



Council for Trade-Related Aspects of Intellectual Property Rights

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 24-25 FEBRUARY 2015

Chairperson: Ambassador Mothusi Palai (Botswana)

The present document contains the record of the Council for TRIPS meeting held on 24-25 February 2015. 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 October 2014, the Council had received a number of updates to earlier notifications of laws and regulations notified under Article 63.2 of the Agreement:

- Following the brief oral introduction at the last meeting, Colombia had notified a decree from September 2014 adjusting patent duration through restoration of the patent term;
- Hong Kong, China had notified amendments to certain laws and regulations in the field of patents, trademarks, designs and layout designs of integrated circuits;
- Peru had notified amendments to its copyright law;
- Croatia had notified its Copyright and Related Rights Act and an Act amending it;
- Canada had notified amendments to its Copyright Act, Trademarks Act, Patent Act, Industrial Design Act, Customs Act, and to the Criminal Code. It had also notified a Statement Limiting the Right to Equitable Remuneration of Certain Rome Convention or WPPT Countries;
- Chinese Taipei had notified Enforcement Rules of the Patent Act, as well as Regulations of Patent Fees; and
- New Zealand had notified its Patent Act 2013 and its Patent Regulations 2014.

1.2. 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.

1.3. In addition, Thailand and Sri Lanka had provided their initial responses to the Checklist of Issues on Enforcement, circulated in document IP/N/6/THA/1 and IP/N/6/LKA/1 respectively.

1.4. As regards notifications of contact points under Article 69 for the exchange of information and cooperation on trade in infringing goods, since the meeting in October 2014, Nepal had notified a contact point under Article 69 for the first time. An update to a contact point notified earlier had been received from Sri Lanka. The information on the Members' transparency toolkit page had been updated accordingly.

1.5. He particularly encouraged the delegations that had notified a new or revised legislative measure, or a new or updated response to the enforcement checklist to briefly inform the Council about the key points of the notified amendment or information provided, as most new notifications were revisions or amendments of existing notifications. 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.

1.6. The representative of Colombia took the floor.

1.7. 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 obligations under the TRIPS Agreement to notify any subsequent amendments of their laws and regulations without delay after their entry into force.

1.8. He especially encouraged Members to notify changes made to their laws and/or regulations to implement the Decision on TRIPS and public health. At least 50 WTO Members, including many of the world's major exporters of medicines, had adopted implementing legislation that allowed them to use the Paragraph 6 System as exporters and/or importers. However, only 16 Members had formally notified such measures to the TRIPS Council. Completing the notification of all relevant laws and regulations could assist Members in preparing for the potential use of the System. It would also help the Secretariat in its efforts to provide informed technical support to Members in this area.

1.9. The Secretariat updated the Council on its work to improve the user-friendliness and cost-effectiveness of the notification system.

1.10. The Council took note of the statements made.

2 REVIEWS OF NATIONAL IMPLEMENTING LEGISLATION

2.1 Review of the national implementing legislation of Tajikistan

2.1. The Chairman recalled that the Council had initiated at its last meeting the review of Tajikistan's national implementing legislation. Tajikistan had received questions from the United States, circulated in document IP/C/W/604.

2.2. Tajikistan had provided responses to the questions on 23 February 2015 (circulated in document IP/C/W/606). The Chairman suggested that the Council revert to the matter at its next meeting.

2.3. The Council so agreed.

2.2 Review of the national implementing legislation of the Russian Federation

2.4. The Chairman recalled that the Council had initiated this review 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. Shortly before the Council's last meeting, the United States had posed additional follow-up questions (circulated in document IP/C/W/589/Add.2). The Russian Federation's responses to these questions were available in document IP/C/592/Add.2. Provided that there were no further follow-up questions, he suggested that the review of the Russian Federation be removed from the agenda, it being understood that any delegation should feel free to revert to any matter stemming from this review at any time.

2.5. The Council so decided.

2.3 Follow-up to reviews already undertaken

2.6. 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. To support this process, he suggested that the incoming Chair be requested to contact the Members in question to enquire when they would expect to be in a position to provide the outstanding materials needed to complete the reviews and to offer any Secretariat technical support that they might need.

2.7. The representative of Switzerland indicated its readiness to provide technical assistance to the two Members in question.

2.8. The Council took note of the statements made and agreed that the incoming Chair contact the Members concerned and revert to the matter at its next meeting.

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. He recalled that, at the last meeting, he had encouraged delegations to continue direct talks among themselves on two pending suggestions supported by a number of Members, i.e. (i) 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 agenda items, and (ii) 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 October 2010. He had been in touch with the interested delegations, but they had not reported on any new developments with respect to the above suggestions.

5.2. The representatives of Ecuador; Bangladesh on behalf of the LDC Group; the Plurinational State of Bolivia; Brazil; China; the Bolivarian Republic of Venezuela; Egypt; Colombia; Indonesia; Cuba; South Africa; India; Nepal; Peru; Switzerland; United States; the Republic of Korea; Japan; Canada; Australia; and Chile took the floor.

5.3. The Chairman encouraged the interested Members to continue direct talks among themselves on the two pending suggestions.

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

6 NON-VIOLATION AND SITUATION COMPLAINTS

6.1. 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 that would be held in Nairobi in December 2015. It had been agreed that, in the meantime, Members would not initiate such complaints under the TRIPS Agreement.¹

6.2. Members had discussed the matter at the TRIPS Council's three meetings in 2014. In particular, a communication on "Non-Violation Complaints under the TRIPS Agreement" submitted by the United States (circulated in document IP/C/W/599) had served as the basis for an intense exchange of views at the meeting in October 2014, where the Council had agreed to revert to this matter at its next meeting. The Chairman had been in touch with some interested delegations, but they had not been in a position to report on any new developments. He invited delegations to share 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.

6.3. The representatives of United States; Bangladesh on behalf of the LDC Group; the Bolivarian Republic of Venezuela; Peru; Canada; Norway; Brazil; South Africa; China; Japan; Argentina; the Republic of Korea; Switzerland; Ecuador; Colombia; Egypt; Cuba; Chile; Chinese Taipei; Russian Federation; Nepal; India and Nepal took the floor.

6.4. The Chairman said that there were only two more formal meetings of the Council left to respond to the instruction by Ministers that draft recommendations be prepared by MC10. This

¹ Document WT/L/906.

should be of particular concern to delegations, given that the initial deadline for accomplishing this task was 1999 and that there were still no concrete proposals on the table as to how the Council might prepare the recommendations. Keeping the item on the agenda had not yielded any solution over the past 16 years.

6.5. The Council took note of the statements made and agreed to revert to this 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.

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 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 Add.1. However, only 49 Members out of 160 had undertaken this valuable exercise to date, and a number of past responses were likely to be out of date, since they dated back over a decade. 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.

8.2. As the question of GI protection remained of continuing interest, he invited those delegations that had not yet provided responses to the Checklist of Questions to consider doing so and those who had already done so to consider updating the information as appropriate. In line with the Council's recommendation made in March 2010, he also encouraged any Member that was party to any bilateral agreements related to the protection of GIs and had not yet shared such information with the Council to do so.

8.3. The representatives of China, Ecuador and the European Union took the floor.

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

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

9.1. The Chairman recalled that, at its meeting in October 2014, the Council had taken up the twelfth annual review of developed country Members' reports on their implementation of Article 66.2 of the TRIPS Agreement. In concluding the item, he had indicated that delegations would be provided an opportunity at the present meeting to make further comments on the information submitted for that meeting that they had not yet been able to study.

9.2. The representatives of Bangladesh on behalf of the LDC Group and Nepal took the floor.

9.3. The Council took note of the statements made.

10 TECHNICAL COOPERATION AND CAPACITY-BUILDING

10.1. The Chairman recalled that, at its last meeting, the Council had taken up its annual review of technical cooperation. Given that some information from Members and intergovernmental organizations available only a short time before the review, he had indicated that the Council would be offered a further opportunity to make comments on that material at this meeting.

10.2. The representative of the Gulf Cooperation Council informed the Council of its relevant activities.

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

11 IP AND INNOVATION: WOMEN AND INNOVATION

11.1. The Chairman said that this item had been put on the agenda at the written request by the delegations of the European Union, Japan, Norway, Turkey and the United States.

11.2. The representatives of Norway; Turkey; Japan; the United States; the European Union; Montenegro; Mexico; Chile; Switzerland; Canada; Chinese Taipei; Australia; India; and the World Bank took the floor.

11.3. The Council took note of the statements made.

12 CONCERNS WITH RESPECT TO PROPOSALS FOR PLAIN PACKAGING OF TOBACCO PRODUCTS IN THE UNITED KINGDOM AND IRELAND

12.1. The Chairman said that this item had been put on the agenda at the written request by the delegation of the Dominican Republic.

12.2. The representatives of the Dominican Republic; the European Union; Nicaragua; Honduras; Cuba; Indonesia; Nigeria; Zimbabwe; Australia; Uruguay; Canada; Norway; New Zealand; and the World Health Organization took the floor.

12.3. The Council took note of the statements made.

13 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

13.1 Accessions

13.1. The Chairman informed that, at its meeting on 10 December 2014, the General Council had approved the package of accession of the Republic of Seychelles. The relevant decision was available in document WT/L/944. In keeping with WTO provisions, Seychelles would become a Member of the WTO 30 days following the date of the ratification of its Protocol of Accession.

13.2 Protocol Amending the TRIPS Agreement

13.2. The Chairman said that, at its meeting on 20 February 2015, the General Council had had an item on its agenda regarding the "Protocol Amending the TRIPS Agreement: Update on Status – Statement by the Director-General". Under this item, the Director-General had reported on the renewed efforts that he had recently undertaken in order to secure the entry into force of the TRIPS amendment by MC10. Among others, he had informed delegations about his recent meeting with the Ambassadors of the African Group. He had also referred to the letters that he had addressed to all Ministers to encourage those who had yet to accept the Protocol to complete domestic procedures and to invite others who had already done so to support his efforts to reach the two third of threshold of acceptances that was required for the Protocol's entry into force. The Director-General had called upon Members concerned to complete this process so that the amendment could be brought into force.

13.3. At the General Council meeting, a number of delegations had concurred with the statement made by the Director-General. In particular, the Dominican Republic, speaking on behalf of the Informal Group of Developing Countries, had fully supported the efforts undertaken to allow the entry into force by MC10 and had urged all Members which had yet to accept the Protocol to complete their domestic procedures.

13.4. In order to facilitate the efforts of those delegations who were yet to accept the Protocol, an *aide-mémoire* had been made available as a Room Document at the General Council's meeting last week. The General Council had also agreed that the *aide-mémoire* be circulated as a formal document. The Chairman had asked the Secretariat to include document WT/GC/W/696 on the list of documents that were available for today's TRIPS Council meeting.

13.5. He once again encouraged the delegations that were yet to accept the TRIPS amendment to take the necessary steps so that the domestic procedures could be completed as soon as possible. As outlined by the Director-General in his statement at the General Council, entry into force of the amendment would give this new compulsory licensing mechanism the same status as all other public health-related flexibilities under the TRIPS Agreement. It would provide a permanent legal pathway that strengthens the System's future potential to facilitate export of medicines that were needed by patients in developing countries. And it would respond to widespread calls within the UN, including from the UN Economic and Social Council and the UN General Assembly, to complete the process of acceptance. At this stage, he was confident that this goal could be achieved this year. For this to happen, another 27 Members needed to submit their respective instruments of acceptance to the WTO.

13.3 Work on E-Commerce

13.6. The Chairman said that the Second WTO Ministerial Conference held in May 1998 had adopted a Declaration on Global Electronic Commerce,² which had launched a comprehensive work programme to examine all trade-related issues relating to global electronic commerce. At their most recent session in Bali in December 2013, Ministers had decided to continue with the work.³ At its meeting in July 2014, the General Council Chair had informed Members that he had appointed Ambassador Alfredo Suescum of Panama to act as "a friend of the Chair" to facilitate the work. Ambassador Suescum had held the Tenth Dedicated Discussion on E-Commerce on 16 February 2015. In preparation of that meeting, the WTO Secretariat had prepared a background note on the Work Programme on Electronic Commerce (available in document JOB/GC/73). This note also summarized the TRIPS Council's earlier work in this area.

13.7. He said that e-commerce had been on the agenda of each TRIPS Council meeting from 1998 to June 2003, and that the Council had produced three reports to the General Council. Following the Cancún Ministerial Conference in 2003, no Member, however, had made any written submissions to the TRIPS Council or otherwise sought to continue discussions on e-commerce in the Council. While not specifically under the heading of "e-commerce", the TRIPS Council had continued to discuss relevant issues under various agenda items.

13.8. In his informal contacts with a number of delegations, the Chairman had enquired whether any of them was contemplating making any written submissions on these topics or otherwise raising any issues related to them in the TRIPS Council. Currently that did not seem to be the case. He underlined that the WTO's work programme on e-commerce would be an opportunity for Members to raise any issues or concerns relating to TRIPS and e-commerce.

13.9. The Council took note of the information provided.

14 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

14.1. The Chairman recalled 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.

14.2. In the past few years, the Council had been able to make some progress by agreeing to grant *ad hoc* observer status on a meeting-by-meeting basis to ARIPO, OAPI, the GCC and EFTA.

14.3. As requested by the Council at its meeting in October 2014, he had consulted with a number of interested delegations on the pending requests for observer status, in particular those from the South Centre, the CBD Secretariat and the International Vaccine Institute. Unfortunately, he was not in a position to report on new thinking among those delegations.

14.4. The representatives of India; Nepal; Bangladesh; Brazil; Egypt; the European Union; Cuba; China; Cuba; Ecuador; and the United States took the floor.

² WT/MIN(98)/DEC/2.

³ Ministerial Decision on the Work Programme on Electronic Commerce WT/L/907.

14.5. 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 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 Date for the Council's meeting in October

15.3. The Chairman informed that, due to a scheduling conflict with the Assemblies of Member States of WIPO which would take place from 5 to 14 October 2015, a fax had been sent to delegations on 15 December 2014 to inform them that the Council's October meeting had been tentatively rescheduled to take place on 15-16 October, instead of the initially agreed dates, i.e. 13-14 October.

15.4. The Council so agreed.

15.3 Request for an Extension of the Transitional Period under Article 66.1 of the TRIPS Agreement for LDC Members with respect to Pharmaceutical Products and for Waivers from the Obligations of Articles 70.8 and 70.9 of the TRIPS Agreement

15.5. The Chairman said that, at the beginning of the meeting, the delegation of Bangladesh had indicated that it wished to make a statement on behalf of the LDC Group under "Other Business" concerning the issue of extension of the transition period in the pharmaceutical sector. He drew Members' attention to a request for an extension of the transitional period under Article 66.1 of the TRIPS Agreement for LDC Members with respect to pharmaceutical products and for waivers from the obligations of Articles 70.8 and 70.9 of the TRIPS Agreement that had been submitted by Bangladesh on behalf of the LDC Group (circulated in document IP/C/W/605).

15.6. The representatives of Bangladesh on behalf of the LDC Group; Nepal; Brazil; the European Union; India; China and Chinese Taipei took the floor.

15.7. The Council took note of the statements made.

15.4 Contribution of Intellectual Property to Facilitate the Transfer of Environmentally Sound Technology

15.8. The Chairman said that, at the beginning of the meeting, the delegation of Ecuador had indicated that it wished to inform the TRIPS Council about the steps taken to advance its proposal regarding the issue of the contribution of intellectual property to facilitate the transfer of environmentally sound technology.

15.9. The representative of Ecuador took the floor.

15.10. The Council took note of the statement made.

16 ELECTION OF THE CHAIRPERSON

16.1. The Chairman recalled that, at its meeting of 20 February 2015, 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. Dr. Abdolazeez Al-Otaibi from the Kingdom of Saudi Arabia as its Chairperson for the coming year by acclamation.

16.2. The Council so agreed.
