reports" and "TTI" stands for "Technology Transfer Incentives".

47. He said that paragraph 2 of the Council's Decision on the Implementation of Article 66.2 states that the annual review should provide Members with an opportunity to pose questions in relation to the information submitted and request additional information; discuss the effectiveness of the incentives provided in promoting and encouraging technology transfer to least developed country Members in order to enable them to create a sound and viable technological base; and consider any points relating to the operation of the reporting procedure established by the Decision.

48. Some of the information by developed country Members had been received only very recently, and most of it was, so far, available only in its original language. He therefore intended for Members to have an opportunity to make further comments at the next meeting of the Council. This would give Members a chance to study the information recently circulated and any additional information subsequently received.

49. The Chair announced that the Secretariat was once again planning to hold the Article 66.2 Workshop in March 2023, back-to-back with the first TRIPS Council meeting of the year. This would allow LDCs sufficient time to absorb the information provided by developed countries in their reports and would also ensure that these reports are translated. It would further be an opportunity to discuss the LDC Groups' proposal for a template for reporting on commitments under this Article. He

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<sup>2</sup> [WTO/AIR/IP/44](#) of 11 July 2022.

indicated that the Workshop would comprise two days of workshop sessions, and a reporting and review segment within the first TRIPS Council meeting of 2023.

50. The representatives of the; the European Union; Australia; the United Kingdom; New Zealand; the United States of America; Japan; Switzerland; Canada; South Africa; Bangladesh, on behalf of the LDC Group; and India took the floor.

51. The Chair suggested that Members be given an opportunity to continue considering the information provided at our next meeting.

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

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

53. The Chair recalled that in July 2022, the Council had agreed to hold the annual review of technical cooperation at the present meeting.

54. Developed country Members had been requested to update information on their technical and financial cooperation activities relevant to the implementation of the TRIPS Agreement. Other Members who also made available technical cooperation were encouraged to share information on these activities. The Secretariat had issued an Airgram on 11 July 2022 reminding developed country Members of this request. Intergovernmental organizations observers to the Council and the WTO Secretariat had also been invited to provide information.

55. The Council had received information from the following developed country Members: Switzerland, New Zealand, Australia, Norway, Japan, the United Kingdom, Canada, and the United States. Since the circulation of the revised draft agenda the European Union has also submitted information in this regard. These reports are being circulated under the new dedicated document series with the symbol [IP/C/R/TC/\[Member\]/ -](#) where "R" stands for "Reports" and "TC" stands for "Technical Cooperation".

56. Intergovernmental organizations had also submitted updated information: the United Nations Conference on Trade and Development (UNCTAD), the Gulf Cooperation Council (GCC), the World Health Organization (WHO), the World Customs Organization (WCO), and the World Intellectual Property Organization (WIPO). Since the circulation of the revised draft agenda, had also submitted information in this regard. Their reports were being circulated in the same document series [IP/C/R/TC/\[IGO observer\]/](#).

57. The report of the WTO Secretariat on technical cooperation activities in the TRIPS area was available in document [IP/C/R/TC/WTO-OMC/3](#).

58. The representatives of the European Union; the United Kingdom; the United States of America; Australia; Switzerland; Canada; New Zealand; Japan; Bangladesh, on behalf of the LDC Group; the WTO Secretariat; the Gulf Cooperation Council (GCC); the World Intellectual Property Organization (WIPO); and the World Health Organization (WHO) took the floor.

59. The Chair noted that most of the valuable information provided by Members and IGO observers had been received only very recently. He would provide delegations an opportunity at the next regular meeting to make further comments on the information submitted.

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

## **13 PARAGRAPH 8 OF THE MINISTERIAL DECISION ON THE TRIPS AGREEMENT ADOPTED ON 17 JUNE 2022**

61. The Chair recalled that under paragraph 8 of the Ministerial Decision on the TRIPS Agreement, adopted on 17 June 2022, Members had agreed to make a decision within six months from adoption, on whether to extend this Decision to cover the production and supply of COVID-19 diagnostics and therapeutics. Since the last formal meeting of the Council in July, Members had held two dedicated



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informal open-ended meetings on this issue - on 19 September and on 3 October 2022. At the first meeting, Members had shared their views on which key issues would need to be discussed to enable Members to take a decision by the prescribed deadline in December.

62. A number of Members had expressed their readiness to move ahead with an extension of the Decision to therapeutics and diagnostics. Other Members had called for an evidence- and fact-based analysis to identify supply side constraints and any IP-related barriers to access to individual therapeutics and diagnostics. A number of delegations had raised the question of the scope of an extension of the Decision, including possibilities for a definition of 'therapeutics and diagnostics'. Some delegations also indicated the need for a list of individual products to be covered. After the meeting, a number of Members had informally shared their questions and analysis in writing with all Members.

63. The Chair said that, based on this discussion, he had set out a schedule of dedicated meetings until December in order to map out the path forward, which he had circulated on 21 September 2022.

64. The second dedicated informal open-ended meeting on the issue had taken place on 3 October 2022. At that meeting, a number of delegations had provided responses to questions circulated after the previous meeting. Detailed interventions had given examples of product definitions from national legislation, and had shared information on the licensing and supply situation of certain therapeutic products used to treat COVID-19. Other delegations had requested evidence on concrete IP-related barriers and indicated that their internal information-gathering and consultation exercises were still on-going. Many delegations had argued that the differences in use, production and distribution between vaccines on the one hand, and therapeutics and diagnostics on the other, meant that a solution for these products also needed to be different from that for vaccines. He said that he had once again invited delegations to share these detailed statements in writing - and he hoped this would be the case soon.

65. Most Members who had taken the floor had also emphasized again that the negotiation process on this question should continue in an open, transparent, and inclusive manner, and that all Members needed to be heard on the development of any outcome.

66. The Chair said that he had reported on these meetings to the General Council on 25 July and on 6 October. As mentioned in his last report, while heartened by the engagement and the efforts that delegations had clearly made - to formulate questions and to provide detailed responses - it was his sense that Members would need to focus on concrete outcomes of our discussion very soon, in order to meet the approaching December deadline. He therefore encouraged delegations to start considering which concrete form their respective proposed outcome decision should take - and ideally propose concrete text, so that other delegations could take a view on this basis.

67. The representatives of South Africa; Maldives; Kenya, on behalf of the ACP Group; Malaysia; Bangladesh, on behalf of the LDC Group; Colombia; Indonesia; Sri Lanka; Egypt; Argentina; Bolivia, Plurinational State of; Brazil; China; Uruguay; Peru; Singapore; Switzerland; Chinese Taipei; the United States of America; Mexico; the European Union; Japan; Canada; Korea, Republic of; India; the United Kingdom; Nigeria; and the World Health Organization (WHO) took the floor.

68. The Chair thanked Members for a rich discussion, and for their serious engagement on this matter. He said he was very much aware that the time until 17 December 2022 was short - and that, in order to take a meaningful decision by that deadline, Members would have to focus on concrete steps very soon. Judging from the interventions at the informal open-ended meetings and today, there were currently a wide range of views held by Members in this regard. In his view, they included at least the following positions:

- a. those who wished to extend the current decision "as is" to therapeutics and diagnostics without any additional language or definition;
- b. those who wished to see concrete evidence of IP barriers before considering an extension to therapeutics and diagnostics; and finally

- c. those who were looking to include a definition, or to agree a concrete list of products to be covered by an extension of the TRIPS Decision to therapeutics and diagnostics.

69. In view of the deadline for a decision in December, he said he would suggest the following approach. As the Council's next open-ended informal meeting dedicated to this issue was just over two weeks away – scheduled for 2 November 2022 – he urged delegations to use the time until that meeting to engage bilaterally and to address concerns and information queries, as these would otherwise take up too much time in the open-ended meetings.

70. He also requested that, by the time of the next meeting on 2 November, all delegations that had a view on what the Council should decide, should make concrete textual proposals for such a Council decision in writing. As he had indicated before, such textual proposals for a decision should be circulated in writing before that meeting, so that these could be a basis for discussion at the meeting. These could be position papers, outlines, detailed drafts, or fully formulated decisions - but it was his sense that such concrete textual options were necessary to focus the discussions ahead of the December deadline. He also indicated that, if the discussions did not concretize on concrete textual options at the next meeting, he would consider a more intense consultative process to drive this process forward.

71. Given that this was the last formal meeting planned for this year, he suggested to keep this agenda item open with a view to resuming in formal mode before 17 December in order to take a decision as prescribed by paragraph 8 of the Ministerial Decision.

72. The Council so agreed.

73. At a resumed meeting of the Council on 15 December 2022, the Chair recalled that the Council had kept discussions under this item open at its meeting on 12-13 October 2022. Since then, the Council had held informal meetings on this matter on 2 and 22 November, and on 6 and 15 December, including directly preceding the current formal meeting. In these meetings, Members agreed that the Council should report the state of play of discussions under this item to the General Council by the expiry of the deadline specified in paragraph 8 of the Ministerial Decision.

74. Against that background, he had circulated a draft report for a factual and neutral reflection of the state of play, as well as for a forward-looking element, on 7 December 2022 in document [JOB/IP/65](#) with an invitation for Members to provide comments. The item had also been placed on the agenda of the General Council meeting scheduled for 19-20 December in the usual fashion.

75. He said that, having received comments on the draft, he had held consultations with a group of interested Members on 12 and 14 December, and the matter had been further discussed in an open-ended informal meeting of the Council on 15 December, immediately preceding this formal session.

76. Although these discussions had been inconclusive, he still believed that the amended language of his proposed draft report circulated in [JOB/IP/65/Rev.1](#) was the best chance of reaching consensus. He said he would refrain from reading out the entire text at this meeting, and simply propose that the Council adopt the draft report as circulated in document [JOB/IP/65/Rev.1](#).

77. The representatives of South Africa; Sri Lanka; Switzerland; the United Kingdom; the United States of America; and the European Union took the floor.

78. Resuming in formal mode later on the same day, the Chair said it was his impression that there was no consensus on adopting a report to the General Council under this agenda item, and that he would therefore report to the General Council under his own responsibility next week.

79. The representatives of Sri Lanka; South Africa; Switzerland; the United Kingdom; Tanzania; Singapore; and Egypt took the floor.

80. The Chair said he would suspend the agenda item one more time, and that he would call a meeting the following day, if Members would be able to find an agreed solution that could then be adopted by all Members.

81. At a resumed meeting of the Council on 16 December 2022 the Chair proposed that the following text – also displayed on the screen in the room – be adopted as the Council's report to the General Council:

"In view of paragraph 8 of the Ministerial Decision on the TRIPS Agreement adopted on 17 June 2022 providing that

[n]o later than six months from the date of this Decision, Members will decide on its extension to cover the production and supply of COVID-19 diagnostics and therapeutics

the TRIPS Council recommends that the General Council extend the deadline."<sup>3</sup>

82. The Council so agreed.

83. The representative of Switzerland took the floor.

#### **14 INTELLECTUAL PROPERTY AND INNOVATION: ROLE OF IP TO RAISE FINANCE FOR START-UPS**

84. The Chair said this item had been put on the agenda at the request of the delegations of Australia, Canada, Chile, the European Union, Japan, Singapore, Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, the United Kingdom, and the United States of America. These delegations had also submitted a communication on this topic, circulated in document [IP/C/W/692](#) in order to allow Members to prepare for today's discussion.

85. The representatives of Switzerland; Japan; the United States of America; Australia; Canada; Chinese Taipei; Singapore; the European Union; the United Kingdom; Chile; Hong Kong, China; Uruguay; Mexico; Switzerland; South Africa; India; China; and Indonesia took the floor.

86. The Council took note of the statements made.

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

87. The Chair recalled that the purpose of this agenda item was to keep Members informed of developments in other WTO bodies which are relevant to TRIPS matters, so no discussion was required. 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.

88. The representative of the Secretariat took the floor.

89. The Council took note of the information provided.

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

90. The Chair said that there continued to be 14 pending requests for observer status in the TRIPS Council by intergovernmental organizations. The updated list of requests<sup>4</sup>, and the information provided by these organizations on their respective work and the reasons for their interest in observer status was available on the Members' website.<sup>5</sup>

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

92. 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).

<sup>3</sup> Subsequently circulated as document [IP/C/95](#).

<sup>4</sup> [IP/C/W/52/Rev.14](#)

<sup>5</sup> Available at [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).

Since then, this invitation had been renewed at each meeting. The Chair suggested to invite again the EFTA to attend the Council's next formal meeting on an *ad hoc* basis.

93. The Council so agreed.

## **17 ANNUAL REPORT**

94. The Chair said that the draft Annual Report of the Council had been circulated in document JOB/IP/61 and still needed to be updated in order to reflect the discussions at the present meeting. He asked if any delegation would have any comments on the draft at this point. He suggested that the Council agrees that the Secretariat be requested to update the draft to reflect the discussions at this meeting. The draft delegations would have one week to comment on the updated parts of the draft report.

95. The Council so agreed.

## **18 OTHER BUSINESS**

96. The Chair proposed to hold the TRIPS Council on the following dates in 2023:

- 16-17 March 2023
- 14-15 June 2023
- 9-10 October 2023.<sup>6</sup>

97. The Council so agreed.

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<sup>6</sup> These dates have been coordinated with WIPO.