

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

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 13 FEBRUARY 2019

Chair: H.E. Ambassador Dr. Walter Werner

The present document contains the record of the meeting of the Council for TRIPS, held on 13 February 2019. 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 invited the Secretariat to report on notifications that the Council had received since its meeting in November 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. Japan had notified consolidated versions of the Unfair Competition Prevention Act, the Patent Act and the Trademark Act. The Trademark Act and the Patent Act had been revised to be compatible with the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). The Unfair Competition Prevention Act had been revised to enhance regulation and enforcement of acts of unfair competition relating to undisclosed data in the context of information technologies.
 - b. Chinese Taipei had notified a revision to the Enforcement Rules of the Trademarks Act, which reflected changes permitting direct reference to WIPO's International Classification of Goods and Services. It had also notified revised Regulations governing the Determination of Patent Term Extension, including changes to facilitate requests for patent term extensions for pharmaceuticals, agrochemicals and their manufacturing processes.
 - c. Norway has notified consolidated versions of the Norwegian Trademarks Act and the Norwegian Designs Act, which mainly reflected consequential changes from the entry into force of the Penal Code. Norway had also notified consolidated versions of the Norwegian Patent Regulations and the Regulation relating to payments to the Norwegian Industrial Property Office and the Board of Appeal for Industrial Property Rights. These versions reflected amendments accommodating changes in the Patents Act, which introduced the possibility of establishing security interests in Patents and Plant Variety Rights, and changes regarding extensions of supplementary protection certificates for medicinal products for paediatric use.
 - d. The United States had notified the Music Modernization Act that updated copyright-related issues for music and audio recordings in light of new technologies, like digital streaming. Regarding patent law, the United States had also notified the Study of Underrepresented Classes Chasing Engineering and Science Success Act of 2018 (SUCCESS Act), which directed certain agencies to study the participation of women, minorities, and veterans in entrepreneurship activities and the patent system; and, to develop recommendations for improvement.
 - e. Samoa had submitted its first notification of its Intellectual Property Act and IP Regulations that were passed in the context of its accession to the WTO. It had also submitted its responses to the Checklist of Issues on Enforcement.
3. Since the circulation of the agenda, the United States had also notified the Marrakesh Treaty Implementation Act, which revised the Copyright Act to implement the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled.
4. Under Article 69, Samoa and Myanmar had provided information on contact points for the exchange of information and cooperation on trade in infringing goods. The Members' transparency toolkit page would be updated accordingly.
5. The Chair invited delegations that had notified 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.
6. The representatives of Japan, Chinese Taipei, Norway, and the United States of America took the floor.
7. The Chair 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.

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

9. 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.

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

2 REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

11. The Chair recalled that, at its meeting in June 2012, the Council had been informed that Samoa had become a new Member of the WTO, and that it had agreed to apply the TRIPS Agreement no later than 1 July 2013. On 1 January 2014, Samoa had graduated from its former status as a least-developed country Member. As indicated under agenda item 1, Samoa had submitted notifications of its TRIPS implementing laws and regulations. He suggested that the Council request the Secretariat to contact Samoa concerning arrangements for the upcoming review of its implementing legislation, and that the Council revert to arrangements for Samoa's review at its next meeting.

12. The Chair added that, given the Council's monitoring function envisaged in Article 68 of the TRIPS Agreement, Members should feel free to revert to any matter stemming from previous reviews, or to propose further reviews in future.

13. The Council took note of the information provided and agreed to proceed with the review of Samoa's national implementation legislation as proposed by the Chair.

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, agenda items 3, 4 and 5 would be addressed together. He noted that there had been important developments in these areas in many WTO Members. However, these developments had not been shared with the Council. Particularly, there had been no response or update to the Illustrative List of Questions on Article 27.3(b) (IP/C/W/122) since 2003; and only 25 Members had responded at all. Likewise, there had been no notifications to the TRIPS Council of domestic laws that related to the protection of genetic resources and traditional knowledge. He encouraged delegations to submit responses to the Checklist or update their previous responses; as well as to notify any relevant changes in legislation. At the previous meeting, delegations had continued their discussion on two long-standing procedural issues, namely 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 the proposal initially submitted in October 2010 that the CBD Secretariat be invited to brief the Council on the Nagoya Protocol to the CBD. He said that he had no new developments to report in this regard.

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

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

6 NON-VIOLATION AND SITUATION COMPLAINTS

17. The Chair recalled that Article 64.3 of the TRIPS Agreement contained the initial mandate that required the submission recommendations on scope and modalities for non-violation and situation complaints to the Ministerial Conference in 1999. 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 the Twelfth Ministerial Conference (MC12). It had also been agreed that, in the meantime, Members would not initiate such complaints under the TRIPS Agreement.¹ 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.

18. There had been some encouraging signs during recent meetings. 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 meetings in June and November 2018, some delegations had given examples of what such modalities could look like. He noted that there were barely ten months left until the December 2019 deadline. Therefore, it was important that discussions start to focus on concrete suggestions on the recommendation that the Council should prepare for the next Ministerial Conference. As MC12 was also not far away, work to get there needed to intensify as of now.

19. The Chair said that, while the TRIPS Council was the best forum to discuss these issues, the Chair would also be available to assist delegations, including through informal consultations among interested delegations or individual discussions.

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

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

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

22. The Chair said that Article 71.1 required the TRIPS Council to conduct a review once every two years.

23. 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

24. 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 (IP/C/13 and Add.1). At the Council's meeting in November 2018, Ukraine had introduced its responses to the GI checklist (IP/C/W/117/Add.35). Since then, Montenegro had submitted its responses to the Checklist (IP/C/W/117/Add.36) and Norway had updated its earlier responses (IP/C/W/177/Add.7/Rev.1).

25. The Chair said 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. He also recalled the Council's recommendation, made in March 2010, inviting Members to share information on bilateral agreements related to the protection of GIs. Such information could greatly facilitate the Council's conduct of this review.

26. The representatives Montenegro, Norway and Switzerland took the floor.

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

¹ Document WT/L/1033.

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

28. The Chair recalled that, at the previous meeting in November 2018, the Council had on its agenda the Sixteenth Annual Review under Paragraph 2 of the Decision on the Implementation of Article 66.2 of the TRIPS Agreement. At that meeting, delegations had briefly presented the reports submitted by developed country Members under Article 66.2 (IP/C/W/646 and Addenda) as well as a proposal by the LDC Group entitled "Proposal on the Implementation of Article 66 of the TRIPS Agreement" (IP/C/W/640 and IP/RD/24). The Council had agreed that it would revert to the item at its next meeting to permit continued consideration of the submitted material.

29. In order to give LDCs more time to absorb the information provided by developed countries in their reports, and also to ensure that those reports were available in the official languages of the WTO, the Article 66.2 Workshop, which would have usually been held in November 2018, had been postponed. The Workshop had taken place in the two days preceding the meeting of the Council. Some of the capital-based delegates, who had participated in that Workshop would participate in the discussions under this agenda item. He invited delegations to comment on the materials that had been submitted for the meeting that had taken place in November 2018 and to share their experiences from the Article 66.2 Workshop.

30. The representatives of Chad, on behalf of the LDC Group, the Central African Republic, Senegal, Myanmar, Bangladesh, Vanuatu, Japan, Australia, Switzerland, the United States of America, Norway, New Zealand, the European Union, Canada and the African Regional Intellectual Property Organization (ARIPO) took the floor.

10 TECHNICAL COOPERATION AND CAPACITY BUILDING

31. The Chair recalled that the Council had conducted its annual review of technical cooperation, at its meeting in November 2018. Considering that some information had been made available only shortly before that meeting, the Council had agreed that Members would have a further opportunity to make comments at this present meeting. Since then, the International Union for the Protection of New Varieties of Plants (UPOV) had submitted its report on technical cooperation activities (IP/C/W/644/Rev.1/Add.6).

32. The representative of Australia took the floor.

33. The Council took note of the statement made.

11 INTELLECTUAL PROPERTY AND INNOVATION: SUMMARY OF THE 2018 THEME – THE SOCIETAL VALUE OF IP IN THE NEW ECONOMY, AND 2019 IP AND INNOVATION THEME: PUBLIC-PRIVATE COLLABORATIONS IN INNOVATION

34. The Chair said that the item had been put on the agenda at the request of Australia; Canada, Chile; the European Union; Hong Kong, China; Japan; the Republic of Korea; Singapore; Switzerland; Chinese Taipei; and the United States of America. It covered two aspects of the broader topic of IP and innovation:

- a. "The societal value of IP in the New Economy", a topic that the Council had discussed at its meetings last year. A relevant communication has been submitted to facilitate discussion (IP/C/W/650); and
- b. "Public-Private Collaborations in Innovation", a theme proposed by the co-sponsors for 2019. A relevant communication had been submitted to facilitate discussion (IP/C/W/652 and Add.1).

35. The representatives of the United States of America; Singapore; Australia; Switzerland; New Zealand; Chinese Taipei; Chile; South Africa; Hong Kong, China; Canada; Japan; Mexico; the European Union; the Republic of Korea; Brazil; China; India and the Dominican Republic took the floor.

36. The Council took note of the statements made.

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

37. 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 of South Africa. A communication, which included questions to guide the discussion, had been submitted (IP/C/W/651).

38. The representatives of South Africa, Costa Rica, Brazil, Indonesia, China, Switzerland, the United States of America, Japan and the European Union took the floor.

39. The Council took note of the statements made.

13 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

13.1 Dispute Settlement

40. The Chair said that the European Union had submitted a revised request for consultations with China regarding *Certain Measures on the Transfer of Technology*, on 20 December 2018. This request has been circulated on 8 January 2018 (IP/D/39/Rev.1).²

13.2 Amendment to the TRIPS Agreement

41. The Chair noted that Georgia had deposited its instrument of acceptance on 21 November 2018. Thus, 126 Members had accepted the Amendment to the TRIPS Agreement. He encouraged the remaining 39 Members to expedite action, before the current deadline for acceptance. The General Council Decision of 30 November 2017 (WT/L/1024) had extended the period for acceptance of the Protocol until 31 December 2019. His successor would consult with Members on whether they would consider recommending a further extension of this period of acceptance to the General Council before the end of this year.

13.3 IPR-Related Issues in Trade Policy Reviews

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

43. The representative of the Secretariat took the floor.

44. The Council took note of the statements made.

14 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

45. The Chair said that an updated list of pending requests for observer status in the TRIPS Council by intergovernmental organizations 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.³

46. He recalled that, at its November 2018, the Council had agreed to grant permanent observer status to the Cooperation Council of the Arab States of the Gulf (GCC). Regarding the pending requests, he encouraged Members to try to resolve the differences among themselves and said that the Chair stood ready to assist.

47. The representatives of South Africa, Ecuador, the United States of America, the Bolivarian Republic of Venezuela, China and Bangladesh took the floor.

48. The Chair recalled that, at its meeting in November 2012, the Council had agreed to grant *ad hoc* observer status on a meeting-to-meeting basis to the European Free Trade Association (EFTA).

² Also circulated with document symbol WT/DS/549/1/Rev.1.

³ Available at https://www.wto.org/english/tratop_e/trips_e/xtrips_e/igo_observer_e.htm.

Since then, this invitation had been renewed at each meeting. He suggested to invite the EFTA to attend the Council's next formal meeting on an *ad hoc* basis.

49. The Council took note of the statements made and agreed to invite EFTA to attend the next meeting on an *ad hoc* basis.

15 OTHER BUSINESS

50. No statements were made under this agenda item.

16 ELECTION OF THE CHAIRPERSON

51. The Chair noted that the General Council meeting to agree on the slate of chairpersons for WTO bodies was scheduled to take place from 28 February to 1 March. Therefore, the TRIPS Council would not be in a position to elect its next Chairperson its present meeting.

52. He suggested that, in order to avoid having an additional meeting just for the purpose of formalizing the election of the Chairperson, the Council's follow its earlier practice in similar situations and proceed as follows:

- a. Firstly, the TRIPS Council would formally elect its new Chairperson at the beginning of its meeting scheduled for 4-5 June 2019; and
- b. As soon as the General Council has agreed on the slate of chairpersons, the TRIPS Council Chairperson-designate could take up his or her role, including holding any consultations in preparation of the Council's June meeting, pending his or her formal election at that meeting.

53. The Council so agreed.
