



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

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 16-17 MARCH 2023

Chair: H.E. Ambassador Dr Lansana GBERIE

The present document contains the record of the meeting of the Council for TRIPS held on 16-17 March 2023. 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 October 2022 and said he would then offer the floor to delegations wishing to introduce their notifications.

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

- a. A number of the member States of the European Union had notified a significant number of primary and secondary domestic laws relating to the substance and the administration of their respective IP systems. These EU member States were Bulgaria, Latvia, Austria, Lithuania, Denmark, Italy, Portugal, and Ireland.
- b. Canada had notified an amended set of patent rules.
- c. Ukraine had notified two laws relating to geographical indications and a cabinet resolution addressing issues of the National Intellectual Property Authority.
- d. Costa Rica had notified a significant number of laws and regulations relating to the entirety of its substantive IP system.
- e. Japan had notified consolidated versions of the Trademark Act and the Designs Act.
- f. Hong Kong, China had notified Rules and an Ordinance related to Registered Designs.
- g. Chinese Taipei had notified its Copyright Act, its Patent Act, as well as Enforcement Rules of the Patent Act.
- h. Saudi Arabia had notified the Law and implementing regulations relating to Arbitration. It had also notified Executive Regulations relating to the Copyright Law and the Patent Law.
- i. Australia had notified amended Copyright Regulations which extend protection for secondary uses of foreign sound recordings to additional countries that provide equivalent protection to Australian sound recordings.
- j. The United Kingdom had notified regulations related to the market organization and protection of agricultural products, food and drink after its withdrawal from the European Union.
- k. The Gambia had notified its 2021 Intellectual Property Bill and related 2022 Regulations.
- l. Korea had notified its Agricultural and Fishery Products Quality Control Act.

3. Ireland, El Salvador, the European Union and The Gambia had notified a contact point for IP enforcement under Article 69.

4. Austria, El Salvador, Botswana and The Gambia had also submitted new or updated responses to the Checklist on Issues of Enforcement.

5. The Chair invited delegations that had provided new or revised notifications to the Council to introduce those notifications. The representatives of Canada; the United Kingdom; Australia; Ukraine; Hong Kong, China; Korea, Republic of; Chinese Taipei; the European Union; Japan; Costa Rica; The Gambia; and the Russian Federation took the floor.

6. The Chair invited the Secretariat to introduce the "Annual Report on Notifications and other information flows" (document [IP/C/W/696](#)).

7. A representative of the Secretariat took the floor.

8. The Chair thanked delegations for the information provided on their notifications and welcomed the information provided by the Secretariat. 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.

9. 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. It would also help the Secretariat in its efforts to provide informed technical support to Members in this area.

10. 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.

11. The Chair recalled that all these notifications could be made through the e-TRIPS Submission System. 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.

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

2 REVIEWS OF NATIONAL IMPLEMENTING LEGISLATION

13. 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 accession to a number of World Intellectual Property Organization (WIPO) treaties 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.

14. 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.

15. 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

16. 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. 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. The list was being updated continuously, even if 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 (document [WT/L/1142](#)), 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, it was agreed 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 (document [WT/L/1141](#)) 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 them under this agenda item. In this regard, he noted that no communications under paragraph 5 of the Ministerial Decision had been received to date.

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

18. The representatives of South Africa, India, the European Union and the United Kingdom took the floor.

19. 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.

20. 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

21. 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.

22. 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.

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

24. The representatives of India; Bangladesh; Indonesia; Tanzania, on behalf of the African Group; Peru; South Africa; Brazil; Japan; the United States of America; and the World Intellectual Property Organization took the floor.

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

7 NON-VIOLATION AND SITUATION COMPLAINTS

26. 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.

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

28. He said that, during recent meetings of the Council for TRIPS, 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.

29. 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.

30. The representatives of South Africa; Bangladesh; Tanzania, on behalf of the African Group; India; Kenya, on behalf of the ACP Group and Indonesia took the floor.

31. 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

32. 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.

33. 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.

34. 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 had also

been requested as *ad hoc* agenda items in the Council for TRIPS in the past, and that all this indicated that there was considerable interest in such implementation-related discussions among delegations.

35. 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.

36. 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.

37. The Chair said that, in his view, 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.

38. 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

39. 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.

40. 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.

41. 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.

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

10 FOLLOW-UP TO THE TWENTIETH ANNUAL REVIEW UNDER PARAGRAPH 2 OF THE DECISION ON THE IMPLEMENTATION OF ARTICLE 66.2 OF THE TRIPS AGREEMENT

43. The Chair recalled that the Council had conducted the Twentieth Annual Review under Paragraph 2 of the Decision on the Implementation of Article 66.2 of the TRIPS Agreement at its meeting in October 2022. At that meeting delegations from developed country Members had briefly presented the updated reports they had submitted under Article 66.2, and the Council had agreed that it would revert to the item at the present meeting to permit continued consideration of the submitted material. He also recalled that, in July 2020, the LDC Group had circulated a new submission entitled "Proposed New Template for Annual Reporting under Article 66.2 of the Agreement on Trade-related Intellectual Property Rights" in document [IP/C/W/664](#).

44. In order to give LDCs more time to absorb the information provided by developed country Members in their reports, and to ensure that these reports were available in the working languages of the WTO, the Secretariat had once again organized a "Workshop on the Implementation of the

Article 66.2 of the TRIPS Agreement" which had taken place on 14-15 March 2023, immediately preceding the meeting. The Chair indicated that a number of capital-based delegates who had participated in that Workshop were present at the meeting.

45. The Chair asked the Secretariat to report on this Workshop.

46. A representative of the Secretariat took the floor.

47. The representatives of Bangladesh, on behalf of the LDC Group; Tanzania, on behalf of the African Group; Sierra Leone; the United Kingdom; Nepal; Benin; Bangladesh; Switzerland; Haiti; Mali; the United States of America; the European Union; Australia; Japan; Canada; Norway; Malawi; and Sudan took the floor.

48. The Council took note of the statements made.

11 TECHNICAL COOPERATION AND CAPACITY-BUILDING

49. The Chair recalled that in October 2022, the Council had conducted its annual review of technical cooperation on the basis of reports submitted by developed country Members, and a number of observer international organizations. He said that, as some information had only been made available a short time before the meeting, the Council had agreed that Members would have a further opportunity to make comments at the present meeting.

50. The representatives of Bangladesh, on behalf of the LDC Group took the floor.

51. The Chair recalled that during the Council meetings in October 2021 and in March 2022, a request had been made for the Secretariat to organize a dedicated annual workshop on technical cooperation under Article 67 of the TRIPS Agreement – similar to the Article 66.2 Workshop – to help inform dialogue among Members in this regard. He invited the Secretariat to update Members on its follow-up to this request.

52. A representative of the Secretariat said that during the Council meetings of October 2021 and March 2022, the delegation of Bangladesh had requested the WTO Secretariat to organize a dedicated annual workshop to monitor progress on IP-related technical cooperation under Article 67 of the TRIPS Agreement. In response to this request, the Secretariat was planning to organize such a workshop on 12-14 June 2023 to help inform dialogue among Members. The aim was also to provide specific input to the Council with a view to improving overall coordination and the matching of programmes with priority needs. Thirty places were available to applicants from beneficiary LDC and developing Members and observers.

53. The programme would consist of two segments: a two-day workshop segment on 12-13 June, and a final segment, on 14 June, involving participation in, and contribution to, deliberations under Council agenda item "Technical Assistance and Capacity Building". The final segment of the workshop would be optional, but participation was strongly encouraged. The Secretariat would reach out to delegations regarding possible speakers and topics in the near future, and further details would be communicated to delegations in due course.

54. The representative of Bangladesh took the floor.

55. The Council took note of the statements made.

12 PARAGRAPH 8 OF THE MINISTERIAL DECISION ON THE TRIPS AGREEMENT ADOPTED ON 17 JUNE 2022

56. 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. He also recalled that at the last formal meeting in October – and resumed in December – the Council had recommended to the General Council to extend the deadline for such a decision. The General Council, at its meeting on 19 December 2022, had agreed to this recommendation and resolved to return to the question of the duration of the extension at its next meeting. At its recent

meeting on 6-7 March 2023, the General Council had agreed that it would keep the question of the duration of the extension on its agenda again for its next meeting – and that Members would provide updates on where they stand on their internal processes. In the meantime, substantive discussions would continue in the Council for TRIPS. It was against this background, that the item was on the Council's agenda.

57. The representatives of Tanzania, on behalf of the African Group; South Africa; Bangladesh, on behalf of the LDC Group; Nepal; Egypt; Kenya, on behalf of the ACP Group; Indonesia; China; India; the United States of America; Brazil; Switzerland; Japan; the United Kingdom; Chinese Taipei; the European Union; Korea, Republic of; Singapore; and Norway took the floor.

58. With respect to next steps, the Chair said that in his experience, Council discussions were most constructive when they were well prepared and took place on the basis of submissions and proposals that Members had been able to study in advance. The 10-day rule for the closing of the Airgram was intended precisely for that purpose, namely, to allow Members to prepare for the items on the agenda, so that discussions at the Council meeting were constructive and focused. The next formal meeting of the Council was scheduled for 14-15 June – and the agenda for that meeting would close on 1 June.

59. Given that his term as Chair ended with the current meeting, he suggested that the new Chair be invited to consult with Members on how best to move forward with work under this agenda item.

60. The Council so agreed.

13 INTELLECTUAL PROPERTY AND INNOVATION: CROSS-BORDER COOPERATION AMONG IP OFFICES

61. The Chair said this item had been put on the agenda at the request of the delegations of Australia; Canada; the European Union; Hong Kong, China; 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/697](#) in order to allow Members to prepare for today's discussion.

62. The representatives of Japan; the United States of America; Singapore; Switzerland; Australia; Chinese Taipei; the United Kingdom; Canada; Hong Kong, China; the European Union; Korea, Republic of; Peru; India; Bangladesh; South Africa; Canada and the World Intellectual Property Organization took the floor.

63. The Council took note of the statements made.

14 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

64. The Chair recalled that the purpose of this information agenda item was to keep Members posted of developments in the WTO, which had a TRIPS or intellectual property angle.

65. Regarding dispute settlement, the Chair noted that one request for consultations had been formally submitted since the last meeting. By means of a communication dated 12 December 2022, and revised on 9 February 2023, China requested consultations with the United States of America regarding *Measures on Certain Semiconductor and other Products, and related services and technologies*. The requests were circulated on 15 December 2022 and 10 February 2023, respectively (documents [IP/D/44](#) and [IP/D/44/Rev.1](#)).

66. Regarding developments relating to the TRIPS amendment, the Chair said that the period for acceptance of the Protocol currently ran until 31 December 2023 (document [WT/L/1122](#)). 136 Members had now accepted the TRIPS amendment. He encouraged the remaining 28 Members to complete their domestic procedures and deposit their instrument of acceptance with the WTO Director-General as soon as possible.

67. The Chair 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.

68. A representative of the Secretariat took the floor.

69. The Council took note of the information provided and the statements made.

15 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

70. 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 requests¹, 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.²

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

72. 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, 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.

73. The Council so agreed.

16 OTHER BUSINESS

74. The Chair recalled that the Ministerial Decision adopted at the 12th Ministerial Conference reinvigorated the Work Programme on Electronic Commerce based on the original mandate and instructed the General Council to periodically review work under the Work Programme, based on reports submitted by the relevant WTO bodies. He also recalled that the Council for TRIPS had had brief discussions relating to the E-commerce Work Programme in 2019 and 2020. While a number of delegations had supported making E-commerce a standing item on the Council's agenda, others had preferred that the topic only be taken up on the basis of proposals by Members.

75. Since then, he had not detected any movement regarding these issues, and no delegation had requested that an *ad hoc* item on the Work Programme on Electronic Commerce be added to the agenda this time.

76. The Chair said that, when requested to provide an update on the work carried out in the Council for TRIPS, he had in the past reported this state of play to the General Council accordingly. He suggested that the new Chair follow the same practice as appropriate.

77. He invited delegations who would like to see certain issues be addressed by this Council under the Work Programme on Electronic Commerce to request the inclusion of an *ad hoc* item at the next meeting in June.

17 ELECTION OF CHAIRPERSON

78. The Chair turned to the last agenda item, namely "election of the Chairperson".

79. He noted that the rules of procedure provided that "[t]he election shall take place at the first meeting of the year and shall take effect at the end of the meeting", and that "[t]he Chairperson [...] shall hold office until the end of the first meeting of the following year". He recalled that, at its meeting on 6-7 March 2023, the General Council had noted consensus on the Chairpersons for regular and negotiating WTO bodies. On the basis of the understanding reached by the General Council, he proposed that the Council for TRIPS elect H.E. Mrs Pimchanok Pitfield, Ambassador of Thailand, as its chairperson for the coming year.

80. The Council so agreed.

¹ [IP/C/W/52/Rev.14](#)

² Available at https://www.wto.org/english/tratop_e/trips_e/xtrips_e/igo_observer_e.htm.

81. The representatives of Thailand; the European Union; Bangladesh; Nepal; the United Kingdom; Tanzania, on behalf of the African Group; Japan; the United States of America; Indonesia; Cambodia; Canada; Kenya; Egypt; Korea, Republic of; Brazil and the Secretariat took the floor.

82. The Chair thanked delegations for their trust and cooperation during his term as TRIPS Council Chair during the past year and expressed his hope that they would also support the efforts of his successor in addressing the items on the Council's agenda. He wished delegations and the new Chair much success in that endeavour.

83. The meeting was closed.
