

**Council for Trade-Related Aspects of
Intellectual Property Rights**

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 8-9 NOVEMBER 2018

Chair: H.E. Ambassador Dr. Walter Werner

The present document contains the record of the meeting of the Council for TRIPS, held from 8 to 9 November 2018. 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. The Chair suggested that Members first consider notifications submitted under the TRIPS Agreement, then take up questions submitted by India to the European Union with respect to the enforcement of IPRs regarding goods in transit, and conclude with a Secretariat update on the status of the e-TRIPS project. He invited the Secretariat to report on notifications that the Council had received since its meeting in June 2018.

2. A representative of the Secretariat said that the Council had received the following notifications under Article 63.2 of the TRIPS Agreement:

- a. Croatia had submitted a comprehensive package of 14 notifications. These included amendments to and codifications of its main dedicated IP laws and regulations in the fields of copyright and related rights, trademarks, geographical indications, patents, industrial designs and topographies of semiconductor products. A new Act on the Protection of Undisclosed Information with Market Value had also been notified.
- b. Japan had notified revisions of its Patent and Design Acts, expanding in both cases the "grace period" regarding the exception to lack of novelty of inventions, from six months to one year. A revision of the Trademark Act had also been notified. It reportedly improved trademark application procedures through adding the requirement of divisional application.
- c. Ukraine had notified its law "On Efficient Management of Property Rights of Right Holders in the Sphere of Copyright and Related Rights" of May 2018, which defined the legal and organizational principles of collective management of copyrights and related rights.
- d. Colombia had notified its new "Orange Economy" Law of May 2017. This law promoted creative industries that generate value through their IP-based goods and services. It had also notified two updates to its copyright law. Amongst others, the right of remuneration of authors of cinematographic works, including directors and scriptwriters, for acts of communication to the public of audio-visual works is recognized. Finally, an amendment to a 2015 decree regarding certain aspects of the procedure for the declaration of the existence of reasons of public interest for compulsory licensing had also been submitted to the TRIPS Council.
- e. Republic of Moldova had notified two Decisions of 2011 and 2018, respectively, approving and amending the Regulations on the Activity of Authorized Intellectual Property Attorneys which addressed the fundamental principles and rules of professional conduct.

3. Under Article 69, Ukraine had updated its contact points for the exchange of information and cooperation on trade in infringing goods, and, Tonga had notified new information regarding its contact points. The Members' transparency toolkit page had been updated accordingly.¹

4. The Chair invited delegations that had notified a new or revised legislative measures, or submitted updates to their contact points, to introduce their notifications. He also invited other delegations that might wish to comment on them.

5. The representatives of Colombia, Japan, Republic of Moldova, Ukraine, and the United States of America took the floor.

6. The Chair invited India to introduce its communication on the "Enforcement of IPRs Regarding Goods in Transit – Questions to the European Union" (circulated in document IP/C/W/636/Add.1).

7. The representative of the European Union and India took the floor.

8. The Chair turned to the e-TRIPS project and invited the Secretariat to provide an update on the development of e-TRIPS, an online platform for filing and consulting notifications and other Council documentation.

¹ Available at: https://www.wto.org/english/tratop_e/trips_e/trips_toolkit_e.htm

9. A representative of the Secretariat briefed Members on the development of e-TRIPS.

10. The Chair recalled that notifications to the Council were not keeping up with the actual development of laws and regulations relating to TRIPS. He recalled that Article 63.2 was not a one-off requirement, but obliged Members to notify any new or amended laws. Therefore, he urged Members to complete any outstanding initial notifications and to keep up to date with notifications on subsequent amendments. The same applied to the Checklist of Issues on Enforcement which had been established by the Council as an element of Members' notification obligations.

11. The Council took note of the notifications and the statements made.

2 REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

12. The Chair noted that there were no pending reviews. Members should feel free to revert to any matter raised in past reviews, or suggest further reviews. He encouraged delegations to share their ideas on how to make the best use of this agenda item.

13. The Council took note of the information provided.

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

14. The Chair proposed that, following past practice, the three agenda items would be addressed together. Members had seen important developments in these areas, over the last decade. However, information on those developments had not been shared with the TRIPS Council. For example, the Review of Article 27.3(b) was based on an Illustrative List of Questions agreed by the Council. To date, only 25 Members had submitted responses to that list and there had been no responses or updates since 2003. Similarly, there had been no notifications of domestic mechanisms to protect genetic resources and traditional knowledge under Article 63.2 TRIPS. He encouraged delegations to submit or update responses and to notify relevant laws and regulations to the TRIPS Council. This would definitively facilitate and enrich the discussions. He recalled that there had been no new developments on two long-standing procedural issues, namely:

- a. The suggestion, first made in November 2012, that the Secretariat update the three factual notes on the Council's previous discussions on TRIPS/CBD and related items; and
- b. The proposal, initially submitted in October 2010, that the CBD Secretariat be invited to brief the Council on the Nagoya Protocol to the CBD.

15. The representatives of India, Egypt, China, Brazil, Bangladesh, the Plurinational State of Bolivia, Ecuador, Chinese Taipei, Chile, South Africa, Indonesia, Canada, Thailand, Australia, Japan, the United States of America, and Switzerland took the floor.

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

6 ANNUAL REVIEW OF THE SPECIAL COMPULSORY LICENSING SYSTEM (PARAGRAPH 7 OF THE ANNEX TO THE AMENDED TRIPS AGREEMENT AND PARAGRAPH 8 OF THE DECISION ON THE IMPLEMENTATION OF PARAGRAPH 6 OF THE DOHA DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH)

17. The Chair recalled that, in the past, the Special Compulsory Licensing System had been conducted pursuant to paragraph 6 of the 2003 Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. Since the entry into force of the Protocol Amending the TRIPS Agreement on 23 January 2017, the review also responded to the requirements that had now been incorporated into the amended TRIPS Agreement.

18. Paragraph 7 of the Annex to the amended TRIPS Agreement and paragraph 8 of the 2003 Waiver Decision required the Council to review the functioning of the System annually, with a view to ensuring its effective operation. They also required the Council to report annually on the System's operation to the General Council. In the case of the Waiver Decision, the review was also deemed to fulfil the requirements of Article IX:4 of the WTO Agreement.

19. The Chair informed Members about the status of acceptances of the Protocol Amending the TRIPS Agreement.² The current period for accepting the Protocol ran until 31 December 2019. Since the last meeting in June 2018, Paraguay had deposited its instrument of acceptance with the Director-General on 4 July. The amended TRIPS Agreement was binding for 126 WTO Members. In other words, 38 Members were yet to accept the Protocol Amending the TRIPS Agreement. He encouraged those Members to complete their domestic procedures as soon as possible.

20. When the TRIPS Amendment had entered into force in January last year, Members had noted that it would be useful to consider how to make this new procurement tool worked effectively in practice. He encouraged Members to engage in a constructive discussion, which could also build on earlier reviews. Members might find two documents particularly helpful to facilitate their considerations. The first was the Council's annual review of 2016 (circulated in document IP/C/76); and the second was the Secretariat's 2016 report on technical cooperation activities (circulated in document IP/C/W/618). Annex II of that report summarized key issues that delegations might wish to consider supporting the practical use of the System.

21. The representatives of Brazil, India, Japan, Canada, the United States of America and Switzerland took the floor.

22. The Council took note of the statements made.

23. The Chair turned to the Report to the General Council. A draft cover note had been prepared by the Secretariat (circulated in document JOB/IP/32). It was modelled on previous years' reports and contained factual information on the implementation and use of the System. Under the section on the Amendment to the TRIPS Agreement, it also included a list of Members who were yet to accept the Protocol Amending the TRIPS Agreement. As for past reports, an extract from the Council's minutes on this agenda item would be attached to the cover note.

24. The Council agreed on the draft cover note to the Report and to attach the record of the discussion to it.

7 NON-VIOLATION AND SITUATION COMPLAINTS

25. The Chair recalled that, at the Eleventh Ministerial Conference (MC11), Ministers had directed the 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 to make recommendations to MC12. It had also been agreed that, in the meantime, Members would not initiate such complaints under the TRIPS Agreement.³ At the General Council meeting of 26 July 2018, the Chair had also noted that the 2019 deadlines for the two moratoria on Electronic Commerce and on TRIPS non-violation and situation complaints would be maintained, notwithstanding the decision to hold MC12 in June 2020.

26. At the two meetings of the TRIPS Council that had been held since MC11, there had been some encouraging signs. A number of delegations had indicated their readiness to engage in a constructive discussion on scope and modalities in case non-violation and situation complaints were to apply to TRIPS. Also, at the Council's meeting in June, some delegations had given examples of what such modalities could look like.

27. While this would require delegations to reconsider their longstanding positions, such engagement in a constructive examination of scope and modalities would, indeed, help to move beyond the binary question of whether or not non-violation and situation complaints should apply to TRIPS at all. He invited Members to provide concrete suggestions regarding the possible way forward,

² Document WT/L/641.

³ Document WT/L/1033.

particularly, if there were any developments that would permit the Council to examine scope and modalities, as instructed by Ministers, in order to prepare recommendations to the next Ministerial Conference. As MC12 was approaching, work needed to intensify. The Council was the best forum to discuss these issues. However, he was also available to assist delegations, including through informal consultations among interested delegations or individual discussions.

28. The representatives of India, Ecuador, South Africa, Bangladesh, Egypt, Brazil, Argentina, China, Canada, Chinese Taipei, Indonesia, the United States of America, Switzerland and the Russian Federation took the floor.

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

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

30. The Chair said that Article 71.1 required the TRIPS Council to conduct a review once every two years. Since the TRIPS Council had not completed its initial review in 1999, there had been no subsequent review since.

31. Periodic reviews could be a useful opportunity for Members to share information and experiences in implementing the TRIPS Agreement. He invited delegations to suggest how the TRIPS Council could take this review forward.

32. The Council agreed to revert to the matter at its next meeting.

9 REVIEW OF THE APPLICATION OF THE PROVISIONS OF THE SECTION ON GEOGRAPHICAL INDICATIONS UNDER ARTICLE 24.2

33. The Chair said Article 24.2 of the TRIPS Agreement required the Council to keep under review the application of the TRIPS provisions on geographical indications (GIs). The principal tool for the review was the Checklist of Questions (document IP/C/13 and Add.1). Since the meeting in June 2018, Ukraine had submitted its responses to the Checklist (circulated in document IP/C/W/117/Add.35).

34. The representatives Ukraine and Switzerland took the floor.

35. The Chair recalled that fewer than 50, out of 164 Members, had responded to the Checklist. Many of the earlier responses were also likely to be outdated and did not adequately reflect the fact that GI protection was an active area of legal and policy development at the domestic level and in free trade agreements (FTAs). He encouraged delegations to provide responses to the Checklist or to update earlier responses. In line with the Council's recommendation of March 2010, he also invited Members to share information regarding GI chapters in their bilateral agreements.

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

10 SIXTEENTH ANNUAL REVIEW UNDER PARAGRAPH 2 OF THE DECISION ON THE IMPLEMENTATION OF ARTICLE 66.2 OF THE TRIPS AGREEMENT

37. The Chair recalled that under the TRIPS Council decision of February 2003, developed country Members were to submit annual reports on actions taken or planned in pursuance of their commitments under Article 66.2. They were to provide new detailed reports every third year and updates in the intervening years. In June 2018, the Council had requested developed country Members to submit the sixth set of new reports in time for the present meeting, and the Secretariat had since circulated a reminder.⁴

38. The Council had received new detailed reports from the United States of America, Switzerland, Australia, Japan and Canada. Since the circulation of the revised agenda, Norway had also submitted its new report. This documentation had been circulated in document IP/C/W/646 and addenda. In

⁴ WTO/AIR/IP/20

addition, shortly before the meeting, the Council had received the reports from New Zealand, as well as from the European Union and some of its member States, namely Austria, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Sweden and the United Kingdom. Advance copies of both reports had been made available as room documents on documents online and would also be circulated as addenda to document IP/C/W/646.

39. Paragraph 2 of the Council's Decision on the Implementation of Article 66.2 explained that the annual review was to provide Members with an opportunity to pose questions in relation to the information submitted and request additional information; discuss the effectiveness of the incentives provided in promoting and encouraging technology transfer to least developed country Members in order to enable them to create a sound and viable technological base; and consider any points relating to the operation of the reporting procedure established by the Decision.

40. Some of the information by developed country Members had been received only very recently, and most of it is, so far, available only in its original language. Members would have an opportunity to make further comments at the next meeting of the Council. This would allow Members to study the information recently circulated and any additional information subsequently received. For the same reasons, the Article 66.2 Workshop that would have been held before that meeting had been postponed. The plan was to convene the Workshop on 11-12 February 2019, back-to-back with the Council's next meeting in February 2019.

41. The Chair informed Members that, the day before, there had been an informal small group meeting and ideas had been exchanged with regard to the organization of the forthcoming Article 66.2 Workshop.

42. The representatives of the European Union; Canada; Japan; Australia; the United States of America; Norway; the Central African Republic, on behalf of the LDC Group; and Cambodia took the floor.

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

11 TECHNICAL COOPERATION AND CAPACITY BUILDING

44. The Chair recalled that in June 2018, the Council had agreed to hold the annual review of technical cooperation at the November meeting. Developed country Members had been requested to update information on their technical and financial cooperation activities relevant to the implementation of the TRIPS Agreement. Other Members who also made available technical cooperation were encouraged to share information on these activities. The Secretariat had issued an airgram on 5 July 2018⁵ reminding Members of this request. Intergovernmental organizations observers to the Council and the Secretariat had also been invited to provide information.

45. The Council had received information from the following developed country Members: United States of America, Switzerland, Australia, Japan and Canada. Their reports had been circulated in document IP/C/W/647 and addenda. Shortly before the meeting, the Council had also received the reports from New Zealand, as well as from the European Union and some of its member States, namely Austria, Bulgaria, Czech Republic, Germany, the Netherlands, Spain and Sweden. Advance copies of both reports had been made available as room documents on documents online and would also be circulated as addenda to document IP/C/W/647.

46. The following intergovernmental organizations had also submitted updated information: the Cooperation Council for the Arab States of the Gulf (GCC), United Nations Conference on Trade and Development (UNCTAD), World Health Organization (WHO), World Customs Organization (WCO), African Regional Intellectual Property Organization (ARIPO) and World Intellectual Property Organization (WIPO). Their reports had been circulated in document IP/C/W/644/Rev.1 and addenda. Since the circulation of the revised draft agenda, information had also been received from UPOV, which would be made available shortly.

⁵ WTO/AIR/IP/19.

47. Updated information on the Secretariat's own technical cooperation activities in the TRIPS area could be found in document IP/C/W/645.

48. The representatives from Canada, Australia, Japan, the United States of America, Norway, the European Union, the Secretariat, the WHO, the GCC, UNCTAD, WIPO and ARIPO took the floor.

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

12 INTELLECTUAL PROPERTY AND INNOVATION: THE SOCIETAL VALUE OF IP IN THE NEW ECONOMY – IP AND NEW BUSINESS

50. The Chair said that the item "Intellectual Property and Innovation: The Societal Value of IP in the New Economy – IP and New Business" had been put on the agenda at the written request by the delegations of Australia; the European Union; Japan; Switzerland; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; and the United States of America. Since the circulation of the revised draft agenda, Brazil had co-sponsored the item. Those delegations had also submitted a communication on this topic (circulated in document IP/C/W/648 and addendum) to allow Members to prepare for the discussion.

51. The representatives of the United States of America, Switzerland, Australia, Chile, Japan, the European Union, Norway, Brazil, Singapore, India, Chinese Taipei, Canada, China, South Africa and Colombia took the floor.

52. The Council took note of the statements made.

13 INTELLECTUAL PROPERTY AND THE PUBLIC INTEREST: PROMOTING PUBLIC HEALTH THROUGH COMPETITION LAW AND POLICY

53. The Chair said that the item "Intellectual Property and the Public Interest: Promoting Public Health Through Competition Law and Policy" had been added to the agenda at the request of the Delegation of South Africa. It had been co-sponsored by Brazil and India since the circulation of the revised draft agenda. The co-sponsors had also submitted a communication on this topic (circulated in document IP/C/W/649 and addenda), which included questions to guide the discussion.

54. The representatives of South Africa, Brazil, India, China, Indonesia, the United States of America, Japan, the European Union and the WHO took the floor.

14 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

14.1 Dispute Settlement

55. The Chair said that two requests for consultations had been formally submitted since the June 2018 meeting. On 1 June 2018, the European Union had requested consultations with China regarding "Certain Measures on the Transfer of Technology" (circulated in document IP/D/39). On 1 October 2018, Qatar had requested consultations with Saudi Arabia regarding Measures Concerning the Protection of Intellectual Property Rights (circulated in document IP/D/40).

56. At the meeting on 27 August 2018, the Dispute Settlement Body had adopted two Panel reports regarding "Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging", concerning the complaints by Cuba and Indonesia. The information was available in documents IP/D/33/Add.1 and IP/D/34/Add.1. In proceedings on the same subject matter, Honduras had appealed certain findings of the Panel in its report WT/DS435/R, on 19 July 2018; and the Dominican Republic had also appealed certain findings in report WT/DS441/R, on 23 August 2018.

57. The representatives of Honduras, the Dominican Republic, Norway, Australia and Indonesia took the floor.

14.2 IPR-Related issues in Trade Policies Reviews

58. The Chair invited the Secretariat to report on IP-related issues that had been considered in the context of individual Members' trade policy reviews.

59. The representative of the Secretariat took the floor.

60. The Council took note of the statements made.

15 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

61. The Chair recalled that there were still 13 pending requests for observer status in the TRIPS Council by intergovernmental organizations. The updated list was contained in document IP/C/W/52/Rev.13. Information provided by these organizations on their respective work and the reasons for their interest in observer status was available on the Members' website.⁶

62. While there had been some progress last year, when the Council agreed to grant permanent observer status to ARIPO and OAPI, other pending requests could not move ahead. Members should consider these requests on their individual merits, particularly, the competence and interest that the requesting entity had in matters dealt with by the TRIPS Council. Members' positions with respect to the pending requests had been well recorded in the Council minutes. He encouraged delegations to take the floor only if there were new suggestions or developments to share. He informed Members that the GCC had requested to make a statement first. The purpose was to reiterate the interest to become a permanent observer.

63. The representatives of the GCC, Jordan, the State of Kuwait, Morocco, Oman, Qatar, the Kingdom of Bahrain, Egypt, Brazil and China took the floor.

64. The Chair proposed that the Council grant the GCC permanent observer status. He encouraged delegations to hold bilateral consultations regarding the observer status of the CBD Secretariat and the South Centre. He suggested to invite the European Free Trade Association (EFTA) to attend the next meeting on an *ad hoc* basis again. This was in line with the agreement reached at the Council's meetings in November 2012 to grant EFTA *ad hoc* observer status on a meeting-by-meeting basis.

65. The Council took note of the statements made and agreed to grant permanent observer status to the GCC and to invite EFTA to attend the next meeting on an *ad hoc* basis.

16 ANNUAL REPORT

66. The Chair said that the draft Annual Report of the Council had been circulated in document JOB/IP/31. It still needed to be updated to reflect the discussions at the present meeting. Also, two errors would be corrected before circulating the final document:

- a. In paragraph 8.2: reference to "2017" would be replaced by the current deadline for acceptance, i.e. "2019"; and
- b. In paragraph 11.1 of the English version only: the correct reference to the title of the communication circulated in document IP/C/W/638 was "Inclusive Innovation and MSME Growth".

67. He suggested that the Council agree that the Secretariat be requested to update the draft to reflect the discussions at the meeting. The draft would be faxed to Members. Delegations would then have one week to comment on the updated parts of the draft report.

68. The Council so agreed.

⁶ Available at https://www.wto.org/english/tratop_e/trips_e/xtrips_e/igo_observer_e.htm.

17 OTHER BUSINESS

17.1 Dates for the Council's Meetings in 2019

69. The Chair said that the Secretariat had reserved meeting rooms, tentatively, for the following dates for meetings of the Council in 2019: Wednesday and Thursday, 13-14 February; Tuesday and Wednesday, 4-5 June; and Tuesday and Wednesday, 15-16 October.

70. The Council agreed on the dates for the meetings in 2019.

17.2 Work Programme on Electronic Commerce

71. The Chair recalled that delegations had exchanged views on e-commerce under the agenda item Other Business at the Council's meeting in June. The discussion had focused on the proposal made by some delegations that the Work Programme be included as a standing item on the Council's agenda until MC12. These delegations had also suggested that the Secretariat update its background note that was last circulated in document IP/C/W/128/Rev.1 in 2003. However, no agreement had been reached at that meeting. Accordingly, he had reported the state of play of the Council's considerations to the General Council, at its first review of the Work Programme on 26-27 July 2018. Since then, there had been no movement regarding the issues that had been raised at the meeting. Also, no delegation had requested that an ad hoc item on the Work Programme on Electronic Commerce be added to the agenda.

72. If requested to provide an update on the work carried out in the TRIPS Council, the Chair said that he would report accordingly to the General Council, during its second review of the Work Programme at its meeting scheduled to take place on 12-13 December 2018.

73. He suggested that delegations that would like to see certain issues to be addressed by this Council under the Work Programme on Electronic Commerce could request the inclusion of an ad hoc item for the next meeting in February. In the meantime, he would be in touch with interested delegations to look at possible ways forward.

74. The Council took note of the information provided.

Preparation for next meeting in 2019

75. The Chair encouraged delegations to use the time before the next meeting in February 2019 to engage in constructive discussions to facilitate the consideration of some of the longstanding issues on the Council's agenda. He remained available for any informal consultations that delegations might find useful in the meantime.
