



Council for Trade-Related Aspects of Intellectual Property rights

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 7-8 JUNE 2016

Chairperson: Ambassador Mero (United Republic of Tanzania)

The present document contains the record of the Council for TRIPS meetings held on 7-8 June 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 Follow-up to review already undertaken..... 4
2.2 Arrangements for the review of the national implementing legislation of the Republic of Seychelles and Kazakhstan 4
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 8
8 REVIEW OF THE APPLICATION OF THE PROVISIONS OF THE SECTION ON GEOGRAPHICAL INDICATIONS UNDER ARTICLE 24.2 8
9 TECHNICAL COOPERATION AND CAPACITY-BUILDING 9
10 IP AND INNOVATION: SUSTAINABLE RESOURCE AND LOW EMISSION TECHNOLOGY STRATEGIES 9
11 WORK PROGRAMME ON ELECTRONIC COMMERCE 10
12 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO 11
12.1 Protocol Amending the TRIPS Agreement 11
12.2 Issues related to Intellectual Property Rights in Trade Policy Reviews 12
13 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS 12

14 OTHER BUSINESS	13
14.1 Invitations to ad hoc observers	13
14.2 Contribution of Intellectual Property to Facilitate the Transfer of Environmentally Rational Technology	13
14.3 14 th Annual Review under Paragraph 2 of the Decision on the "Implementation of Article 66.2 of the TRIPS Agreement"	14

1 NOTIFICATIONS UNDER PROVISIONS OF THE AGREEMENT

1.1. The Chairman said that, since its meeting in March 2016, the Council had received a number of updates to earlier notifications of laws and regulations notified under Article 63.2 of the Agreement:

- The European Union had notified a recast of its Trademark Directive, as well as amendments to its Trademark Regulation;
- Shortly after the Council's last meeting on 1 March, Fiji had notified its Patents Act and the Trademarks Act, as well the Copyright Tribunal Rules of Procedure and the Copyright Prescribed Countries Regulation. This complemented the series of legislative measures that had been notified prior to the Council's last meeting and that had been introduced by the then Chairman at that meeting;
- Mexico had notified a series of legislative measures in the field of geographical indications and copyright and related rights. These included amendments to the General Declaration on Protection of the Appellation of Origin "Mezcal", amendments to the Federal Law on Copyright and amendments to certain provisions on telecommunications and broadcasting; and
- Japan had notified its Patent Act, Design Act and Trademark Act, as well as related enforcement ordinances in each of these areas.

1.2. In addition, the Council had also received a comprehensive set of notifications from two newly acceded Members:

- The Republic of Seychelles had notified its Copyright Act 2014, the Industrial Property Act and Regulations 2014, the Customs Management Act 2011 and related Regulations, as well as the Penal Code 1955 and its 2012 Amendment Act;
- Kazakhstan had notified three main laws on copyright and related rights, on trademarks, service marks and appellations of origin of goods, and on patents, as well as a comprehensive set of other legislative measures.

1.3. The Chair suggested that these notifications be taken up as part of the review of the national implementing legislation of the Seychelles and Kazakhstan respectively.

1.4. Finally, since the circulation of the revised draft agenda on 26 May, the delegation of Canada had notified legislative measures that amend the Copyright Act and the Plants Breeders' Rights Act, as well as an Order Amending Schedule 1 to the Patent Act 2014.

1.5. 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.

1.6. The Chairman noted that the Republic of Seychelles had also notified its initial responses to the Checklist of Issues on Enforcement. No other initial responses or updates to earlier responses had been submitted since the Council's last meeting. 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 in the past, some of them dating back almost two decades to 1997, to consider updating the information provided, as appropriate, bearing in mind that the Checklist had been established by the Council as an element of Members' notification obligations.

1.7. 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 March, the Seychelles had notified a contact point under Article 69 for the first time. The information on the Members' transparency toolkit page had been updated accordingly.

1.8. The Chair particularly encouraged any delegation 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. This had almost become a well-established tradition, as many delegations had followed this practice at recent sessions of the Council. It had provided valuable insight into the notifications provided and had assisted in promoting awareness and transparency.

1.9. The representatives of Japan, the European Union, Canada and Mexico introduced their respective measures. Benin, Brazil, India, South Africa, China and Indonesia also took the floor.

1.10. 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.

1.11. 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 52 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. That said, only 19 Members, including the European Union, 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.

1.12. The representative of the Secretariat provided the Council with a further update on its work to improve the user-friendliness and cost-effectiveness of the notification system.

1.13. The representative of Chinese Taipei took the floor.

1.14. The Council took note of the statements made.

2 REVIEWS OF NATIONAL IMPLEMENTING LEGISLATION

2.1 Follow-up to review already undertaken

2.1. The Chairman said that, as regards the reviews of national implementing legislation that had been initiated at the Council's meetings since April 2001, the review of Saint Kitts and Nevis remained on the Council's agenda. As reported at the Council's meeting in March, the delegation of Saint Kitts and Nevis had been urged to provide the outstanding material as soon as possible, so as to allow the Council to also complete the follow-up to this review.

2.2. Given that there had been no developments since then, he suggested that the Secretariat be requested once more to contact the delegation of Saint Kitts and Nevis with a view to exploring the support that might be needed in order to complete the review process.

2.3. The Council so agreed.

2.2 Arrangements for the review of the national implementing legislation of the Republic of Seychelles and Kazakhstan

2.4. The Chairman recalled that the Republic of Seychelles had become a new Member of 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. Kazakhstan had also become a new Member of the WTO on 30 November 2015. It 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.

2.5. In both cases, the Council had agreed to revert to the arrangements for the review of national implementing legislation once it had received the initial notification of legislative measures taken to implement the TRIPS Agreement by the Republic of Seychelles and Kazakhstan respectively.

2.6. As he had already mentioned under item 1, the Chairman noted that both the Seychelles and Kazakhstan had made their initial notifications of their TRIPS implementing laws and regulations. A complete list of the measures notified was included on the agenda of the present meeting. They had also been made available to Members in the document series IP/N/1.

2.7. In scheduling the reviews of the implementing legislation of the Seychelles and Kazakhstan, enough time should be reserved for other Members to prepare questions for these two newly acceded Members. It was also necessary to ensure that the Republic of Seychelles and Kazakhstan had sufficient time to prepare their responses. Accordingly, the Chairman suggested that both reviews be scheduled for the Council's first meeting in 2017.

2.8. In accordance with the standard procedures for such reviews, he proposed that the Council set the following target dates for the submission of questions and answers in these reviews:

- questions should normally be submitted to the Republic of Seychelles and Kazakhstan, with a copy to the Secretariat, ten weeks before the meeting in which the reviews would take place; assuming that the Council's first meeting next year would be scheduled in late February, he suggested a target date of 15 December 2016;
- responses to questions posed within that deadline should normally be submitted four weeks before the meeting; accordingly, he suggested a target date of 31 January 2017.

2.9. 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 noted that the Council had continued its substantive exchange of views under these agenda items at its last meeting, including the suggested inclusion of a mandatory disclosure requirement in TRIPS, as well as the patentability of life forms. Members' views had remained, however, divided so that no progress could be made.

5.2. Nor had it been possible at that meeting to make any progress with respect to two procedural questions that related to these items and that had been discussed for some years in the TRIPS Council. These included the suggestion, first made at the Council's meeting in November 2012, that the Secretariat update the three factual notes on the Council's previous discussions on the TRIPS and CBD and related items, initially prepared in 2002 and updated in 2006. It also concerned the request that the CBD Secretariat be invited to brief the Council on the Nagoya Protocol to the CBD that had first been proposed at the Council's meeting in October 2010. At the Council's meeting in March, the then Chairman therefore had again encouraged delegations to continue direct talks among themselves to find a way forward regarding these two pending suggestions.

5.3. The Chairman noted that since the Council's last meeting, and including at the meeting with a small group of delegations that he had convened on 2 June, no new developments with respect to the above suggestions had been reported to him. 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 Article 27.3(b) review, 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, or about 13 years ago, and material had been received from fewer than one in six Members.

5.4. He therefore again reminded delegations of the mandatory nature of the review under Article 27.3(b) of the TRIPS Agreement, as well as the need to respond or update responses to the Illustrative List of Questions on Article 27.3(b). While the development of a more user-friendly interface for TRIPS documentation, described by the Secretariat under item 1, would facilitate

future contributions, the fact that only a limited number of Members had provided responses to this list to date did not adequately cover the important developments that many WTO Members had seen in this area over the last decade.

5.5. He also pointed to the fact that the two procedural suggestions had been debated on the formal record of the Council for 11 and 16 successive meetings respectively without any resolution. Therefore, at the informal meeting that had been held the previous week, he had again encouraged delegations to engage in bilateral talks in order to explore ways that would allow us to close off the matter one way or the other.

5.6. Some delegations present at the informal meeting had reiterated the critical importance that the triplets represent for developing countries. Among other things, it had been suggested that the proposed amendment to the TRIPS Agreement in TN/C/W/59 be taken as the basis for discussions in the TRIPS Council. An interest had also been expressed for the DG to resume his consultations. Another delegation had considered that WIPO was the most appropriate forum to discuss these issues.

5.7. Following a suggestion by the Chairman, the Council continued its session in informal mode. When the Council resumed its formal session, he provided a brief summary of the discussions held in informal mode. He reported that the Council had continued its discussion on the substantive issues, including the patentability of life forms and the introduction of a mandatory disclosure requirement in TRIPS. Delegations had also continued to examine the two pending proposals of procedural nature, i.e. the possibility of inviting the CBD Secretariat to debrief the Council on the Nagoya Protocol and the update of the three factual notes that had been prepared and updated by the Secretariat ten years ago. While delegations had constructively engaged in the discussion, positions had, however, not evolved, neither as regards the substantive matters nor with respect to the procedural suggestions. A number of Members had reiterated the suggestion that the proposed amendment to the TRIPS Agreement circulated in document TN/C/W/59 be considered in this Council. Some Members had also called for a workshop to be organized to initiate a fruitful discussion in the WTO. None of these suggestions had found unanimous support by delegations.

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

5.9. The Chairman welcomed the fact that delegations were thinking about how to make best use of the TRIPS Council, in particular how to carry forward some of the issues. He noted that there had been the suggestion from the floor for him to continue his consultations with delegations. He therefore suggested that the Council so agree.

5.10. The Council took note of the Chairman's summary of the discussion held in informal mode and the statements made and so agreed.

6 NON-VIOLATION AND SITUATION COMPLAINTS

6.1. The Chairman recalled that Ministers at MC10 had renewed their instruction to the TRIPS Council "to continue its examination of the scope and modalities" for non-violation and situation complaints and to make recommendations to MC11. This was also in line with the original mandate in Article 64.3 of the TRIPS Agreement. As on past occasions and for the seventh time in a row, Ministers had also agreed to prolong the moratorium on such complaints under the TRIPS Agreement.

6.2. He assumed that delegations would agree with him that since the Council had begun discussing the application of such complaints to the TRIPS Agreement in the late 1990s the situation had been effectively blocked. Recent discussions had essentially served to repeat positions that argued either for or against the application of non-violation and situation complaints to the TRIPS Agreement, while not addressing the question of scope and modalities for which Ministers had repeatedly requested the Council to prepare recommendations and which was in line with the requirements of the TRIPS Agreement itself in Article 64.3.

6.3. A number of delegations had, however, more recently signalled their readiness to engage in constructive discussions. There also seemed to be an emerging view shared by many delegations that the application of non-violation and situation complaints should not and did not undermine existing TRIPS flexibilities.

6.4. Following up on the request that had been made to him by the Council in March, he had consulted with key delegations on this matter, including at an informal meeting that had been held the previous week at which he had explored an idea for a possible way forward as a first step towards a more focused discussion.

6.5. Solely in pursuance of the Ministerial instruction and the mandate in Article 64.3 of the TRIPS Agreement, he had suggested that some elements describing possible scope and modalities be put together that could in principle frame the application of non-violation and situation complaints in the area of TRIPS, but expressly without prejudice to the position of any Member. Such an exercise could be informed by past discussions in the TRIPS Council. It could also draw on other WTO agreements and related jurisprudence, as well as on existing bilateral and regional trade agreements. These elements could be informally shared with delegations in the form of a non-paper in order to inform Members' discussion at the Council's meeting in November.

6.6. At the informal meeting that had been held on 2 June, delegations had engaged in a useful exchange of views on his suggestion, and, more broadly, on how the Council could best ensure a meaningful debate that would ultimately fulfil the Ministers' instructions to examine the matter in the coming 18 months, and prepare recommendations to the next Ministerial Conference.

6.7. On the positive side, most, if not all, delegations had confirmed their willingness to engage in constructive discussions. Positions had remained, however, divided as to whether non-violation and situation complaints should apply to TRIPS and whether there was a need to establish scope and modalities at all. One delegation had objected to the idea that elements for scope and modalities be put together by him or by the Secretariat, considering that such proposals should be made by Members, as this was a Member-driven process. Another delegation had proposed an update of the Secretariat summary note of the points raised in substantive discussions so far that had last been updated in 2012 (IP/C/W/349/Rev.2).

6.8. He recalled once more 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 encouraged delegations to come forward with 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.

6.9. As suggested by the Chairman, the Council continued its session in informal mode. When the Council resumed its formal session, he provided a brief summary of the main points raised during the discussion in informal mode. He reported that delegations had engaged in an informative exchange of views about the application of non-violation and situation complaints to the TRIPS Agreement, as well as the scope and modalities related to such complaints. While delegations were recognizing the mandate given to the TRIPS Council by Ministers, i.e. that it had been instructed once again to continue the examination of scope and modalities that should apply to non-violation and situation complaints and to make recommendations to the next Ministerial Conference, there had been no progress regarding the question whether such complaints should apply to TRIPS, whether there was even a need to establish scope and modalities and the elements that would form part of scope and modalities.

6.10. An important point of divergence related to the question whose task it should be to propose possible elements for scope and modalities. One view that had been expressed in the informal discussion was that these would not be needed for non-violation and situation complaints to apply, as the WTO agreements and jurisprudence provided sufficient guidance. According to another view, the discussion on scope and modalities was obsolete if such complaints were declared inapplicable to TRIPS.

6.11. His initial proposal to put together elements for scope and modalities in the form of a non-paper that could serve as the basis for future discussions among Members had aimed at overcoming this blockage. However, it had not been supported by all Members in the informal discussion, as some delegations had considered that the process should remain entirely Member-driven.

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

6.13. The Chairman suggested that the Council request him to continue his consultations with delegations prior to the next meeting.

6.14. The Council took note of the Chairman's summary of the discussion held in informal mode and the statements made and so agreed.

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

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

7.2. Despite the wealth of information that could be shared under this agenda item and the unique opportunity to discuss, in particular, new developments of which there had been plenty since the entry into force of the TRIPS Agreement, the Council had not discharged this obligation. This could not be because of limited experience with TRIPS implementation, nor because there had been limited new developments over the past 14 years since the initial Article 71.1 review was due. Since it was incumbent on the Council to undertake this review every two years, it seemed appropriate to look actively at how to progress this obligation. The preferred option would be for delegations to consult upon, to develop and to propose possible avenues for this review, although alternative approaches would also be possible.

7.3. At the informal meeting that he had convened the previous week, he had encouraged delegations to consider how to take forward this mandated review. He had also suggested that this could be most usefully dealt with in informal conversation that he might have with delegations in order to develop concrete ideas that could be presented to the Council at its meeting in November. Delegations had, however, not reacted to this proposal at the informal meeting held during the previous week.

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

9 TECHNICAL COOPERATION AND CAPACITY-BUILDING

9.1. 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 8-9 November.

9.2. 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 14 October 2016 in order to allow its timely circulation before the meeting.

9.3. 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.

9.4. The Council so agreed.

10 IP AND INNOVATION: SUSTAINABLE RESOURCE AND LOW EMISSION TECHNOLOGY STRATEGIES

10.1. The Chairman noted that this item had initially been put on the agenda at the written request by the delegations of the European Union, Japan, Switzerland and the United States; since the circulation of the initial proposed agenda, it had been co-sponsored by the delegations of Canada, Singapore and Chinese Taipei.

10.2. The representatives of Japan, the European Union, the United States, Chinese Taipei, Canada, Switzerland, India, Australia, Bangladesh, China, and the Republic of Korea took the floor.

10.3. The Chairman noted that this was the latest in a series of ad hoc agenda items on Intellectual Property and Innovation that had been added to TRIPS Council meetings since late 2012 upon request by various co-sponsors. These discussions had proven to be a valuable source of information and different views, as they touched on one of the recurring key issues, i.e. the role of IP protection in government policies to promote innovative activities.

10.4. At the informal meeting that he had held the previous week, he had therefore shared a couple of ideas on how to make best use of this discussion. These were ideas of a general character that could, of course, equally apply to any other ad hoc agenda item that delegations might request to be added to the agenda in the future. They were guided by what he believed was the Council's collective interest in consulting on and preparing for items more thoroughly that Members were choosing to add to the agenda; they were not meant to imply at all that such ad hoc agenda items should be turned into regular agenda items.

10.5. First, he took up an observation that had been made by some delegations at the informal meeting, i.e. that sponsors of ad hoc agenda items, such as the item on IP and Innovation at this meeting, should circulate a communication in advance of the meeting in order to engage other Members in an informed discussion. Indeed, and without considering this as an obligation, it would seem appropriate to encourage the sponsors of ad hoc agenda items to circulate a brief submission in writing sufficiently in advance of the meeting that provided background information regarding the subject matter concerned. This would seem to be a good way to enable delegations to prepare for a meaningful discussion of such items.

10.6. Second, at the informal meeting that had been held the previous week, he had also drawn delegations' attention to the fact that past discussions had been held on a "one-off" basis. This had made it difficult for many delegations to actively engage in them, in particular in the absence of prior documentation and an opportunity to comment at a subsequent meeting. In order to provide the framework for a more robust exchange of views, the Council might therefore wish to consider the possibility of providing delegations an opportunity to comment on any statements made during a discussion of such an item still at the Council's subsequent meeting. This would, among other things, allow delegations to comment more substantively on the issues addressed by the co-sponsors in the initial round of discussions.

10.7. Finally, at the informal meeting on 2 June, he had mentioned the possibility for the TRIPS Council to request the Secretariat to compile this information in a background note prepared under its own responsibility as one of the options that could also be explored to take the dialogue on IP and Innovation a step further so that best use could be made of the information exchanged.

10.8. He acknowledged that there were sensitivities among delegations about the distinction between regular agenda items, and one-off agenda items that require agreement for inclusion on the agenda each time. That distinction would remain clearly in place. The suggestion solely related to more systematic and consultative preparation for these agenda items, in the interests of more productive discussions for the benefit of all delegations.

10.9. The representatives of the European Union, South Africa, India, Bangladesh and Brazil took the floor.

10.10. The Council took note of the statements made.

11 WORK PROGRAMME ON ELECTRONIC COMMERCE

11.1. The Chairman said that, since the circulation of the initial proposed agenda, the delegation of Canada had asked for this item to be added to the agenda. It had also submitted a communication that briefly introduced the matter. The communication had been circulated in document IP/C/W/613.

11.2. Before passing the floor to the delegation of Canada to introduce the proposed agenda item, he provided the Council with some background regarding past discussions on e-commerce in the WTO and the TRIPS Council, as well as the most recent mandate adopted by Ministers at MC10. The Second WTO Ministerial Conference held in May 1998 had adopted a Declaration on Global Electronic Commerce, which had launched a comprehensive work programme to examine all trade-related issues relating to global electronic commerce.

11.3. Subsequently, e-commerce had regularly featured on the agenda of each TRIPS Council meeting from 1998 to June 2003, and the Council had produced three reports to the General Council, which had reflected the view among Members that continued further study was needed given the novelty and complexity of the intellectual property issues arising in connection with electronic commerce. Members had also noted the related work of WIPO (IP/C/18, IP/C/20 and IP/C/29).

11.4. In response to a request by the TRIPS Council in December 1998, the Secretariat had also prepared a factual background note and addendum that examined the provisions of the TRIPS Agreement relevant to the Work Programme on Electronic Commerce and relevant activities in other intergovernmental organizations (IP/C/W/128 and Addendum 1).

11.5. Since the Cancún Ministerial Conference in 2003, however, no Member had made any written submissions to the TRIPS Council or otherwise sought to continue discussions on e-commerce in the Council.

11.6. At their most recent session in Nairobi in December 2015, Ministers had decided to "continue the work under the Work Programme based on the existing mandate and guidelines and on the basis of proposals submitted by Members in the relevant WTO bodies". They also had instructed the General Council to hold periodic reviews "based on the reports that may be

submitted by the WTO bodies entrusted with the implementation of the Work Programme and report to the next session of the Ministerial Conference".

11.7. Ambassador Alfredo Suescum of Panama had also been asked to continue to chair the e-commerce talks in his capacity as "a friend of the General Council Chair" in order to facilitate Members' understanding of the linkages between the various elements of the Work Programme.

11.8. The representatives of Canada, Switzerland, the United States, Chinese Taipei, India, Brazil, the European Union, South Africa, the Republic of Korea, China and Bangladesh took the floor.

11.9. The Chairman noted that, as demonstrated by Canada's initiative and the interesting exchange of views at this meeting, there clearly seemed to be a continuing interest of WTO Members in issues related to the interface between intellectual property and e-commerce. While not specifically under the heading of "e-commerce", the TRIPS Council, for example, had continued to discuss, under various agenda items, issues that were relevant in this regard. In addition, the strong interest of Members in this matter was reflected by the wide range of questions concerning IP in the digital environment that had been raised on the occasion of recent Trade Policy Reviews of a number of WTO Members. And it was also supported by the fact that many Regional Trade Agreements that had been notified to the WTO included provisions that dealt with pertinent questions, such as the interface between trademarks and domain names, the liability of internet service providers, and the protection of copyright on the Internet.

11.10. He encouraged Members to consider how they wished to take up issues related to e-commerce in the TRIPS Council in the future, taking due account of the significance of the interface between IP and trade in the digital environment, the many important developments at national level, as well as the interest that WTO Members were taking in issues related to e-commerce more generally. An in-depth debate could constitute a sound basis for the Council to report to the General Council. It would thus be an opportunity for delegations to contribute to the periodic review that the General Council had been requested to hold, as well as to provide input for the General Council report to the next Ministerial Conference. Such a discussion would not have a norm-setting quality nor would it aim at negotiations of any sort. It would be an opportunity to create a clearer, more inclusive factual picture of the current state of affairs as the foundation for informed dialogue between Members.

11.11. The Council took note of the statements made.

12 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

12.1 Protocol Amending the TRIPS Agreement

12.1. The Chairman recalled that, Ministers at the Tenth Ministerial Conference in Nairobi last December, had commended Members who had already accepted the TRIPS amendment and had looked forward to additional acceptances. Since the beginning of 2015, considerable momentum had built up regarding the acceptance of the TRIPS amendment. In particular, since the Council's last meeting in March, seven more Members had deposited their instruments of acceptance with the Director-General of the WTO: Nepal on 11 March, Tanzania on 14 March, Ukraine on 16 March, Qatar on 6 April, Samoa on 22 April, Saint Lucia on 2 May 2016, and Tajikistan on 23 May. This amounted to a total of 11 acceptances during the first five months of the current year.

12.2. He once again encouraged 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. 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 are 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. This year, Members were closer than ever before to securing the Protocol's entry into force. For this to happen, only seven more acceptances of the Protocol were needed.

12.3. In this context, he recalled that the Council would have the annual review of the functioning of the Paragraph 6 System on the agenda of its next meeting. The discussion under this agenda item in November might take a more prominent place than in the last couple of years as the 2/3 threshold of acceptances by WTO Members needed for the Protocol Amending the TRIPS Agreement to enter into force was within reach. Beyond celebrating this historic event, it would also be the moment in time to turn the page and focus on how this new procurement tool could be effectively used in practice to respond to public health needs.

12.4. The Chairman said that, starting immediately after this meeting, a significant amount of work would be required to prepare the grounds for a stimulating and forward-looking debate to happen, rather than hearing Members reaffirm their well-known positions regarding the functioning of the System and the need to organize an open-ended workshop to address this question. It was therefore his firm intention to approach delegations bilaterally during the coming weeks in order to engage the delegations in a structured and in-depth debate, as the Council had witnessed on the occasion of the annual reviews in 2010 and 2011.

12.5. As suggested at previous week's informal meeting, such a debate could also be usefully facilitated by a Secretariat background note setting out the framework ahead, focusing on the issues that would merit further consideration for the System to be used as an effective procurement tool. At that meeting, delegations had not expressed any views.

12.6. The representative of the Republic of Seychelles took the floor.

12.7. The Council took note of the statements made.

12.2 Issues related to Intellectual Property Rights in Trade Policy Reviews

12.8. The Chairman invited the representative of the Secretariat to provide an initial overview of the wide range of IPR-related issues that were intensively considered by Members as part of individual trade policy reviews. It was his understanding that this was a first step to report on the overall patterns and general themes that are raised in another WTO body and which were of direct relevance for the TRIPS Agreement and for the TRIPS Council. He suggested that more detailed information could be provided by the Secretariat at future meetings.

12.9. The representative of the Secretariat provided the Council with an overview of issues related to IPRs that were raised in various Members' trade policy reviews.

12.10. The Council took note of the statements made.

13 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

13.1. The Chairman reminded delegations 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 last meeting in March, 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 signalled that they could agree to granting permanent observer status to ARIPO, OAPI, the GCC and EFTA.

13.3. As it had not been possible to reach agreement on any of the pending requests, he had been asked by the Council to hold consultations on this matter. He had therefore taken up the matter at the informal meeting that he had convened the previous week. In particular, he had noted that, rather than linking requests for observer status and trying to trade them off against each other, it would seem to make imminent sense to assess each request for observer status on its individual merits, in particular the competence and interest the requesting institution has in matters dealt with by the TRIPS Council.

13.4. However, it had not been possible to make progress at the informal meeting on 2 June on any of the pending requests for observer status. As on previous occasions, the African Group proposal to grant permanent observer status to ARIPO and OAPI had been supported by some delegations, while, according to Brazil, the Council should continue its current practice of granting ad hoc observer status on a meeting-by-meeting basis to these organizations, as well as to the GCC and EFTA. Similarly, as regards the CBD Secretariat, South Centre and the International Vaccines Institute, the United States had informed delegations that its position had not changed, i.e. that it could not support a decision concerning the grant of observer status to any of these institutions.

13.5. The Chairman therefore invited delegations to have a fresh look at the pending requests for observer status in order to overcome the current blockage that had prevented the Council from making any progress.

13.6. To facilitate a frank exchange of views among delegations, he suggested that the Council continue its session in informal mode. He invited delegations to share any new thinking on the pending requests, including as to whether, by way of a fall back solution, granting the CBD Secretariat, the South Centre and the International Vaccines Institute ad hoc observer status on a meeting-by-meeting basis would constitute a viable option.

13.7. When the Council resumed its formal session, the Chairman provided a brief summary of the main points raised during the discussion in informal mode. He noted that, while it was too early to reach an agreement, there had been positive signals indicating that the issues could be resolved through consultations among delegations. Delegations were positively engaging in the discussions and had demonstrated some degree of flexibility. In particular, there had been widespread agreement that each of the pending requests needed to be considered on its own merits. However, there had also been objection to each of these pending requests among Members. Therefore, it had not yet been possible to make progress on any of them, but delegations had undertaken to further consult with their respective capitals.

13.8. The Chairman concluded by noting that pending requests should not be taken hostage one over the other. Negotiations should not be used to block progress merely for tactical reasons, but to address real concerns that delegations had. In order to further explore the issue, he suggested that the Council request him again to continue his consultations on the pending requests for observer status with a view to reaching an agreement at the Council's next meeting.

13.9. The Council 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 Rational Technology

14.3. The Chairman noted that, at the beginning of the meeting, the delegation of Ecuador had asked for an opportunity to address its proposal on the "Contribution of IP to Facilitate the Transfer of Environmentally Rational Technology" under this agenda item in order to inform the Council of the progress made.

14.4. The representative of Ecuador took the floor.

14.5. The Council took note of the statements made.

14.3 14th Annual Review under Paragraph 2 of the Decision on the "Implementation of Article 66.2 of the TRIPS Agreement"

14.6. 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 were requested to provide new detailed reports every third year and, in the intervening years, provide updates to their most recent reports. These reports had to be submitted prior to the last Council meeting scheduled for the year in question. Paragraph 3 of the Decision determined the information that had to be provided in these reports.

14.7. Detailed annual reports under the Decision had been presented to the Council's end-of-year meetings in 2003, 2006, 2009, 2012, and 2015, and updates to the Council's meetings in the intervening years. Therefore, during the current year, developed country Members should provide an update to their respective 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 8-9 November. As provided in paragraph 2 of the Decision, the Council shall review these reports at that meeting. 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 14 October in order to allow their timely circulation and review at the Council's meeting of November.

14.8. The Council so agreed.

14.9. 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.

14.10. The Chairman also informed delegations that the Secretariat was preparing the ninth in a series of workshops on the Implementation of Article 66.2 of the TRIPS Agreement. As in the past, the purpose was to facilitate the dialogue between reporting developed country Members and LDC delegations on the incentives for technology transfer for the benefit of least developed countries. According to the current planning, this workshop would take place on 7 November, i.e. the day preceding the formal TRIPS Council meeting on 8-9 November.

14.11. Furthermore, while LDCs were currently enjoying extended transition periods, both in general and as regards specifically the pharmaceutical sector, a number of TRIPS provisions specific to this group of WTO Members continue to apply. This included the recognition in the Preamble of their special needs in order to enable them to create a sound viable technological base, as well as the obligation on developed country Members to provide incentives to their industry for the purpose of promoting technology transfer to LDCs. In addition, LDC Members were entitled to technical assistance, on mutually agreed terms, in line with Article 67 of the Agreement.

14.12. Next to the aforementioned Workshop on Technology Transfer under Article 66.2 of the TRIPS Agreement, the Secretariat was therefore looking into the possibility of holding a symposium on the special needs of LDCs in order to reinvigorate earlier efforts to coordinate the assessment of needs in individual LDCs to put in place an IP regime that is supportive of their domestic needs, as well as the responses to such needs where they had been identified.

14.13. For this initiative to be meaningful, the full support and input from the LDC Group, as well as its development partners was needed. In his capacity as the Chairman of the TRIPS Council, he would shortly be in touch with delegations concerned in order to facilitate the preparations for the LDC Symposium and the Workshop on Technology Transfer.
