



Council for Trade-Related Aspects of Intellectual Property Rights

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 9-10 JUNE 2015

Chairperson: Ambassador Al-Otaibi (Kingdom of Saudi-Arabia)

The present document contains the record of the Council for TRIPS meeting held on 9-10 June 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 February 2015, the Council had received a number of laws and regulations that Members had notified under Article 63.2 of the Agreement:

- Following the brief oral introduction at the last meeting, Colombia had notified a decree from November 2014 regulating the compensation prescribed for the infringement of trademark rights;
- Uruguay had notified amendments to its law establishing provisions on trademarks that had been adopted in November 2013, as well as a decree of October 2014 that provided for implementing regulations in this regard;
- Denmark had notified a consolidated version of its Act on Copyright of October 2014;
- Japan had notified its Designs Act, Patent Act, Trademark Act and its Law Concerning International Applications Pursuant to the Patent Cooperation Treaty, as well as related Enforcement Ordinances;
- Norway had notified consolidated versions of its Design Act, Patent Act, Trademark Act and related Regulations, as well as a number of other laws; and
- The Russian Federation had notified its Law on Information, on Information Technology and on Protecting Information and related amendments. It had also submitted amendments to the Civil Procedure Code.

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. No initial responses or updates to the Checklist of Issues on Enforcement had been provided since the last meeting in February.

1.4. Botswana had notified an update to a contact point under Article 69 for the exchange of information and cooperation on trade in infringing goods. 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. This had provided valuable insight into the notifications submitted and had assisted in promoting awareness and transparency.

1.6. The representatives of Canada; the Russian Federation; and Japan 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 51 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 representative of the Secretariat updated the Council on its work to improve the timeliness, 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 said that at its meeting in October 2014, the Council had initiated the review of Tajikistan's national implementing legislation. Since the Council's last meeting, Tajikistan had notified its Law on Copyright and Related Rights and the Law on Trade Secrets. While the original laws or consolidated versions thereof were yet to be notified, Tajikistan had also submitted amendments and additions to its Law on Pharmaceuticals and Pharmaceutical Activities, as well as to its Law on the Production and Safe Handling of Pesticides and Agrochemicals. They were being circulated in document series IP/N/1/TJK/, and the text of the laws could be found in the relevant law series of documents.

2.2. Tajikistan had also received questions from the United States, which had been circulated in document IP/C/W/604. It had provided responses to these questions that had been circulated in document IP/C/W/606.

2.3. Shortly before the meeting, the United States had submitted follow-up questions to Tajikistan. Since these questions were yet to be circulated and were only available in English, the Chairman suggested that the Council revert to the matter at its next meeting..

2.4. He also asked the delegation of Tajikistan to submit answers to any follow-up questions in writing within eight weeks after the meeting. Any delegation that would wish to raise further questions should provide those questions in writing to the delegation of Tajikistan, with a copy to the Secretariat.

2.5. The Council so agreed.

2.2 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. As agreed at the last meeting, to support this process, he had also contacted 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 Council took note of the statements made and agreed to revert to the matter at its next meeting.

2.3 Arrangements for the review of the national implementing legislation of the Republic of Seychelles

2.8. The Chairman noted that the Republic of Seychelles had acceded to the WTO on 26 April 2015. It had agreed to apply the provisions of the TRIPS Agreement no later than the date of its accession to the WTO, without recourse to any transitional periods. It had also agreed to submit all initial notifications required by any Agreement constituting part of the WTO Agreement upon accession.

2.9. He suggested that the Secretariat be requested to contact the Republic of Seychelles concerning the notification procedures of the Council and that the Council revert to the arrangements for this review at its meeting in October.

2.10. The Council so agreed.

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.

5.2. The representatives of Bangladesh on behalf of the LDC Group; Brazil; South Africa; Egypt; Ecuador; Colombia; Peru; China; Indonesia; India; Mali; Tanzania; Chile; Pakistan; Switzerland; Cuba; the United States; Japan; Canada; the Republic of Korea; the European Union and Australia took the floor.

5.3. Regarding the proposals that the CBD Secretariat be invited to brief the Council on the Nagoya Protocol that had been adopted in October 2010 and that the WTO 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, the Chairman pointed out that the Council had already devoted considerable time to these proposals in virtually each meeting over the last couple of years. He therefore indicated his readiness to facilitate the process with a view to reaching a decision at the Council's next meeting that would provide for a definite solution.

5.4. He also urged Members to provide responses to or update their initial responses to the illustrative list of questions on Article 27.3(b) TRIPS and to notify or report on any relevant mechanisms to protect genetic resources and traditional knowledge.

5.5. 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.

6.2. He recalled that Members had discussed the matter at the three meetings that the Council had held in the course of last year, as well as at its last meeting in February when the Council again had agreed to revert to this matter at the present meeting. In particular, a communication on "Non-Violation Complaints under the TRIPS Agreement" that had been 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 last two meetings.

6.3. Since its last meeting in February, the Council had received a revision of a communication on "Non-Violation and Situation Nullification or Impairment Under the TRIPS Agreement" that had been circulated on 30 October 2002. The revised submission (circulated in document IP/C/W/385/Rev.1) was co-sponsored by a number of TRIPS Council Members (Argentina, the Plurinational State of Bolivia, Brazil, China, Colombia, Cuba, Ecuador, Egypt, India, Indonesia, Kenya, Malaysia, Pakistan, Peru, the Russian Federation, Sri Lanka and the Bolivarian Republic of Venezuela).

6.4. He said that the Council was mandated to provide its recommendations on scope and modalities to the Nairobi Ministerial Conference; the Council's meeting in October would therefore be the last scheduled opportunity to conclude these recommendations. He therefore urged delegations to provide guidance on how the Council could conclude its substantive work on this matter, which had been originally mandated in the TRIPS Agreement for the Council to conclude in 1999.

6.5. The representatives of Brazil; Bangladesh on behalf of the LDC Group; Ecuador; Argentina; India; South Africa; Colombia; Cuba; the Bolivarian Republic of Venezuela; Lesotho on behalf of the Africa Group; Chile; Switzerland; Peru; Nepal; Indonesia; Pakistan; China; the Republic of Korea; Norway; Tanzania; the Russian Federation; Egypt; Japan; Chinese Taipei; Uruguay; Hong Kong, China; Canada; the United States and Barbados on behalf of the ACP Group took the floor.

6.6. The Chairman recalled that there was only one more formal meeting of the Council left to respond to the instruction by Ministers that draft recommendations be prepared by the next Ministerial Conference. This should be of particular concern to delegations, given that there were still no concrete proposals on the table as to how the Council might prepare the recommendations. He therefore suggested that the Chairman be requested to hold consultations before the matter would be raised again at the next meeting with a view to enabling the Council to agree on its recommendation to the Nairobi Ministerial Conference at that meeting.

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

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 161 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 Council agreed to revert to the matter at its next meeting.

9 TECHNICAL COOPERATION AND CAPACITY-BUILDING

9.1 Protocol Amending the TRIPS Agreement

9.1. The Chairman recalled that, at its last meeting, the Council had been informed by his predecessor about the Director-General's renewed efforts that he had undertaken earlier this year in order to secure the entry into force of the TRIPS amendment by MC10.

9.2. As outlined by the Director-General in his statement at the General Council in February, 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 was 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.

9.3. These earlier initiatives by the Director-General had triggered significant interest in many WTO Members who were yet to accept the TRIPS amendment. Other Members who had already accepted the TRIPS Protocol had also confirmed their availability to assist and share their experience with Members concerned.

9.4. Reportedly, considerable progress had been made in domestic acceptance procedures in some of the Members concerned. This said, since the last meeting in February, only Brunei Darussalam had formally deposited its instrument of acceptance.¹

9.5. In his capacity as the Chair of the Council, he therefore had taken the initiative to suggest, in a communication that had been circulated by the WTO Secretariat in a fax dated 26 May 2015, that the issue of cooperation to facilitate domestic procedures to accept the TRIPS Protocol and thus ultimately to support the entry into force of the TRIPS amendment be raised under the agenda item on technical cooperation. At this stage, he still hoped that this goal could be achieved in time for MC10 later this year. For this to happen, it was necessary that another 26 Members submit their respective instruments of acceptance to the WTO.

9.6. His initiative built on past work in this Council that had recognized the need for technical assistance concerning the acceptance process and had also provided support to Members in this area. In his communication, he had proposed that Members concerned come prepared to this meeting to share information about any potential needs for further assistance and experience sharing and to inform the Council about the steps taken in order to complete their domestic acceptance procedures since the letter of the Director-General in February.

9.7. The representatives of Chile; India; the European Union; Bangladesh on behalf the LDC Group; Australia; Brazil; the Republic of Seychelles; Chinese Taipei; Pakistan and Rwanda took the floor.

9.8. The Council took note of the statements made.

9.2 Arrangements for Annual Review of Technical Cooperation

9.9. 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 15-16 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 wished. 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 23 September 2015 in order to allow its timely circulation before the meeting.

9.10. 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.

9.11. The Council so agreed.

10 IP AND INNOVATION: THE ROLE OF INTELLECTUAL PROPERTY IN FINANCING INNOVATION

10.1. The Chairman said this item had been put on the agenda at the written request by the delegations of Switzerland and the United States. Since the circulation of the airgram, Singapore and the European Union had also indicated their intention to co-sponsor this item.

¹ Document WT/Let/1037.

10.2. The representatives of the United States; Switzerland; Singapore; the European Union; India; Bangladesh on behalf the LDC Group; Chile; Chinese Taipei; the Republic of Korea; Japan; Brazil; Pakistan; Canada and Australia took the floor.

10.3. The Council took note of the statements made.

11 REQUEST FOR AN EXTENSION OF THE TRANSITIONAL PERIOD UNDER ARTICLE 66.1 FOR LEAST DEVELOPED COUNTRY MEMBERS WITH RESPECT TO PHARMACEUTICAL PRODUCTS AND FOR WAIVERS FROM THE OBLIGATION OF ARTICLES 70.8 AND 70.9

11.1. The Chairman said that this item had been put on the agenda at the written request by the delegation of Bangladesh on behalf of the LDC Group.

11.2. The representatives of Bangladesh on behalf of the LDC Group; Uganda on behalf of the LDC Group; Lesotho on behalf of the Africa Group; South Africa; Nepal; Myanmar; Barbados on behalf of the ACP Group; Cambodia; Tanzania; India; Norway; Mali; Cuba; Brazil; the Republic of Yemen; Argentina; Togo; Canada; China; the United States; Japan; Chinese Taipei; Sierra Leone; Turkey; Haiti; the Democratic Republic of Congo; the European Union; Chile; Uruguay; Rwanda; Switzerland; Australia; the Holy See and the Secretariat of the WHO took the floor.

11.3. The Council took note of the statements made and requested the Chairman to consult on the matter before its next meeting in October.

12 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

12.1. The Chairman noted that the Republic of Seychelles had deposited its Instrument of Acceptance with the Director-General on 27 March 2015 and became the 161st Member of the WTO on 26 April 2015.²

13 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

13.1. 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.

13.2. 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.

13.3. The representatives of India; Bangladesh on behalf of the LDC Group; Ecuador; Indonesia; Nepal; Brazil and the United States took the floor.

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

14 OTHER BUSINESS

14.1 Invitations to ad hoc observers

14.1. 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.

14.2. The representatives of the United States and Nigeria on behalf of the Africa Group took the floor.

² WT/Let/1036 of 1 April 2015; the Protocol on the Accession of the Republic of Seychelles was circulated in document WT/L/944.

14.3. The Chairman said that since the Council could not take a decision under "Other Business" regarding the grant of permanent observer status to ARIPO, OAPI, GCC and EFTA, it could revert to that matter at its next meeting under the agenda item on "Observer Status".

14.4. The Council so agreed.

14.2 13th Annual Review under Paragraph 2 of the Decision on the "Implementation of Article 66.2 of the TRIPS Agreement"

14.5. 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 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 determined the information that must be provided in these reports.

14.6. 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, developed country Members should submit their fifth new detailed reports on actions taken or planned in pursuance of their commitments under Article 66.2. These reports should be provided prior to the Council's end of year meeting that had been scheduled for 15-16 October. As provided in paragraph 2 of the Decision, the Council shall review these reports at that meeting.

14.7. 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 23 September 2015, i.e. three weeks before the meeting, in order to allow their timely circulation and review at the Council's meeting later that month.

14.8. 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.

14.9. The Council so agreed.

14.3 Other reviews

14.10. The Chairman said that, as already discussed under item 9, the Council would take up the annual review of technical cooperation under Article 67 at its meeting in October. 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.

14.11. The Council took note of the information provided.

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

14.12. The Chairman recalled that, at the beginning of the meeting, the delegation of Ecuador had said 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.

14.13. The representative of Ecuador took the floor.

14.14. The Council took note of the statement made.

14.5 Chair for the TRIPS Council Meeting in October

14.15. The Chairman informed the Council that, due to other commitments, he would not be available to chair the Council's next formal meeting on 15-16 October 2015. In informal contacts, Ambassador Alfredo Suescum from Panama, who had chaired the Council in 2013, had kindly offered to replace him at that meeting.

14.16. The Council took note of the information provided.
