



Council for Trade-Related Aspects of Intellectual Property Rights

MINUTES OF MEETING HELD IN THE CENTRE WILLIAM RAPPARD ON 11-12 JUNE 2013

Chairperson: Ambassador Alfredo Suescum (Panama)

The present document contains the record of the Council for TRIPS meeting held on 11-12 June 2013. 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

1.1. The Chairman said that, since its meeting in March 2013, the Council had received a number of updates to earlier notifications of laws and regulations notified under Article 63.2 of the TRIPS Agreement:

- The European Union had notified 30 directives, regulations and other legislative measures relating to copyright and related rights, trademarks, patents, supplementary protection certificates, geographical indications, industrial designs, plant varieties, and undisclosed information and clinical trial data;
- Croatia had notified Patent Regulations and amendments thereto; in addition, it notified, as "other laws and regulations", various rules concerning copyright and related rights, trademarks, geographical indications, industrial designs, patents, plant variety protection, layout-designs of integrated circuits, protection of undisclosed information, medical products, and enforcement, as well as related administrative procedures;
- Australia had notified various amendments to its laws and regulations on copyright, patents, and trademarks, as well as to a number of general IP laws;
- Japan had notified its Patent Act, Trademark Act, and Design Act; in addition, it had notified as "other laws and regulations" related ordinances.

1.2. Those notifications of laws and regulations were available in the IP/N/1- series of documents, and the actual texts of laws in sub-series of documents in electronic form on the Documents Online database.

1.3. As regards notifications of contact points under Article 69 for the exchange of information and cooperation on trade in infringing goods, since its meeting in March 2013, Cape Verde had notified its contact point. In addition, updates to contact points notified earlier had been received from the Kyrgyz Republic, Australia and Croatia. The information on the Members' transparency toolkit page had been updated accordingly.

1.4. The Chairman urged those Members whose initial notifications of laws and regulations remained incomplete to submit the outstanding material without delay. Equally, he urged other Members to fulfil their obligation under the TRIPS Agreement to notify any subsequent amendments of their laws and regulations without delay after their entry into force. He especially encouraged Members to notify changes made to their laws and/or regulations to implement the Decision on TRIPS and public health.

1.5. The Council took note of the information provided.

## 2 REVIEWS OF NATIONAL IMPLEMENTING LEGISLATION

### 2.1 Follow-up to reviews already undertaken

2.1. The Chairman said that, as regards the reviews of national implementing legislation that had been initiated at the Council's meetings since April 2001, the reviews of two Members remained on the Council's agenda, namely those of Fiji; and Saint Kitts and Nevis. He urged the delegations concerned to provide the outstanding material as soon as possible, so as to allow the Council to complete the follow-up to those reviews.

2.2. The Council took note of the information provided.

### 2.2 Arrangements for the review of the national implementing legislation of the Russian Federation

2.3. The Chairman recalled that the Council had agreed, at its meeting in November 2012, to review the national implementing legislation of the Russian Federation at the present meeting. In

preparation of the review, Switzerland, the European Union and the United States had posed questions to the Russian Federation (documents IP/C/W/587-589, respectively).

2.4. The representative of the Russian Federation said that, since his delegation faced this kind of procedures for the first time, it had not managed to present responses before the present meeting. His delegation intended to provide responses to the questions posed to it in consultation with its partners in the Council. He requested that the Council postpone the review until the Council's meeting in October.

2.5. The Chairman suggested that, in light of the statement by the representative of the Russian Federation, the Council revert to the review of the national implementing legislation of the Russian Federation at its meeting scheduled for 10-11 October 2013.

2.6. The Council so agreed.

### **2.3 Arrangements for the review of the national implementing legislation of Tajikistan**

2.7. The Chairman recalled that, at its meeting in March 2013, the Council had requested the Secretariat to contact Tajikistan, a newly acceded Member, concerning its notification under the TRIPS Agreement. He suggested that the Council schedule the review of the national implementing legislation of Tajikistan for the Council's first meeting in 2014, and that the Council revert to the arrangements for that review at its meeting in October.

2.8. The Council so agreed.

### **2.4 Arrangements for the review of the national implementing legislation of Montenegro**

2.9. The Chairman recalled that, at its meeting in March 2013, the Council had agreed to review the national implementing legislation of Montenegro, also a newly acceded Member, at its meeting scheduled for 10-11 October 2013. Concerning the arrangements for that review, the Council had set the following target dates for the submission of questions and answers: questions should be submitted to Montenegro, with a copy to the Secretariat, by 1 August 2013; and responses to questions posed within that deadline should be submitted by 12 September 2013.

2.10. The Council took note of the information provided.

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

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

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

5.1. The Chairman suggested that the Council continue to discuss the three agenda items together on the basis of contributions by Members. As requested by the Council at its meeting in March 2013, he had continued his predecessor's consultations on the suggestions that the Secretariat of the Convention of Biological Diversity (CBD) be invited to brief the Council on the Nagoya Protocol that had been adopted at the tenth meeting of the Conference of the Parties to the CBD held in Nagoya, Japan in October 2010. Furthermore, at that meeting, the Council had also requested him to consult on Ecuador's proposal that the Secretariat be requested to update three factual notes that summarized the points delegations had made in the Council's past discussions on the review of the provisions of Article 27.3(b); on the relationship between the TRIPS Agreement and the CBD; and protection of traditional knowledge and folklore. He said that, unfortunately, he was not in a position to report any new developments in delegations' positions on those two matters.

5.2. The representatives of Indonesia, Brazil, China, the Plurinational State of Bolivia, India, Bangladesh, Colombia, Peru, South Africa, Cuba, Ecuador, Nepal on behalf of the LDC Group, Switzerland, El Salvador, the United States, Japan, Korea, New Zealand and Canada took the floor. The statements will be reproduced in an addendum to the present record.

5.3. As to the suggestion that the WIPO Secretariat be requested to brief the Council on the on-going work in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), the Chairman said that, as an observer in the Council, the WIPO Secretariat could request the floor whenever it deemed necessary, and that any delegation interested in such a report could contact the delegation of WIPO to see if that would be a possibility in the future. In light of the discussion, he suggested that the Council request the Chair to continue consulting on the suggestions that the CBD Secretariat be invited to brief the Council on the outcome of the Nagoya meeting, and that the Secretariat be requested to update three factual notes that summarize the points delegations have made in the Council's past discussions on these three agenda items.

5.4. The Council took note of the statements made and so agreed.

## 6 NON-VIOLATION AND SITUATION COMPLAINTS

6.1. The Chairman recalled that, at the Eighth Session of the Ministerial Conference, Ministers had directed the Council to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 (so-called "non-violation and situation complaints") and make recommendations to their next Session. It was agreed that, in the meantime, Members would not initiate such complaints under the TRIPS Agreement.<sup>1</sup> He said that this meant that the Council should agree on its recommendations to the Bali Ministerial Conference at its end-of-year meeting scheduled for 10-11 October.

6.2. At the Council's November 2012 meeting, many delegations had welcomed the updated Secretariat note summarizing the Council's earlier discussions on the matter,<sup>2</sup> as well as a briefing session it had organized. At its last meeting in March, the Council had continued its consideration of this matter, and requested the Chair to hold consultations on the matter.

6.3. In his consultations, he had said that he would welcome any feedback from delegations on whether they thought that there was anything more that the Chair or the Secretariat could do to further facilitate the Council's discussion of the matter.

6.4. He indicated that he intended to intensify consultations prior to the next meeting with a view to enabling the Council to agree on its recommendations to the Ministerial Conference at its meeting in October. While this might appear a low priority issue, it should be borne in mind that under the TRIPS Agreement the Council was originally required to make these recommendations over 12 years ago, in 1999.

6.5. The United States, India, China, Brazil, the Plurinational State of Bolivia, South Africa, Ecuador, Cuba, Switzerland, Nigeria, the European Union, and the United States took the floor under this item. The statements will be reproduced in an addendum to the present record.

6.6. The Chairman reiterated that he intended to intensify his consultations on the matter with a view to enabling the Council to agree on its recommendations to the Bali Ministerial Conference at its October meeting. He said that, in the meantime, he would remain available to any delegation that would have any ideas or suggestions to share. He also noted some delegations' wish to participate in the consultations.

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

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

7.1. No statements were made by Members under this agenda item.

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

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<sup>1</sup> Document WT/L/842.

<sup>2</sup> Document IP/C/W/349/Rev.2.

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

8.1. The Chairman recalled that Article 24.2 provided that the Council shall keep under review the application of the provisions of the Section on geographical indications of the Agreement. The principal tool used to coordinate the review process was a Checklist of Questions contained in document IP/C/13 and Addendum 1, which a number of Members had submitted, but many had not yet completed. In addition, at its meeting in March 2010, the Council had agreed to encourage Members to share information on and notify to the Council bilateral agreements relating to the protection of GIs which they had entered into.

8.2. As the question of GI protection remained of continuing interest and a point of discussion, Members were likely to benefit from a more complete and up-to-date picture. He therefore urged those delegations that had not yet done so to consider providing responses to the questions. Likewise, he encouraged those Members having already responded to the Checklist to provide updates to the extent there had been any significant changes in the way that they provided protection to GIs. He added that the Secretariat advised that only 49 Members had submitted responses, and that the majority of these dated back to the period from 1998 to 2002. Since there had been significant developments at the national and bilateral levels, it would be beneficial for Members to have a fuller base of updated information.

8.3. In line with the Council's recommendation made in March 2010, he also encouraged any Member that was a party to any bilateral agreements related to the protection of GIs and had not yet shared such information with the Council to do so as soon as possible. He indicated that so far, only three Members had provided such information in writing; in addition, five other Members had orally provided information at past Council meetings.

8.4. No statements were made by Members under this agenda item.

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

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

### **9.1 Arrangements for the annual review**

9.1. The Chairman said that the Council had traditionally undertaken its annual review of technical cooperation each autumn. He therefore suggested that the Council hold the annual review at its meeting scheduled for 10-11 October. Accordingly, he suggested that the Council invite developed country Members to supply information on their activities pursuant to Article 67 of the TRIPS Agreement. Other Members who also made available technical cooperation were encouraged to share information on these activities if they so wished. He also suggested that the Council invite those intergovernmental organizations that had observer status in the Council to provide information on their activities of relevance and that the WTO Secretariat also be instructed to report on its activities. He proposed that the Council request that this information be made available by 18 September in order to allow its timely circulation before the meeting.

9.2. The Council so agreed.

9.3. The Chairman said that the notifications on Article 67 activities represented one area where the Council produced a very significant amount of invaluable documentation, containing information which could be difficult to access and review to get an overall picture of developments. In view of the on-going implementation of the recommendations for savings and more efficient use of resources made by the Budget Committee<sup>3</sup>, the Council had invited, at its meeting in June 2012, the Secretariat to identify ways of facilitating the submission, processing and circulation of this information, and to consult with delegations at a technical level. He invited the Secretariat to provide an update on its work to develop an information management tool for this purpose.

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<sup>3</sup> Document WT/BFA/128.

9.4. The information provided by the representative of the Secretariat will be reproduced in an addendum to the present record.

## 9.2 Other matters

9.5. The Chairman recalled that, in its past meetings, the Council had also discussed in this context LDC priority needs for technical and financial co-operation.

9.6. He said that Australia had provided an update on its notification of a contact point for technical co-operation on TRIPS. The information on the Members' transparency toolkit page had been updated accordingly.

9.7. The representatives of the European Union, Nepal, Uganda, India, Brazil, Japan, the European Union, South Africa, Nepal and Rwanda took the floor under this agenda item. The statements will be reproduced in an addendum to the present record.

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

## 10 REQUEST FOR AN EXTENSION OF THE TRANSITIONAL PERIOD UNDER ARTICLE 66.1 OF THE TRIPS AGREEMENT

10.1. The Chairman recalled that, at the Council's meeting in November 2012, Haiti on behalf of the LDC Group had presented, under "Other Business", a request for an extension of the current transition period under Article 66.1 of the TRIPS Agreement that the LDC Group had submitted just prior to that meeting (IP/C/W/583). The extended general transition period was set to expire on 1 July 2013. At the request of Nepal on behalf of the LDC Group, the Council had had this item on the agenda of its meeting in March 2013. After its first discussion of the request, the Council had agreed to revert to the matter at the present meeting, and had requested the Chair to hold consultations with a view to resolving the matter at the present meeting.

10.2. He said that, in light of the consultations, he had circulated for Members' consideration a draft decision on the extension of the transition period under Article 66.1 for least developed country Members. This draft had been discussed at the Council's informal meetings on 7 June and briefly before before the present meeting. In light of those discussions, he suggested that the Council adopt the decision as contained in document JOB/IP/8.

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

10.4. The Chairman thanked all the delegations involved in the consultations for their hard work and considerable efforts, as well as those delegations which, although not directly involved, had provided support and counsel in the course of the consultation process. He extended his thanks to the Secretariat, which at all times was working alongside the process, and finally his predecessor, Ambassador Castillo, who had started off the consultation process and set it off on the right track.

10.5. The representatives of Nepal on behalf of the LDC Group; Haiti; the Dominican Republic; India; Morocco on behalf of the African Group; El Salvador; Lesotho; Brazil; South Africa; China; Australia; Norway; Mexico; Argentina; Uruguay; Chile; Japan; the United States; Canada; the European Union; Hong Kong, China; Korea; Switzerland; Tanzania; Rwanda and the Holy See (as Observer) took the floor under this agenda item. The statements will be reproduced in an addendum to the present record.

10.6. The Council took note of the statements made.

## 11 INTELLECTUAL PROPERTY, CLIMATE CHANGE AND DEVELOPMENT

11.1. The Chairman said that the item had been put on the agenda at the written request of the delegation of Ecuador. He recalled that, at the Council's meeting in March 2013, Ecuador had

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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/64.

briefly presented, under "Other Business", its submission entitled "Contribution of Intellectual Property for Facilitating the Transfer of Environmentally Rational Technology" (IP/C/W/585).

11.2. The representatives of Ecuador, Cuba, Indonesia, China, India, the Plurinational State of Bolivia, Bangladesh, Nepal on behalf of the LDC Group, Rwanda, Brazil, the Kingdom of Saudi Arabia, the United States, Japan, the European Union, Canada, Switzerland, Australia, New Zealand, Ecuador, Bolivia, and the United States took the floor under this agenda item. The statements will be reproduced in an addendum to the present record.

11.3. In concluding, the Chairman said that, as the representative of Ecuador had said in his initial statement, Ecuador's submission had been useful in sparking discussion on the relationship between IP, climate change and development. He believed that the discussion would continue, particularly as some delegations had indicated that they were keen to continue the debate. He noted, however, that there were diverging positions with regard to a post-Bali programme or agenda.

11.4. The Council took note of the statements made.

## **12 INTELLECTUAL PROPERTY AND INNOVATION: COST-EFFECTIVE INNOVATION**

12.1. The Chairman said that the item had been put on the agenda at the written request by the delegations of Canada, Chile, the European Union, Korea, Switzerland, Chinese Taipei, and the United States.

12.2. The representatives of the United States, Canada, Korea, Chile, Switzerland, Chinese Taipei, the European Union, New Zealand, Australia, Brazil, India and Ecuador took the floor under this agenda item. The statements will be reproduced in an addendum to the present record.

12.3. The Council took note of the statements made.

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

13.1. The Chairman said that, by means of a communication, dated 3 May 2013, Cuba had requested consultations with Australia regarding the issue of "Australia - Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging" (document IP/D/33). The following Members had requested to join those consultations: Canada, New Zealand, Norway, Ukraine, Honduras, the European Union, the Dominican Republic, Uruguay, Brazil, Guatemala and Nicaragua (documents WT/DS458/2 to 13, respectively).

13.2. The Council took note of the information provided.

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

14.1. The Chairman recalled that, at its meeting in November 2012, the Council had agreed to grant ad hoc observer status on a meeting-by-meeting basis to the Cooperation Council of the Arab States of the Gulf (GCC) and the European Free Trade Association (EFTA). There remained 13 pending requests for observer status in the TRIPS Council by other intergovernmental organizations. The updated list was contained in document IP/C/W/52/Rev.13. In June 2011, the Council had requested the Secretariat to contact the IGOs with pending requests to update any information they had provided earlier, including on the nature of their work and the reasons for their interest in being granted observer status. As regards those IGOs, the Secretariat had received updated information as requested from the Conférence des Ministres de l'Agriculture de l'Afrique de l'Ouest et du Centre (CMA/AOC), the International Organization of Vine and Wine (OIV), the South Centre, and the United Nations Environment Programme (UNEP). Furthermore, the CBD Secretariat had informed the Secretariat that it felt that no update was necessary, having already renewed its request as recently as 24 November 2010 by letter addressed to the WTO Director-General. This information was available on the Members' website.

14.2. As requested by the Council at its last meeting, he had continued his consultations on the requests for observer status from the five IGOs that had recently provided updated information, as



well as on the requests from eight other organizations that had not yet updated their information. He said that, unfortunately, he was not in a position to report any new thinking in respect of those requests.

14.3. The representatives of India, Brazil, Ecuador, Indonesia, Cuba, Nepal, Zimbabwe, the United States, Saudi Arabia, and the Dominican Republic took the floor under this agenda item. The statements will be reproduced in an addendum to the present record.

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

## **15 OTHER BUSINESS**

### **15.1 Invitations to ad hoc observers**

15.1. The Chairman recalled that, at its meetings held in June 2010 and November 2012, the Council had agreed to grant ad hoc observer status on a meeting-to-meeting basis to the African Regional Intellectual Property Organization, the African Intellectual Property Organization, the Cooperation Council of the Arab States of the Gulf, and the European Free Trade Association. He suggested that the Council again invite these organizations to attend the Council's next formal meeting on an ad hoc basis.

15.2. The Council so agreed.

### **15.2 Eleventh Annual Review under Paragraph 2 of the Decision on the "Implementation of Article 66.2 of the TRIPS Agreement"**

15.3. The Chairman recalled that paragraph 1 of the decision on the "Implementation of Article 66.2 of the TRIPS Agreement" provided that developed country Members shall submit annual reports on actions taken or planned in pursuance of their commitments under Article 66.2. To that end, they were to provide new detailed reports every third year and, in the intervening years, updates to their most recent reports. Those reports were to be submitted prior to the last Council meeting scheduled for the year in question. Paragraph 3 of the decision determined the information to be provided in those reports.

15.4. The first, second and third sets of detailed annual reports under the decision had been presented to the Council's end-of-year meetings in 2003, 2006, 2009 and 2012, and updates to the Council's meetings in the intervening years. Therefore, for 2013 developed country Members should submit a first set of updates to the fourth set of new detailed reports on actions taken or planned in pursuance of their commitments under Article 66.2 submitted last year. Those updates should be provided prior to the Council's end-of-year meeting scheduled for 10-11 October. As provided in paragraph 2 of the Decision, the Council was required to review those updates at that meeting.

15.5. Accordingly, he suggested that developed country Members be requested to provide new detailed reports on actions they had taken or planned in pursuance of their commitments under Article 66.2 by 18 September, i.e. about three weeks before the meeting, in order to allow their timely circulation and review at the Council's meeting in October.

15.6. The Council so agreed.

15.7. The Chairman said that, as requested by the Council at its March meeting, in preparation for the annual review he intended to hold consultations with delegations on the request by Haiti on behalf of the LDC Group that the Council adopt the proposed format for reports to be submitted by developed country Members under Article 66.2 contained in a communication by Angola on behalf of the LDC Group in document IP/C/W/561.

15.8. He recalled that, in view of the on-going implementation of the recommendations for savings and more efficient use of resources made by the Budget Committee<sup>5</sup>, at its meeting in

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<sup>5</sup> Document WT/BFA/128.

June 2012, the Council had invited the Secretariat to identify ways of facilitating the submission, processing and circulation of this information, and to consult with delegations at a technical level. He invited the Secretariat to provide an update on its work to develop an information management tool for this purpose, and to inform the Council of a workshop that it was planning to hold on transfer of technology.

15.9. The representatives of the Secretariat and Nepal took the floor under this sub-item. The statements will be reproduced in an addendum to the present record.

### **15.3 Other reviews**

15.10. The Chairman said that, as had already been discussed under a previous agenda item, the Council would hold its annual review on technical cooperation under Article 67 at its October meeting. The Council would also have on its agenda the annual review of the functioning of the Paragraph 6 System. In preparation for that review, he encouraged delegations to share either directly with him or through the Secretariat any thoughts or suggestions they might have concerning the arrangements for that review. If needed, he would be available to consult with interested delegations on the preparations of the review.

### **15.4 Proposal for an EU Directive on Tobacco Products**

15.11. The Chairman said that the delegations of Nicaragua and Cuba wished to make statements under "Other Business" concerning a proposal for an EU directive on tobacco products.

15.12. The representatives of Nicaragua, the Dominican Republic, Honduras, Cuba, the European Union, Zimbabwe, Australia and New Zealand took the floor under this sub-item. The statements will be reproduced in an addendum to the present document.

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