



Council for Trade-Related Aspects of Intellectual Property Rights

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 1 MARCH 2016

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

The present document contains the record of the Council for TRIPS meetings held on 1 March 2016. The statements made during the meeting will be circulated in an addendum to the present document.

Subjects discussed

1 NOTIFICATIONS UNDER PROVISIONS OF THE AGREEMENT 3
2 REVIEWS OF NATIONAL IMPLEMENTING LEGISLATION 4
2.1 Review of the national implementing legislation of Tajikistan..... 4
2.2 Follow-up to reviews already undertaken 4
2.3 Arrangements for the review of the national implementing legislation of the Republic of Seychelles and Kazakhstan 5
3 REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B) 5
4 RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CONVENTION ON BIOLOGICAL DIVERSITY 5
5 PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE 5
6 NON-VIOLATION AND SITUATION COMPLAINTS 6
7 REVIEW OF THE IMPLEMENTATION OF THE TRIPS AGREEMENT UNDER ARTICLE 71.1 7
8 REVIEW OF THE APPLICATION OF THE PROVISIONS OF THE SECTION ON GEOGRAPHICAL INDICATIONS UNDER ARTICLE 24.2 7
9 FOLLOW-UP TO THE THIRTEENTH ANNUAL REVIEW UNDER PARAGRAPH 2 OF THE DECISION ON THE IMPLEMENTATION OF ARTICLE 66.2 OF THE TRIPS AGREEMENT 7
10 TECHNICAL COOPERATION AND CAPACITY-BUILDING..... 7
11 IP AND INNOVATION: EDUCATION AND DIFFUSION 8
12 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO 8
12.1 Accessions 8
12.2 Protocol Amending the TRIPS Agreement 8
12.3 Work Programme on Electronic Commerce 8

13 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS	9
14 OTHER BUSINESS	9
14.1 Invitations to ad hoc observers	9
14.2 Contribution of Intellectual Property to Facilitate the Transfer of Environmentally Sound Technology.....	9
15 ELECTION OF THE CHAIRPERSON.....	9

1 NOTIFICATIONS UNDER PROVISIONS OF THE AGREEMENT

1.1. The Chairman said that, since its meeting in October 2015, the Council had received a number of updates to earlier notifications of laws and regulations notified under Article 63.2 of the Agreement:

- Chinese Taipei had notified the Patent Attorney Act in its amended version of July 2015; the Regulations for the Deposit of Biological Material for Patent Application; and the Operational Directions Governing the Mutual Cooperation between the Intellectual Property Office (TIPO) and Japan Patent Office in the Field of Deposit of Biological Materials for the Purposes of Patent Procedure;
- Hong Kong, China had notified its Patents Ordinance Order 2015; the Registered Designs Ordinance Regulation 2015; the Trademarks Ordinance Regulation 2015; and the Layout-Designs (Topography) of Integrated Circuits Regulation 2015; and
- Japan had notified its Unfair Competition Prevention Act, as amended in 2015.

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 new or updated responses to the Checklist of Issues on Enforcement had been submitted since the Council's meeting in October 2015. He encouraged delegations that were yet to do so to submit their initial responses to the Checklist. He also invited other delegations that had submitted responses to consider updating the information provided, as appropriate.

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 Council's meeting in October 2015, Kazakhstan had notified a contact point under Article 69 for the first time. The information on the Members' transparency toolkit page had been updated accordingly.

1.5. The Chair particularly encouraged 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. 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 provided and had assisted in promoting awareness and transparency.

1.6. The representatives of Chinese Taipei; Japan; Hong Kong, China briefly introduced their respective measures notified. The representative of South Africa also 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 obligation 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 allows them to use the Paragraph 6 System as exporters and/or importers. Only 18 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 provided a brief update on the state of play of the e-TRIPS project 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, at its meeting in October 2014, the Council had initiated the review of Tajikistan's national implementing legislation. In February 2014, Tajikistan had notified its laws on trademarks and service marks, geographical indications, industrial designs, inventions and the legal protection of the topologies of integrated circuits. Tajikistan had also notified its responses to the Checklist of Issues on Enforcement in October 2014. This had been complemented by notifications of Tajikistan's Law on Copyright and Related Rights, the Law on Trade Secrets, as well as Amendments and Additions to its Law on Pharmaceuticals and Pharmaceutical Activities and to its Law on the Production and Safe Handling of Pesticides and Agrochemicals in 2015, circulated in documents IP/N/1/TJK/2, IP/N/1/TJK/3, IP/N/1/TJK/4 and IP/N/1/TJK/5.

2.2. Tajikistan had received an initial set of questions in writing from the United States in October 2014, circulated in document IP/C/W/604. Tajikistan's responses to these questions were circulated in document IP/C/W/606. A further set of follow-up questions by the United States to Tajikistan was available in document IP/C/W/604/Add.1. Tajikistan's responses to the follow-up questions posed by the United States were circulated in document IP/C/W/606/Rev.1. Given that these responses had been circulated only shortly before the Council's meeting in October 2015 and that the responses to two questions were outstanding, as they needed further investigation according to the information submitted by Tajikistan, it had been agreed that the Council revert to the matter at the Council's meeting in March 2016.

2.3. The representatives of Tajikistan and the United States took the floor.

2.4. The Chairman suggested that, provided that there were no further follow-up questions, the review of Tajikistan's implementing legislation be removed from the agenda with the understanding that Members could revert to any matters stemming from this review at any time.

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, as well as Saint Kitts and Nevis. As reported at the Council's meeting in October 2015, he had contacted these Members to enquire when they expected to be in a position to provide the outstanding materials needed to complete the reviews and to offer the Secretariat's technical support that they might need.

2.7. Since then, Fiji had submitted the responses to the outstanding questions from the European Union, Switzerland and the United States, circulated in document IP/C/W/311/Add.1. Shortly before this meeting, Fiji had also notified the following legislative measures: Copyright (Amendment) Decree 2009, Patent (Amendment) Act of 2002 and Patent (Amendment) Decree of 2012, as well as two Trademark (Amendment) Decrees of 2012, available in the IP/N/1- series of documents.

2.8. The representatives of Fiji, Switzerland, the United States and the European Union took the floor.

2.9. The Chairman suggested that, provided that there were no further follow-up questions, the review of Fiji's implementing legislation be removed from the agenda with the understanding that Members could revert to any matter stemming from this review at any time.

2.10. The Council so agreed.

2.11. The Chairman urged Saint Kitts and Nevis to provide the outstanding material as soon as possible, so as to allow the Council to also complete the follow-up to this review.

2.12. The Council took note of the statement 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 and Kazakhstan

2.13. The Chairman said 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 as of that date 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 its accession to the WTO.

2.14. As requested by the Council at its meeting in June 2015, the Secretariat had contacted the Seychelles concerning the notification procedures. However, given that the Seychelles had not yet made any initial notification of its domestic laws and regulations implementing the TRIPS Agreement, he suggested that the Council revert to the arrangements for the review of its national implementing legislation at its next meeting in June. In the meantime, he also suggested that the incoming Chair be asked by the Council to contact the delegation of the Seychelles in order to find out more about the state of play of the preparation of their initial notification and to offer the Secretariat's technical support that the Seychelles might need in this regard.

2.15. The Council so agreed.

2.16. The Chairman said that Kazakhstan had agreed to apply the provisions of the TRIPS Agreement as of the date of its accession to the WTO, including provisions regarding enforcement, 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 its accession to the WTO.

2.17. Kazakhstan had already notified its contact point under Article 69 of the TRIPS Agreement. Since its accession to the WTO, the Secretariat had had initial contacts with the delegation of Kazakhstan concerning the notification procedures of the Council.

2.18. The representative of Kazakhstan took the floor.

2.19. To support further progress with respect to notifications, the Chairman proposed that the Secretariat be requested to pursue its contacts with the delegation of Kazakhstan, and that the Council revert to the arrangements for this review at its meeting in June.

2.20. 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 recalled that, at its meeting in October 2015, the interim Chair, Ambassador Alfredo Suescum, 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.

5.2. Since then, no developments with respect to the above suggestions had been reported to the Chairman. Nor had any responses or updates to initial responses to the illustrative list of questions on Article 27.3(b) of the TRIPS Agreement been provided by Members or relevant mechanisms to protect genetic resources and traditional knowledge been reported or notified. In spite of the importance attached to the review of Article 27.3(b) which had been on the agenda of the TRIPS

Council since 1998, the last response or update on the questions had been submitted in 2003, and material had been received from fewer than one in six Members. He said that the development of a more user friendly interface for TRIPS documentation, described earlier by the Secretariat under agenda item 1, would facilitate future contributions under this process as well.

5.3. The representatives of Brazil, the Plurinational State of Bolivia, Bangladesh, Australia, Egypt, Ecuador, Cuba, India, Canada, Indonesia, the Bolivarian Republic of Venezuela, South Africa, Peru, Colombia, China, Japan, the Republic of Korea, the United States and Switzerland took the floor.

5.4. The Chairman encouraged Members to engage in direct talks on the two pending proposals, i.e. that the CBD Secretariat be invited to provide a briefing on the Nagoya Protocol and that the Secretariat be requested to update three factual notes.

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

6 NON-VIOLATION AND SITUATION COMPLAINTS

6.1. The Chairman recalled that, at its reconvened meeting on 23 November 2015, the TRIPS Council had agreed to recommend that the Tenth Session of the Ministerial Conference decide to extend the moratorium on TRIPS non-violation and situation complaints.

6.2. Pursuant to this recommendation, 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 2017. It had been agreed that, in the meantime, Members would not initiate such complaints under the TRIPS Agreement. This decision of the Tenth Session of the Ministerial Conference had been circulated in document WT/L/976.

6.3. He further recalled that Members had discussed the matter at all three meetings that the Council had held in 2015. A number of documents submitted by Members had served as the basis for an intense exchange of views in the Council. These documents included, in particular, a communication on "Non-Violation Complaints under the TRIPS Agreement" by the United States, circulated in document IP/C/W/599, as well as a revision of an earlier communication on "Non-Violation and Situation Nullification or Impairment under the TRIPS Agreement" (IP/C/W/385/Rev.1) and a draft decision on non-violation and situation complaints for consideration at the Tenth Ministerial Conference (IP/C/W/607), both co-sponsored by a number of Members, including the African Group and the LDC Group.

6.4. At the Council's reconvened meeting in November 2015, many Members had flagged their readiness to resume work immediately after the Nairobi Ministerial Conference in order to find a permanent solution.

6.5. He also recalled 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. Just keeping the item on the agenda had not yielded any solution over the past 17 years. This should be of particular concern to delegations. He therefore particularly welcomed any concrete suggestions or ideas on how the Council could best engage in intensified work on the examination of the scope and modalities for non-violation complaints with a view to finding a way out of the current cycle of extending the non-violation moratorium from one Ministerial Conference to the next.

6.6. The representatives of the United States; India; Canada; Cuba; the Plurinational State of Bolivia; Indonesia; Peru; Chinese Taipei; Japan; Egypt; Ecuador; Argentina; China; Malaysia; Colombia; Thailand; Bangladesh; the Russian Federation; the Republic of Korea; Brazil; the Bolivarian Republic of Venezuela; Hong Kong, China; Switzerland and the United States took the floor.

6.7. The Chairman suggested that the Council request the incoming Chair to consult on the matter before its next meeting in June.

6.8. 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. The Chairman recalled that Article 71.1 required the Council periodically to review the Agreement having regard to the experience gained in its implementation.

7.2. The Council took note of the statement made and 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 provides 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 was a Checklist of Questions contained in document IP/C/13 and Add.1. However, only 49 Members out of 162 had undertaken this valuable exercise to date. The latest set of responses had been submitted in 2010. A number of past responses were likely to be out of date since they dated back over a decade at a time of considerable development in this area. The development of a more user friendly interface for TRIPS documentation, described earlier by the Secretariat under agenda item 1, would facilitate future contributions under this process as well. 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 encouraged the Members that were party to bilateral agreements related to the protection of GIs and had not yet shared such information with the Council to do so.

8.3. The representative of the Dominican Republic 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 THIRTEENTH 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 2015, the Council had taken up the thirteenth annual review of developed country Members' reports on their implementation of Article 66.2 of the TRIPS Agreement. In concluding the item, the interim Chair, Ambassador Alfredo Suescum, 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 representative of Switzerland 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 meeting in October 2015, the Council had taken up its annual review of technical cooperation. Given that some information from Members and intergovernmental organizations was available only a short time before the review, the interim Chairman had indicated that Members would be offered a further opportunity to make comments on that material at this meeting.

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

11 IP AND INNOVATION: EDUCATION AND DIFFUSION

11.1. The Chairman said that this item had initially been put on the agenda at the written request by the delegations of Australia, the European Union, Switzerland and the United States; since the circulation of the initial proposed agenda, it had been co-sponsored by the delegations of Hong Kong, China; Japan; Peru; the Russian Federation; Singapore and Chinese Taipei. A communication from Switzerland was circulated in document IP/C/W/612 for consideration under this agenda item.

11.2. The representatives of Switzerland; Japan; Peru; the European Union; the United States; Chinese Taipei; Singapore; Hong Kong, China; the Russian Federation; Australia; Costa Rica; Canada; India; Bangladesh; the Republic of Korea; Nigeria; Brazil and China took the floor.

11.3. The Council took note of the statements made.

12 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

12.1 Accessions

12.1. The Chairman informed that Kazakhstan had deposited its Instrument of Acceptance with the Director-General on 31 October 2015 and had become the 162nd Member of the WTO on 30 November 2015.

12.2 Protocol Amending the TRIPS Agreement

12.2. The Chairman recalled that Ministers at the Tenth Ministerial Conference in Nairobi in December 2015 had commended Members who had already accepted the amendment and looked forward to additional acceptances. Considerable momentum had built up in the course of 2015 regarding the acceptance of the TRIPS amendment. In particular, he noted that, since the Council's meeting in October 2015, another seven Members had deposited their instruments of acceptance with the Director-General of the WTO: Grenada on 8 December 2015, Malaysia on 10 December 2015, Myanmar on 16 December 2015, Lesotho on 4 January 2016, Mali on 20 January 2016, Thailand on 28 January 2016, and South Africa on 23 February 2016.

12.3. He encouraged delegations that were yet to accept the TRIPS amendment to take the necessary steps so that the domestic procedures can be completed as soon as possible. Entry into force of the amendment would give this 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. It would also 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. In 2016, Members were closer than ever before to securing the Protocol's entry into force. For this to happen, another 14 Members were needed to submit their respective instruments of acceptance to the WTO. To support Members that were yet to complete their domestic process to accept the TRIPS amendment, the Secretariat had prepared a hand out based on the information already available on the WTO's dedicated webpage. It provided guidance on the acceptance procedure and also reproduced a model instrument of acceptance. Hard copies were available in the back of the room for interested delegations.

12.4. The Council took note of the statement made.

12.3 Work Programme on Electronic Commerce

12.5. The Chairman said that the Ministerial Conference in Nairobi had taken a decision "to continue the work under the Work Programme on Electronic Commerce (...), based on the existing mandate and guidelines and on the basis of proposals submitted by Members in the relevant WTO bodies (...)."

12.6. At the Council's meeting in February 2015, H.E. Ambassador Palai from Botswana had noted under this agenda item that since 2003, no Member had made any written submissions to the Council for TRIPS or otherwise sought to continue discussions on e-commerce in this Council. He had also underlined that the WTO's Work Programme on Electronic Commerce would be an opportunity for Members to raise any issues or concerns relating to TRIPS and e-commerce.

12.7. In light of the decision taken by Ministers in December 2015 to continue the Work Programme on Electronic Commerce, the Chairman therefore encouraged Members to actively consider how best to resume work on e-commerce in the Council.

12.8. The Council took note of the statement made.

13 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

13.1. The Chairman said that 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 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.

13.2. At the Council's meeting in October 2015, a number of interested delegations had reiterated their support for granting permanent observer status to the South Centre, the CBD Secretariat and the International Vaccine Institute. Other delegations had said that they could agree to grant permanent observer status to ARIPO, OAPI, the GCC and EFTA. As no agreement on any of the pending requests could be reached, the matter had been left to direct contacts between interested Members.

13.3. The representatives of Nigeria, on behalf the African Group, Ecuador, India, the Bolivarian Republic of Venezuela, Egypt, Brazil, Bangladesh, the United States, China, Indonesia and Tanzania took the floor.

13.4. The Chairman suggested that the Council request the incoming Chair to consult on the pending requests for observer status.

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

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 Council so agreed.

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

14.3. The representative of Ecuador took the floor.

14.4. The Council took note of the statement made.

15 ELECTION OF THE CHAIRPERSON

15.1. The Chairman recalled that, at its meeting of 24-25 February 2016, the General Council had noted the consensus on a slate of names of chairpersons for WTO bodies. H.E. Ambassador Modest

Jonathan Mero from Tanzania who had been designated as the Chairperson, could not attend this meeting due to other commitments. On the basis of the understanding reached at the General Council, he proposed that the Council for TRIPS elect H.E. Ambassador Mero as its Chairperson for the coming year by acclamation.

15.2. The Council so agreed.

15.3. The representative of Tanzania took the floor.
