



Council for Trade-Related Aspects of Intellectual Property Rights

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 11 JUNE 2014

Chairperson: Ambassador Mothusi Palai (Botswana)

The present document contains the record of the Council for TRIPS meeting held on 11 June 2014. The statements made during the meeting will be circulated in an addendum to the present document.

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## 1 ELECTION OF THE CHAIRPERSON

1.1. The representative of the Secretariat said that the TRIPS Council's rules of procedure provided that "[t]he election [of the Chairperson] 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". The normal WTO practice was that the General Council meets in early February and notes a consensus on a slate of names of chairpersons for WTO bodies. On the basis of the understanding reached by the General Council, the TRIPS Council then elects, at its first meeting of the year, its Chairperson for the coming year. Exceptionally this year, the General Council had not met until 14 March 2014, which was after the first meeting of the TRIPS Council in 2014. For that reason, the TRIPS Council had agreed, at its meeting in February 2014, to elect its new Chair at the beginning of the present meeting, with the understanding that, as soon as the General Council had agreed on the slate of names, the TRIPS Council Chair-designate could take up his role as the Chair, including holding any consultations in preparation of the present meeting, pending his formal election by the Council.

1.2. At its meeting on 14 March, the General Council had noted the consensus on a slate of names of chairpersons for WTO bodies. On the basis of the understanding reached, he proposed that the Council for TRIPS elect H.E. Mr Mothusi Palai from Botswana as its Chairperson for the coming year by acclamation.

1.3. The Council so agreed.

## 2 NOTIFICATIONS UNDER PROVISIONS OF THE AGREEMENT

2.1. The Chairman said that, since its meeting in February 2014, the Council had received a number of updates to earlier notifications of laws and regulations notified under Article 63.2. of the Agreement:

- Colombia had notified a law on enforcement of IPRs; and its approval of the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite;
- the European Union had notified a directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market;
- Chinese Taipei had notified the Enforcement Rules of the Trademark Act and updates to its acts on patents, copyright collective management; trade secrets and layout-designs of integrated circuits;
- Bahrain had notified a complete set of laws relating to trademarks, trade secrets, geographical indications, patents and utility models, industrial designs, and integrated circuits; in addition, it has advised the Council concerning its membership in the following treaties: the Nice Agreement, the Patent Cooperation Treaty, the Trademark Law Treaty, the Patent Law Treaty, the Madrid Protocol, the Plant Variety Treaty and the Budapest Treaty;
- Macao, China had notified amendments to its Copyright and Related Rights Code;
- Hong Kong, China had notified amending legislation on patents, registered designs, trademarks and layout-designs of integrated circuits; and
- the Russian Federation had notified amendments to its laws relating to the protection of IPRs in telecommunication networks; as well as to its codes on criminal procedures and administrative offences.

2.2. These 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.

2.3. As regards notifications of contact points under Article 69 for the exchange of information and cooperation on trade in infringing goods, since the Council's meeting in February 2014, Congo had submitted its contact point. The information on the Members' transparency toolkit page had been updated accordingly.

2.4. The Chairman encouraged the delegations that had notified a new or revised law, or an update to the enforcement checklist, to inform the Council, briefly, about the nature of the amendment or update. Several delegations had followed this practice at recent sessions of the Council and it had provided valuable insight into the notifications provided and had assisted in promoting awareness and transparency.

2.5. He further 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 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.

2.6. The representatives of Turkey and the Secretariat took the floor.

2.7. The Council took note of the statements made.

### **3 REVIEWS OF NATIONAL IMPLEMENTING LEGISLATION**

#### **3.1 Review of the national implementing legislation of the Russian Federation**

3.1. The Chairman recalled that the Council had initiated the review of the national implementing legislation of the Russian Federation at its meeting in October 2013. The Council had taken note of the notifications submitted by the Russian Federation, as well as the questions put to it in advance of the meeting and the responses it had given. Since then, the United States had posed follow-up questions (IP/C/W/589/Add.1). The Russian Federation had just provided responses to these follow-up questions (being circulated in document IP/C/W/592/Add.1). Since the responses to the US follow-up questions had been received just prior to the meeting and were for the time being available only in English, he said that delegations might wish to have some time to study the responses. He, therefore, suggested that the Council agree to revert to the matter at its next meeting.

3.2. The Council so agreed.

#### **3.2 Follow-up to reviews already undertaken**

3.3. The Chairman recalled that the reviews of two Members' national implementing legislation that had been initiated at the Council's meetings since April 2001 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 these reviews.

3.4. The Council took note of the information provided.

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

3.5. The Chairman recalled that, at its meeting in February 2014, the Council had agreed to review the national implementing legislation of Tajikistan, a newly acceded Member, at its meeting scheduled for 28-29 October 2014. The Council had set the following target dates for the submission of questions and answers in this review:

- questions should be submitted to Tajikistan, with a copy to the Secretariat, by 19 August 2014; and
- responses to questions posed within that deadline should be submitted by 30 September 2014.

#### 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

6.1. The Chairman suggested that the Council continue to discuss the three agenda items together on the basis of contributions by Members. He said that, as requested by the Council, he had continued his predecessors' consultations on the proposal Ecuador had made at the Council's meeting in November 2012 that the Secretariat be requested to update the three factual notes that summarize the points delegations had made in the Council's past discussions under these three agenda items. These notes had been originally prepared in response to a request at the Council meeting in March 2002 that the Secretariat prepare short papers summarizing the issues raised and the points made by delegations in the Council's discussions until then. The Secretariat had circulated these three notes in August 2002. At its meeting in September 2002, the Council had requested the Secretariat to periodically update these summary notes, and that this be done not after every meeting, but when significant new material had been presented. Pursuant to this decision, updated versions of these notes had been circulated in March 2006.

6.2. In his consultations, some delegations had felt that there had been important developments since 2006 and that the notes therefore would need to be updated. One delegation had felt that there had not been the same amount of developments in all areas and that, therefore, it might not be necessary to treat them all the same way. He had encouraged interested delegations to talk directly to each other to see if agreement could be reached. However, at this stage he was not yet in a position to report adequate convergence on this matter.

6.3. He said that the Council had also requested him to continue consultations on the suggestion that the CBD Secretariat 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. In his consultations, one delegation had noted that many parties to the Protocol were already in the process of implementing it; therefore, it might be more interesting to hear what these parties were doing domestically to implement it. Another delegation had said that delegations were already well briefed on the Protocol concluded almost four years ago and, therefore, could not support such a briefing at a Council meeting. Some others had continued to feel that a briefing by the CBD Secretariat at a Council meeting would still be important. A possible compromise mentioned was that the CBD Secretariat would provide a briefing at a side event. However, at this stage he was not in a position to report agreement on this matter.

6.4. The representatives of India, China, Brazil, Bangladesh, the Plurinational State of Bolivia, Ecuador, Colombia, Indonesia, Peru, the Bolivarian Republic of Venezuela, Egypt, the United States, Cuba, South Africa, Japan, Canada, New Zealand, Trinidad and Tobago, Cuba and the Food and Agriculture Organization took the floor.

6.5. In light of the discussion, the Chairman suggested that the Council request him to continue consulting on the suggestions that the CBD Secretariat be invited to brief the Council on the Nagoya Protocol to the CBD, and that the Secretariat be requested to update three factual notes that summarize the points delegations had made in the Council's past discussions on these three agenda items.

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

#### 7 NON-VIOLATION AND SITUATION COMPLAINTS

7.1. The Chairman recalled that, at the Ninth Session of the Ministerial Conference, Ministers had directed the TRIPS 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 and make recommendations to their next Session, which they had decided to hold in 2015. It had been agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement. At its meeting in February 2014, the Council had had its first discussion of the matter

after the Ministerial Conference. The United States had just submitted a paper entitled "Non-Violation Complaints under the TRIPS Agreement" (being circulated in document IP/C/W/599).

7.2. In opening the floor for comments, he said that he would particularly welcome any thoughts on how the Council could best move forward on this matter in order to be in a position to agree in a timely manner on its recommendations to the next Ministerial Conference. He recalled that the Council's original mandate under Article 64 of the Agreement was to provide recommendations on scope and modalities of such disputes to the Ministerial Conference by 1999, and that the Council had most recently been asked to work towards establishing recommendations for the Ministerial Conference that would be convened at the end of 2015.

7.3. The representatives of the United States, the Bolivarian Republic of Venezuela, Switzerland, South Africa, Brazil, China, Bangladesh, the Plurinational State of Bolivia, India, Japan, Egypt, the European Union, Korea, Cuba, Nigeria on behalf of the African Group, Canada, the Russian Federation, Chinese Taipei, Ecuador, Colombia and Peru took the floor.

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

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

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

8.2. 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**

9.1. The Chairman recalled that Article 24.2 provided that the Council shall keep under review the application of the provisions of the GI Section of the Agreement. The principal tool used to coordinate the review process had been a Checklist of Questions contained in document IP/C/13 and IP/C/13/Add.1, which a number of Members had submitted, but many had so far not 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 related to the protection of geographical indications, which they had entered into.

9.2. Currently, only 49 Members out of 159 had undertaken this valuable exercise, and a number of past responses were likely to be out of date, since they dated back over a decade. As the question of GI protection remained of continuing interest and remained a point of discussion, he invited those delegations that had not yet provided responses to the Checklist of Questions to consider doing so. He also encouraged those Members that had already provided responses to provide updates to the extent there had been any significant changes to the way they protected GIs. In line with the Council's recommendation made in March 2010, he also encouraged any Member that was party to any bilateral agreement related to the protection of GIs and had not yet shared such information with the Council to do so.

9.3. The Council took note of the information provided and agreed to revert to the matter at its next meeting.

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

### **10.1 Arrangements for the annual review**

10.1. The Chairman recalled that the Council had traditionally undertaken its annual review of technical cooperation at its end-of-year meeting. Therefore, he suggested that the Council hold its annual review at its meeting scheduled for 28-29 October. Accordingly, he suggested that the Council once more invite developed country Members to supply information on their activities pursuant to Article 67 of the TRIPS Agreement. Other Members who also make available technical cooperation were encouraged to share information on these activities if they so wish. He also suggested that once more 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 might also be instructed to report on its activities. He proposed that the Council request that this information be made available by 7 October 2014 in order to allow its timely circulation before the meeting.

10.2. Given the extensive documentation that had been provided on this topic, and the benefits of a streamlined approach to its management, reporting Members were encouraged to review the possible approaches that had in the past been suggested in the Council. The Secretariat was able to provide informal support and background in this regard on request to interested delegations.

10.3. The Council so agreed.

## 10.2 Other matters

10.4. The representative of the Secretariat informed the Council about a workshop it was organizing on the following two days, entitled "Realizing Development Objectives of the IP System: LDC Priority Needs for Technical and Financial Cooperation".

10.5. The representatives of Bangladesh, Nepal and Australia took the floor.

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

## 11 CONTRIBUTION OF INTELLECTUAL PROPERTY TO FACILITATE THE TRANSFER OF ENVIRONMENTALLY RATIONAL TECHNOLOGY

11.1. The Chairman said that this item had been put on the agenda at the written request by the delegation of Ecuador. He recalled that, at the Council's meeting in March 2013, Ecuador had briefly presented, under "Other Business", its submission entitled "Contribution of Intellectual Property for Facilitating the Transfer of Environmentally Rational Technology" (IP/C/W/585 in English and French, and IP/C/W/585/Rev.1 in Spanish) At Ecuador's request, the Council had continued this discussion at its subsequent meeting in June 2013 under agenda item "Intellectual Property, Climate Change and Development", and in October 2013 and February 2014 under the current heading.

11.2. The representatives of Ecuador, the United States, Switzerland, Cuba, Japan, Chile, the European Union, El Salvador, Canada, Brazil, China, World Intellectual Property Organization, Peru, Brazil, India, the Bolivarian Republic of Venezuela, and Nigeria on behalf of the African Group took the floor.

11.3. The Council took note of the statements made.

## 12 IP AND INNOVATION: INNOVATION INCUBATORS

12.1. The Chairman said that this item had been put on the agenda at the written request by the delegations of Chinese Taipei and the United States.

12.2. The item was cosponsored by Panama. The representatives of Chinese Taipei, the United States, Panama, Hong Kong, China, Japan, Chile, New Zealand, Canada, Switzerland, India, Botswana, El Salvador, the European Union and Brazil took the floor.

12.3. The Council took note of the statements made.

## 13 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

13.1. As regards the status of acceptances of by Members of the Protocol Amending the TRIPS Agreement, the Chairman said that, since the Council's meeting in February 2014, Turkey had deposited its instrument of acceptance (WT/Let/946). To date, 51 instruments of acceptance had been deposited, including the one from the European Union and its member States.

13.2. He encouraged those Members that had not yet notified their acceptance of the Protocol to ensure that necessary measures were being taken in their capitals to allow the consideration of the acceptance in a timely fashion.

13.3. The representative of Uruguay took the floor.

13.4. As regards new accession to the WTO, the Chairman said that Yemen had deposited its Instrument of Acceptance with the Director-General on 27 May.<sup>1</sup> According to the WTO rules, Yemen would become the 160<sup>th</sup> Member of the WTO on 26 June.

13.5. The Council took note of the statements made.

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

14.1. The Chairman said that there remained 12 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 response to a request by the Council in June 2011, four of them had updated the information they had provided earlier, including on the nature of their work and the reasons for their interest in being accorded observer status. These IGOs were 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 since it had already renewed its request as recently as 24/11/2010 by means of a letter addressed to the WTO Director-General. This information was available on the Members' website.

14.2. The Council took note of the information provided 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 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 ARIPO, OAPI, GCC and EFTA to attend the Council's next formal meeting on an ad hoc basis.

15.2. The Council so agreed.

### **15.2 Twelfth 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" provides that developed country Members shall submit annually reports on actions taken or planned in pursuance of their commitments under Article 66.2. To this end, they must provide new detailed reports every third year and, in the intervening years, provide updates to their most recent reports. These reports must be submitted prior to the last Council meeting scheduled for the year in question. Paragraph 3 of the decision determines the information that must be provided in these 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, this year developed country Members should submit a second 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 that they had submitted last year.

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<sup>1</sup> The Protocol on the Accession of the Republic of Yemen has been circulated in document WT/L/905 and the Report of the Working Party on the Accession of the Republic of Yemen in document WT/ACC/YEM/42.



These updates should be provided prior to the Council's end of year meeting that had been scheduled for 28-29 October. As provided in paragraph 2 of the Decision, the Council shall review these updates at that meeting.

15.5. Accordingly, he suggested that developed country Members be requested to provide a second set of updates to the fourth set of new detailed reports they had provided in 2012 on actions they had taken or planned in pursuance of their commitments under Article 66.2 by 7 October, in order to allow their timely circulation and review at the Council's meeting later that month.

15.6. The Council's deliberations on past reports in this area and regular workshops convened on this matter had drawn attention to possible practical approaches to facilitating the submission, processing and consultation of these reports. Given the extensive documentation that had been provided on this topic, and the benefits of a streamlined approach to its management, reporting Members were encouraged to review the possible approaches that had been suggested. The Secretariat was able to provide informal support and background in this regard on request to interested delegations.

15.7. The Council so agreed.

### **15.3 Other reviews**

15.8. The Chairman said that, as already discussed under item 10, the Council would take up at its October meeting its annual review of technical cooperation under Article 67. The Council would also have on its agenda the annual review of the functioning of the Paragraph 6 System. In preparation of this review, he encouraged Members to share either directly with him or through the Secretariat any thoughts or suggestions they might have concerning the arrangements for this review. If needed, he would be available to consult with interested delegations on the preparations of the review.

15.9. The Council took note of the information provided.

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