

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

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 6 JUNE 2019

Chair: H.E. Ambassador Lundeg Purevsuren

The present document contains the record of the meeting of the Council for TRIPS, held on 6 June 2019. The statements made during the meeting will be circulated in an addendum to the present document.

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1 ELECTION OF CHAIRPERSON

1. A representative of the Secretariat recalled that, when the TRIPS Council met on 13-14 February, the General Council was yet to agree on a slate of names of chairpersons for WTO bodies. At that time, the Council for TRIPS could not, therefore, elect its Chairperson for 2019. For that reason, the Council had agreed to elect its new Chairperson at the beginning of the present meeting, with the understanding that, as soon as the General Council had agreed on the slate of names for Chairpersons, the Chair-designate would take up his role and hold consultations in preparation of this meeting, pending her or his formal election.

2. At the meeting that had taken place from 28 February to 1 March 2019, the General Council had noted the consensus on the slate of names for chairpersons for WTO bodies. On the basis of the understanding reached by the General Council, he proposed that the TRIPS Council elect H.E. Ambassador Lundeg Purevsuren from Mongolia as its Chairperson for the coming year.

3. The Council so agreed.

2 NOTIFICATIONS UNDER PROVISIONS OF THE AGREEMENT

4. The Chair invited the Secretariat to report on notifications that the Council had received since its meeting in February 2019.

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

- a. Australia had notified amendments to its Copyright Act and Regulations relating to: service provider safe harbour scheme; online infringement scheme allowing blocking of access to online locations; and to the international extension of the protection for secondary uses of sound recordings. It had also notified the Wine Australia Regulations regarding the protection of geographical indications, and the Intellectual Property Laws Amendment Act and Regulations, which implemented changes across Australia's IP system in response to a Report by the Australian Government's Productivity Commission.
- b. Cuba had notified legislation concerning its Industrial Property System; the regulation of industrial design protection; the regulation of plant variety protection; and provisions for the national implementation of the Patent Cooperation Treaty (PCT). It had further notified legislation on the remuneration of inventors, authors, and other holders of intellectual property rights. Finally, it had also notified laws relating to unfair practices in industrial property, and to the use of restrictive contractual clauses in industrial property matters.
- c. The European Union had notified legislation relating to the protection of geographical indications.
- d. Hungary had notified legislation amending its Act on the protection of Trademarks and Geographical Indications.
- e. Japan had notified a consolidated version of the Patent Act that introduces a new system of patent fees. It had also notified an Act concerning the fees for international patent applications pursuant to the Patent Cooperation Treaty.
- f. Chinese Taipei had notified amendments to its Patent Attorney Act.

6. Under Article 69, Angola and Tonga had provided information on contact points for the exchange of information and cooperation on trade in infringing goods. Under Article 67, Chile had provided information on its contact point on technical and financial cooperation. The Members' transparency toolkit page would be updated accordingly. Since the circulation of the agenda, other notifications had been submitted. The relevant delegations might mention them in their interventions, as appropriate.

7. 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 to comment on them.

8. The representatives of Australia, Japan, Cuba, Chinese Taipei, the European Union, Canada and the United States of America took the floor.

9. The Chair noted that notifications to the Council were not keeping up with the actual development of laws and regulations relating to TRIPS. He emphasized that Article 63.2 was not a one-off requirement. It was a core element of the TRIPS transparency arrangements, a central part of the Council's substantive work, and obliged Members to notify any new or amended laws. He urged Members to complete any outstanding initial notifications and to keep up to date notifications of 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. The e-TRIPS platform made it much easier to fulfil these transparency obligations.

10. The Chair encouraged Members to notify legislative changes made to implement the special compulsory licensing system to export medicines covered by the new Article 31bis of the TRIPS Agreement. At least 56 WTO Members, including many of the world's major exporters of medicines, had adopted implementing legislation that allowed them to use the System as exporters and/or importers. But only 19 Members, including the European Union, had formally notified such measures to the TRIPS Council. 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.

11. The Chair noted that the Secretariat had completed work on the e-TRIPS System. In March, delegations had been informed that the e-TRIPS Submissions System was available online. Several Members had already used the e-TRIPS system to make submissions for this meeting. He announced that another part of the system, the e-TRIPS Gateway, was ready for presentation to delegations. The Secretariat had already commenced informal demonstrations of its potential to support delegations in your work. He invited the Secretariat to present the TRIPS system.

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

13. The representatives of Mexico and Australia took the floor.

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

3 REVIEW OF NATIONAL IMPLEMENTING LEGISLATION

15. The Chair recalled that the Council was preparing for the review of the national implementing legislation of Samoa. The Secretariat had been in contact with the delegation of Samoa regarding the submission of their remaining notifications. Once these had been received, the Council could turn to the timetable for the questions and answers involved in Samoa's review. He proposed that the Council reverted to the arrangements for Samoa's review at its next meeting in October.

16. He noted that Council's monitoring function under Article 68 of the TRIPS Agreement was a continuous task. Therefore, Members should feel free to revert to any matter stemming from previous reviews, or to seek further information on implementation of the Agreement in future. He encouraged delegations to reflect on how to make the best use of the review. The new e-TRIPS system might provide useful information to the Council in this regard. He proposed that delegations return to this item at the next meeting, in the light of the informal consultations on the development and use of e-TRIPS.

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

4 REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B)

5 RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CONVENTION ON BIOLOGICAL DIVERSITY

6 PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE

18. The Chair proposed that, following past practice, agenda items 4, 5 and 6 be addressed together. He noted that there had been important developments in these areas in many WTO Members, which had not been shared with the Council. Until recently, only 25 Members had responded to the List of Questions on Article 27.3(b), and the last response dated from 2003. Mexico had recently submitted its responses, which had been circulated in document IP/C/W/125/Add.25. He invited Mexico to introduce its submission.

19. The representative of Mexico took the floor.

20. The Chair encouraged delegations to submit responses to the List of Questions or update their previous responses; as well as notify any relevant changes in legislation.

21. He noted that two longstanding procedural issues under these items have been discussed extensively on the record, at every regular meeting of the Council for almost nine years:

- a. First, the suggestion for the Secretariat to update the three factual notes on the Council's discussions on the TRIPS and CBD and related items; these notes were initially prepared in 2002 and last updated in 2006; and
- b. Second, the request to invite the CBD Secretariat to brief the Council on the Nagoya Protocol to the CBD, initially proposed in October 2010.

22. The positions on these issues were well-known and already extensively recorded in the Council minutes. In addressing these procedural questions, he encouraged delegations to focus on suggestions as to how to make resolve them.

23. The representatives of Mexico; Benin, on behalf of the LDC Group; Switzerland; the Plurinational State of Bolivia; Nigeria; Bangladesh; Japan; Brazil; Indonesia; China; India, New Zealand; South Africa; Canada; Australia; the Russian Federation; and the United States of America took the floor.

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

7 NON-VIOLATION AND SITUATION COMPLAINTS

25. The Chair recalled that Ministers at the Eleventh Ministerial Conference had renewed their instruction to the TRIPS Council "to continue its examination of the scope and modalities" for non-violation and situation complaints. They also had instructed the Council to make recommendations to MC12 in 2019.¹ In the meantime, Members had agreed not to initiate such complaints under the TRIPS Agreement.

26. The next Ministerial Conference would be held in June 2020. Nevertheless, the General Council Chair had noted, at a meeting in 2018, that the 2019 deadline for the moratorium would be maintained. Therefore, constructive engagement and debate was urgently needed in this area. Such a debate would also be helped by new submissions from Members. There had been some encouraging signs at the Council's recent meetings. Several 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. However, no advances could be detected during informal contacts with delegations.

¹ See document WT/L/1033.

27. The Chair invited delegations to share their comments and ideas, focusing on any new approaches for the Council to take this issue forward. Delegations were encouraged to bring concrete proposals that would permit the Council to move beyond positions of principle and to engage substantively in the discussion of possible recommendations on scope and modalities for such complaints.

28. The representatives of Benin, on behalf of the LDC Group; South Africa; Nigeria; Brazil; the United States of America; Indonesia; Bangladesh; Switzerland; India; China; and Canada took the floor.

29. The Chair said that, as requested by some Members, he would hold informal consultations to help facilitate constructive engagement in this area.

30. 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

31. The Chair recalled that Article 71.1 required the TRIPS Council to conduct a review once every two years. However, as the Council had not completed its initial review in 1999, no subsequent review had been initiated since then.

32. There had been general efforts across the WTO to improve the deliberative function of the WTO regular bodies, and to further improve transparency. TRIPS Council Chairs had often highlighted the fact that there were a few longstanding review items on the agenda of the TRIPS Council under which there had been little or no activity for a number of years.

33. At the same time, there was no lack of interest among delegations in discussing intellectual property law and policy matters relevant to TRIPS, for instance in the context of Trade Policy Reviews. Such discussions could easily find a regular home under the broad mandate of the "Review of the Implementation of the TRIPS Agreement under Article 71.1". He had raised the issue of revitalizing some of the review items on the TRIPS Council's agenda with delegations during his informal consultations and had invited them to reflect on how to make better use of this agenda item.

34. Revitalizing the mandated reviews of the TRIPS Council could be very useful for Members to share information and experiences in implementing the TRIPS Agreement. While he did not have any concrete proposals at that point, he proposed maintaining an informal dialogue with delegations to see if there is interest in resuming an active discussion under this item.

35. 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

36. The Chair said that 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 used for the review was the Checklist of Questions (document IP/C/13 and Add.1). Of the 164 WTO Members, fewer than 50 had responded to the Checklist. Many of the earlier responses were also likely to be outdated, because they were submitted well over 10 years ago. This was despite the fact that GI protection was an active area of legal and policy development in some countries, as well as in a number of FTAs.

37. He encouraged delegations to consider responding to or updating initial responses so that important developments are duly reflected in Members' contributions. The e-TRIPS Submissions System was an easy and convenient tool to prepare and submit these responses and updates. Also, in line with the Council's recommendation made in March 2010, he invited Members to share information on bilateral agreements related to the protection of GIs they are party to.

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

10 TECHNICAL COOPERATION AND CAPACITY BUILDING

39. The Chair said that the Council had regularly conducted annual reviews of technical cooperation and capacity building activities at its end of the year meeting. These reviews were based on reports submitted by developed country Members, international organizations and the WTO Secretariat. He invited the Secretariat to recall the usual arrangements for such reviews.

40. A representative of the Secretariat said the usual procedure was to invite developed-country Members to submit information on their activities pursuant to Article 67 of the TRIPS Agreement to be reviewed at the last Council meeting of the year. Other Members who also engaged in technical cooperation were also encouraged to share information. Intergovernmental organizations with observer status in the TRIPS Council, as well as the WTO Secretariat, were also invited to report on their relevant activities. The requested written information would usually be made available four weeks prior to the next meeting, in order to allow timely circulation before the meeting. In view of the dates of the next TRIPS Council meeting (17-18 October 2019), this would mean that written information should be submitted by 20 September 2019.

41. The Chair said that documentation on this topic was usually quite extensive. To ensure a streamlined and systematic approach to the management of documentation, he encouraged Members to follow the reporting format and structure proposed in the Council and used by the Secretariat, other organizations and several Members. He recommended the use of the e-TRIPS Submissions System, which allowed the convenient preparation of such submissions, both in capital and at Geneva missions. The Secretariat would be pleased to provide informal support and background to interested delegations.

42. The Council agreed to proceed in the usual manner and to revert to the matter at its next meeting.

11 INTELLECTUAL PROPERTY AND INNOVATION: PUBLIC-PRIVATE COLLABORATIONS IN INNOVATION - INNOVATIVE APPROACHES TO ASSISTING IN BRANDING AND PROMOTION AND THE CREATIVE INDUSTRIES

43. The Chair said that the item had been put on the agenda at the request of Australia; Canada, Chile; the European Union; Japan; the Republic of Korea; Switzerland; Singapore; Switzerland; Chinese Taipei; and the United States. A communication had also been circulated in document IP/C/W/653 and Add.1.

44. The representatives of Japan; Australia; the United States of America; Chinese Taipei; Switzerland; Singapore; Canada; Chile; the European Union; the Republic of Korea; Benin, on behalf of the LDC Group; Ukraine, Colombia; Norway; the Russian Federation; Mexico, China, Indonesia, India, Brazil and Peru took the floor.

45. The Council took note of the statements made.

12 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

12.1 Dispute Settlement

46. The Chair said that the European Union had requested consultations with Turkey regarding "Certain measures Concerning the Production, Importation and Marketing of Pharmaceutical Products". The request had been circulated as document IP/D/41.²

12.2 Amendment to the TRIPS Agreement

47. The Chair noted that on 6 June 2019 Cuba had deposited its instrument of acceptance of the Protocol Amending the TRIPS Agreement. Thus, 127 Members had accepted the Amendment to the TRIPS Agreement. He encouraged the remaining 36 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. At the next Council

² Also circulated with document symbol WT/DS583/1.

meeting, Members would need to consider recommending a further extension of this period of acceptance to the General Council before the end of this year.

48. The representative of Cuba took the floor.

49. The Council took note of the statements made.

12.3 IPR-Related Issues in Trade Policy Reviews

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

51. The representative of the Secretariat took the floor.

52. The Council took note of the statements made.

13 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

53. 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.14. 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

54. He stood ready to assist and encouraged Members to resolve the differences among themselves. He invited Members and Observers to share their views or developments.

55. The representatives of South Africa; Bangladesh; the Bolivarian Republic of Venezuela; China; the Plurinational State of Bolivia; India; the United States of America; and Brazil took the floor.

56. The Council took note of the statements made.

14 OTHER BUSINESS

14.1 Annual Review of the Special Compulsory Licensing System

57. The Chair said that, at the meeting that had taken place on 3 February 2017, the Council had taken note of the entry into force of the amended TRIPS Agreement. At that time, Members had said this would also be the moment to consider in greater detail how the Special Compulsory Licensing System could be effectively used as a practical procurement tool to respond to public health needs. Members had also proposed several accompanying measures, including legislative advice to implement the mechanism into domestic law and capacity building activities.

58. The next annual review of the System could be usefully guided by the issues that Members had already identified in the past. Good sources for these issues were the Council's 2016 Report on the Annual Review that had been circulated in document IP/C/76, as well as those listed in Annex II to the WTO Secretariat's Annual Report on its Technical Cooperation Activities that had been circulated in document IP/C/W/618.

59. The Chair planned to consult Members in the coming months on how to prepare for a meaningful review. He would welcome delegations' active support in preparing for and carrying out substantive discussions.

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

60. The Chair recalled that paragraph 1 of the Decision on the Implementation of Article 66.2 provided that developed country Members submit annually reports on actions taken or planned in pursuance of their commitments under Article 66.2. For this purpose, they had to provide new

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

detailed reports every third year and, in the intervening years, provide updates to their most recent reports. For 2019 – which was an intervening year – developed country Members were expected to provide updates to the reports they had submitted in 2018. Paragraph 2 of the Decision said the Council shall review these updated reports at the last meeting of the year.

61. He suggested that developed country Members be requested to submit their updates by 20 September, i.e. four weeks before the last meeting, which was scheduled for 17-18 October 2019. This would allow timely circulation of the documents.

62. The Council so agreed.

63. The Chair recalled that the kind of information to be provided in the reports was specified in paragraph 3 of the Decision. In the past, Members had considered some practical approaches to streamlining their submission and management of this information. Reporting Members were encouraged to use the e-TRIPS Submissions System to submit this information. They were also welcome to seek informal support and background information from the Secretariat in this regard.

14.3 Other Planned Activities for the Benefit of LDCs

64. The Chair said that, in connection with Article 66.2, the Secretariat was planning the 12th Workshop on Technology Transfer. After the success of the arrangements in 2019, this workshop was planned once again to be held back-to-back with the Council's meeting in February 2020. The Secretariat would be in touch with the delegations concerned to prepare for the Workshop.

65. The representatives of Benin, on behalf of the LDC Group; and Bangladesh took the floor.

14.4 Work Programme on E-Commerce

66. The Chair recalled that, at the Eleventh Ministerial Conference, Ministers had agreed that the work under the Work Programme on Electronic Commerce should continue, based on the existing mandate from 1998. They had instructed the General Council to periodically review the work based on reports to be submitted by the relevant WTO bodies. The Chair of the General Council, the Ambassador of Thailand, would report to the next General Council meeting in July.

67. In the TRIPS Council, there had been no discussion on E-commerce since its meeting in June 2018. In the Chair's informal consultations on 16 May, no delegation had indicated any intention to propose E-commerce discussions in the TRIPS Council. He reminded delegations of the mandate under the Ministerial Decision on E-commerce and invited them to share any thoughts. If he was requested to provide an update on the TRIPS Council's work in this regard, he would report the state of play to the General Council during its review of the Work Programme.

14.5 Date of the Next Meeting

68. The Chair said that, as delegations had been informed on 18 April, the dates for the next TRIPS Council meeting had to be moved because of a change in the schedule of the General Council. Thus, the next meeting was now proposed to be scheduled to take place on 17-18 October 2019.

69. The Council so agreed.

70. The representatives of Mexico; and the European Union took the floor.

71. The Council took note of the statements made.
