

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

**MINUTES OF MEETING**

HELD IN THE CENTRE WILLIAM RAPPARD ON 15-16 OCTOBER AND 10 DECEMBER 2020

*Chair: H.E. Ambassador Xolelwa Mlumbi-Peter*

The present document contains the record of the meeting of the Council for TRIPS held on 15-16 October and 10 December 2020. 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 July 2020.

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

- a. Chinese Taipei had notified regulations governing the filing of patent and trademark applications by electronic means, as well as regulations governing the application for compulsory licences for musical works and related royalties;
- b. Australia had notified a consolidated version of its Patents Act 1990, as well as the Intellectual Property Laws Amendment Act 2020, which implemented the Productivity Commission Response Part 2 and Other Measures;
- c. Mexico had notified revisions of the Penal Code, as well as a Decree amending the Federal Law on Copyright regarding copyright protection in the digital environment;
- d. The United States had notified their amended Plant Variety Protection Act and corresponding Regulations;
- e. The United Kingdom had notified over 70 pieces of legislation that represent the evolution of the UKs law on trademarks and on designs since 1996;
- f. Pakistan had notified its Geographical Indications Act 2020;
- g. Myanmar had notified its new Plant Variety Protection Law;
- h. Hong Kong, China had notified a Copyright Amendment Ordinance, which enhanced the Copyright exceptions relating to persons with a print disability in order to meet the standards under the Marrakesh Treaty;
- i. Ukraine had notified amendments regarding its patent law reform, as well as amendments to strengthen rights to trademarks and designs, and to combat patent abuse;
- j. Japan had notified a further revision to its Unfair Competition Prevention Act of 1993, which provided civil remedies against acts of unfair competition with respect to "shared data with limited access"; and
- k. Slovenia had notified an Act Regulating Collective Management of Copyright and Related Rights.

3. He added that, Albania and Slovenia had provided information on contact points for the exchange of information and cooperation on trade in infringing goods, under Article 69 of the TRIPS Agreement.

4. The representatives of Pakistan; Mexico; Australia; Hong Kong, China; Ukraine; Canada; Chinese Taipei; the United Kingdom; and the United States of America took the floor.

5. The Chair recalled that, at the July 2020 meeting, several questions had been asked regarding legislation notified by Canada and the European Union. She invited those two delegations to take the floor to respond to those questions or inform the Council of any follow up in this regard.

6. The representative of South Africa and the European Union took the floor.

7. The Chair noted that, notifications to the Council were not keeping up with the actual development of laws and regulations relating to TRIPS. She recalled that Article 63.2 was not a one-off requirement. It was a core element of the TRIPS transparency arrangements, and a central part of the Council's substantive work. Article 63.2 obliged Members to notify any new or amended laws in

the area of TRIPS. The same applied to the Checklist of Issues on Enforcement which had been established by the Council as an element of Members' notification obligations.

8. She encouraged Members to notify legislative changes made to implement the special compulsory licensing system to export medicines covered by the new Article 31*bis* of the TRIPS Agreement. More than 50 WTO Members, including most of the world's major exporters of medicines, had adopted implementing legislation that allowed them to use the System as exporters and/or importers. However, only 20 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. This would also help the Secretariat in its efforts to provide informed technical support to Members in this area.

9. Finally, she welcomed the information provided by Members concerning their notifications, as well as the constructive exchange on Members' legislation we had under this agenda item.

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

## **2 REVIEW OF NATIONAL IMPLEMENTING LEGISLATION**

11. The Chair recalled that the Council had been preparing for the review of the national implementing legislation of Samoa. As agreed in 2019, the Council would schedule arrangements upon submission of the notifications on revised legislation following Samoa's recent accession to a number of WIPO treaties.<sup>1</sup> She proposed that the Secretariat remain in contact with Samoa on the progress of its new legislation and that the Council revert to the review at its next meeting.

12. She noted that there were currently no reviews pending under this item. 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. Any ideas how to make best use of this agenda item would be most welcome.

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

## **3 IP MEASURES IN THE CONTEXT OF COVID-19**

14. The Chair recalled that this agenda item had been on the agenda of the Council's informal open-ended meeting on 19 June, and the last formal meeting on 30 July 2020. At her informal consultations in September 2020, she had asked Members how they would like to take this topic forward. In response, there had been general appreciation among delegations for the Secretariat's work in maintaining the list of COVID-19 related IP measures on the WTO website, and broad support for a continued discussion and exchange based on this compilation. Some delegations had stressed that the discussion should focus on national measures and their implementation, while others had been of the view that a more substantive discussion was warranted.

15. Considering the broad support, she had proposed to continue the exchange of information at the present meeting. She encouraged Members to reflect on how the Council could take the discussion forward and whether it should keep this agenda item, given the continued interest by Members to continue to exchange views as the pandemic persists. She referred to the compilation "COVID-19: Measures Regarding Trade-Related Intellectual Property Rights", available from the WTO website.<sup>2</sup> It was a non-exhaustive list of IP-related measures taken in the context of COVID-19, compiled by the Secretariat from official sources and verified by the relevant Members. The list was updated continuously. She encouraged Members to inform the Secretariat of any measures that should be included on this list, as well as any information on the expiration, or end of application, of such measures.

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<sup>1</sup> Samoa has acceded to the WIPO Madrid Agreement and Protocol in 2018, and to the Patent Cooperation Treaty, the Geneva Act of the Hague Agreement, and the Geneva Act of the Lisbon Agreement in 2019.

<sup>2</sup> [https://www.wto.org/english/tratop\\_e/covid19\\_e/trade\\_related\\_ip\\_measure\\_e.htm](https://www.wto.org/english/tratop_e/covid19_e/trade_related_ip_measure_e.htm)

16. The representatives of South Africa; Chile; China; Nigeria; India; the European Union; Canada; Jamaica, on behalf of the ACP Group; the United States of America; and Indonesia took the floor.

17. The Chair noted that it was important for the Council to provide a forum for exchange as the pandemic continued and that she would like to provide another opportunity to do so at the upcoming Council meeting. She was aware of the sensitivities around "permanent" agenda items, so she would propose that the Council agree to revert to the item at its next meeting, so that the exchanges can once again take place, including on the basis of the updated Secretariat document of COVID-19 related IP measures.

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

#### **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**

19. The Chair recalled that the next three agenda items concerning the Review of the Provisions of Article 27.3(b), the Relationship between the TRIPS Agreement and the Convention on Biological Diversity and the Protection of Traditional Knowledge and Folklore had been traditionally addressed together. She had asked Members, at her consultations in September 2020, whether the Council should take these items individually; and no clear preference had been detected in this regard. She suggested that the Council maintain the traditional practice; and encouraged delegations to identify the specific agenda item to which they would associate their intervention.

20. At the July 2020 meeting, the delegation of Zimbabwe had expressed interest in inviting the World Intellectual Property Organization (WIPO) to brief the Council on its recently updated report "Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions". After her consultations with delegations in September 2020, there seemed to be no objection. Since then, she had been in touch with WIPO and their representatives were willing to brief the Council.

21. She noted that, with respect to the sequence of discussion, the traditional practice had been that Members take the floor first, and observers afterwards. Considering that the Council had a full agenda and the need to be efficient with time, she proposed to offer the floor to WIPO first so that delegations could refer to the briefing in their subsequent interventions, where Members could also address the long-standing procedural issues. She invited WIPO to brief Members.

22. The representatives of WIPO took the floor.

23. The Chair thanked the WIPO Secretariat for the comprehensive briefing. She opened the floor for discussion, including long-standing procedural issues:

24. 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

25. The request to invite the CBD Secretariat to brief the Council on the Nagoya Protocol to the CBD, initially proposed in October 2010.

26. She recalled that Members' positions on these issues were well known and extensively recorded in the Council minutes. In addressing these procedural questions, she encouraged delegations to focus on suggestions how to resolve them.

27. The representatives of South Africa; Chile; Tanzania, on behalf of the African Group; Brazil; Bangladesh; Nigeria; Thailand; India; China; Indonesia; Chinese Taipei; the United States of America; Japan; Canada; Ecuador; and Australia took the floor.

28. The Chair recalled that one tool for the review under agenda item 4 was the information provided by Members in response to a list of questions on Article 27.3(b). In 2019, the Council had received two sets of responses; from Ukraine and Mexico. These had been the first responses in 15 years. There had been dynamic and significant developments in this area in many Members. Transparency was of considerable mutual benefit to all Members; both in terms of initial submissions and updates to earlier submissions, many of which were already two decades old. She encouraged delegations to submit responses to this Checklist or update their previous responses; as well as notify any relevant changes in legislation.

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

### **7 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)**

30. The Chair recalled that, in the past, the review had been conducted pursuant to Paragraph 6 System 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.

31. 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, this review was also deemed to fulfil the requirements of Article IX:4 of the WTO Agreement.

32. During the Chair's consultations in September concerning Members' preferences for approaching the annual review, a number of Members had suggested that the discussion focus on concrete problems with the application of the System, rather than an abstract consideration of issues. Some had referred to procedural complexities of the System that needed to be discussed so that the System could ensure access to medicines as intended. Others had cautioned that this agenda item should not be "another COVID-19 item". One concrete proposal that had gathered broad support was the suggestion that the Secretariat give a presentation on how to use the Special Compulsory Licensing System (as opposed to how to accept the Amendment), so as to refresh delegations' memory and provide background to the discussion.

33. The Chair suggested that she would proceed by first informing Members about the status of acceptances of the Protocol Amending the TRIPS Agreement, and then give the floor to the Secretariat to provide a presentation on how to use the Special Compulsory Licensing System to remind everyone about the detail. The floor would then be open to delegations for an exchange of views about the functioning of the System, and finally, the Council would consider its Report to the General Council.

34. The Chair updated Members on the status of acceptances of the TRIPS Protocol. The current period for accepting it ran until 31 December 2021. The amended TRIPS Agreement was thus binding for 131 WTO Members. In other words, 33 Members were yet to accept the Protocol Amending the TRIPS Agreement. She encouraged those Members to complete their domestic procedures as soon as possible.

35. When the TRIPS Amendment had entered into force in January 2017, Members had noted that it would be useful to consider how to make this new procurement tool work effectively in practice. The Chair therefore encouraged Members to engage in a constructive discussion which could also build on earlier reviews. As previous Chairs and she herself had indicated on past occasions, Members might find two documents particularly helpful to facilitate their considerations. The first document was the Council's Annual Review of 2016 (circulated in document IP/C/76); and the second document 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 to support the practical use of the System.

36. The representatives of the WTO Secretariat, Chad (on behalf of the LDC Group), Ukraine, South Africa, India, China, Tanzania (on behalf of the African Group), Japan, Australia, the United States of America, Canada, Chile, Switzerland and the European Union took the floor.

37. The Council took note of the statements made.

38. The Chair turned to the Council's report to the General Council. A draft report had been prepared by the Secretariat (circulated in document JOB/IP/38). 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 with past reports, an extract from the Council's minutes on this agenda item would be attached to the report in Annex 1 and Appendix 1.

39. The Council agreed to adopt the draft report and to attach the record of the discussion to it.

## **8 NON-VIOLATION AND SITUATION COMPLAINTS**

40. The Chair recalled the General Council decision of 10 December 2019, in which Members had decided to extend the Moratorium on TRIPS non-violation and situation complaints until the 12<sup>th</sup> Ministerial Conference (MC12). In line with the original mandate, that decision had instructed the TRIPS Council to "continue its examination of the scope and modalities" for such complaints "and make recommendations to the 12th Ministerial Conference."

41. In December 2019, many delegations had emphasized the need for a more detailed discussion on TRIPS non-violation, so that Ministers could take a well-informed decision on scope and modalities at MC12. Most delegations had also said that they were open to engage constructively and discuss concrete proposals for scope and modalities.

42. There had also been a suggestion that one Member might be developing a submission. She encouraged delegations to table submissions that might assist to shape the discussion resulting in a meaningful outcome at MC12. Also, the LDC Group had suggested that the Chair should hold dedicated informal discussions on this issue to facilitate engagement.

43. Since the July 2020 meeting, the Secretariat had also held a Briefing Session on TRIPS non-violation and situation complaints. She invited the Secretariat to brief Members.

44. The representative of the Secretariat took the floor.

45. The Chair invited delegations to share their views on how the Council should approach TRIPS non-violation discussions between now and MC12, specifically where delegations thought there were areas of commonality, as the discussion had been evolving for some time, and areas that required further clarifications among Members so as to have focussed discussions.

46. The representatives of Brazil; Tanzania, on behalf of the African Group; South Africa; Bangladesh; Egypt; Nigeria; Chile; India; Jamaica, on behalf of the ACP Group; Argentina; Thailand; China; Indonesia; Switzerland; the United States of America; the European Union; Canada; Chinese Taipei; South Africa; Ecuador; and the Republic of Korea took the floor.

47. The Chair noted that she would send a communication with a view to facilitate informal consultations with Members.

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

## **9 REVIEW OF THE IMPLEMENTATION OF THE TRIPS AGREEMENT UNDER ARTICLE 71.1**

49. 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. Periodic reviews could represent a useful opportunity for Members to share information and experiences in implementing the TRIPS Agreement in view of the

very significant developments for trade-related aspects of the IP system that had occurred since the Agreement was concluded.

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

## **10 REVIEW OF THE APPLICATION OF THE PROVISIONS OF THE SECTION ON GEOGRAPHICAL INDICATIONS UNDER ARTICLE 24.2**

51. The Chair said that Article 24.2 of the TRIPS Agreement required the Council to keep under review the application of the provisions on geographical indications (GIs). The principal tool used for the review was the Checklist of Questions.<sup>3</sup> She recalled that, of the 164 WTO Members, fewer than 50 had responded to the Checklist. Many of the earlier responses were also likely to be outdated, as some were two decades old. That situation did not adequately reflect the fact that GI protection had been an active area of legal and policy development at domestic level and in free trade agreements (FTAs), and the clear benefits for all Members of transparency and updated information in this area.

52. She encouraged delegations to provide responses to the Checklist or to update earlier responses. The e-TRIPS Submission System provided an easy and convenient online tool to provide responses to the Checklist and to check the date of your delegations' most recent submission in that regard. In line with the Council's recommendation of March 2010, she also invited Members to share information regarding GI chapters in their bilateral agreements.

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

## **11 EIGHTEENTH ANNUAL REVIEW UNDER PARAGRAPH 2 OF THE DECISION ON THE IMPLEMENTATION OF ARTICLE 66.2 OF THE TRIPS AGREEMENT**

54. The Chair recalled that, under a 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 of the TRIPS Agreement. They were to provide new detailed reports every third year and updates in the intervening years.

55. In July 2020, the Council had requested developed country Members to submit the second set of updates to the sixth set of new reports in time for the present meeting, and the Secretariat had also circulated a reminder.<sup>4</sup>

56. The LDC Group had also submitted a proposal of a template for the submission of reports on commitments of developed countries under Article 66.2. In her consultations in September 2020, the LDC Group had indicated that they were reaching out to developed countries in this regard.

57. The Council had received updated reports from the United States, Switzerland, Australia, Japan, and the United Kingdom. Since the circulation of the revised agenda, the Council had received further reports from the European Union and Canada. The documents were being circulated under the new dedicated document series with the symbol IP/C/R/TTI/[Member]/1 – where "R" stood for "Reports" and "TTI" stood for "Technology Transfer Incentives".

58. Paragraph 2 of the Council's Decision on the Implementation of Article 66.2 explained that the annual review should 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.

59. Some of the information by developed country Members had been received only very recently, and most of it was, so far, available only in its original language. She intended to give Members an opportunity to make further comments at the next meeting of the Council to give Members a chance to study the recently circulated information and any additional information subsequently submitted.

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<sup>3</sup> Documents IP/C/13 and IP/C/13/Add.1.

<sup>4</sup> Document WTO/AIR/IP/29.



60. The Secretariat was planning to hold the Article 66.2 Workshop in early 2020. Considering the current situation, the dates had not yet been fixed and would be announced as soon as they are finalized. This would give LDC Members enough time to consider the information provided by developed country Members in their reports and to ensure that these reports are available in the official languages of the WTO. It would also be an opportunity to discuss the proposal of the template for reporting on commitments, presented by the LDC Group. The Workshop would comprise two days of sessions, and a reporting and review segment within the first TRIPS Council meeting of 2021. She invited developed country Members to introduce their reports.

61. The representatives of the United Kingdom; Australia; South Africa; Japan; Switzerland; Bangladesh; Chad, on behalf of the LDC Group; Canada; Indonesia; the United States of America; Australia; and the European Union took the floor.

62. The Chair proposed that Members be given an opportunity to continue considering the information provided at the next meeting.

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

## 12 TECHNICAL COOPERATION AND CAPACITY BUILDING

64. The Chair recalled that, at its July 2020 meeting, the Council had agreed to hold the annual review of technical cooperation at its next meeting. Thus, 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, which also provided technical cooperation were encouraged to share information on their activities. The Secretariat had issued a reminder.<sup>5</sup> Intergovernmental organizations, observers to the Council and the WTO Secretariat had also been invited to provide information.

65. The Council had received information from: Japan, Switzerland, Australia, United States, the United Kingdom, and Norway. Since the circulation of the revised agenda, the Council had received further information from the European Union. These reports were being circulated under the new dedicated document series with the symbol IP/C/R/TC/[Member]/1 – where "R" stands for "Reports" and "TC" stands for "Technical Cooperation". The following intergovernmental organizations (IGOs) had also submitted updated information: United Nations Conference on Trade and Development (UNCTAD), World Health Organization (WHO), World Intellectual Property Organization (WIPO) and the Cooperation Council for the Arab States of the Gulf (GCC). Their reports were being circulated in the same document series IP/C/R/TC/[IGO observer]/1. Information on the WTO Secretariat's own technical cooperation activities in the TRIPS area could be found in document IP/C/R/TC/WTO-OMC/1. She invited Members to introduce their reports.

66. The representatives of the United States of America; the United Kingdom; Japan; Australia; Canada; the European Union; Bangladesh; Switzerland; Brazil; Chad, on behalf of the LDC Group; Mali; and South Africa took the floor.

67. The Chair invited the WTO Secretariat to present its report on technical cooperation activities.

68. The representative of the Secretariat took the floor.

69. The Chair invited the representatives of IGO observers to present their reports on technical cooperation activities.

70. The representatives of the Gulf Cooperation Council (GCC); World Intellectual Property Organization (WIPO); World Health Organization (WHO); and the United National Conference on Trade and Development (UNCTAD) took the floor.

71. The Chair invited Members to comment.

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<sup>5</sup> Document WTO/AIR/IP/30.

72. The representatives of Sri Lanka; Chad, on behalf of the LDC Group; and India took the floor.

73. The Chair thanked Members and IGO observers for the valuable information. As some information had been recently submitted and was available only in its original language, she would provide Members an opportunity to make further comments, at the next meeting.

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

### **13 INTELLECTUAL PROPERTY AND INNOVATION: MAKING MSMES COMPETITIVE - MAKING MSMES COMPETITIVE THROUGH INCLUSIVE PROTECTION OF VARIOUS IPS**

75. The Chair said that the agenda item had been requested by Australia, Canada, Chile, the European Union, Japan, Singapore, Switzerland, Chinese Taipei, the United Kingdom and the United States of America. These delegations had also submitted a communication<sup>6</sup> to allow Members to prepare for the discussion. Since the circulation of the revised agenda, the Republic of Korea has been added to the co-sponsors of this item and the corresponding submission. She invited the co-sponsors to introduce the communication.

76. The representatives of Japan; the United States of America; Singapore; Australia; the European Union; Ecuador; the Republic of Korea; Switzerland; Canada; the United Kingdom; El Salvador; Chinese Taipei; Philippines; Brazil; Mexico; Peru; China; and India took the floor.

77. The Council took note of the statements made.

### **14 DULY MOTIVATED REQUEST BY LDCS TO EXTEND THE TRANSITION PERIOD UNDER ARTICLE 66.1 OF THE TRIPS AGREEMENT FOR LEAST DEVELOPED COUNTRY MEMBERS**

78. The Chair said that the agenda item had been requested by Chad, on behalf of the LDC Group; and a communication had been circulated.<sup>7</sup> She recalled that the transition period for LDC Members had been extended twice: Most recently, by the TRIPS Council Decision of 11 June 2013.<sup>8</sup> Regarding extensions of the transition period, the second sentence of Article 66.1 of the TRIPS Agreement provided that "The Council for TRIPS shall, upon duly motivated request by a least developed country Member, accord extensions of this period." She invited the LDC Group to introduce the request.

79. The representative of Chad, on behalf of the LDC Group took the floor.

80. The Chair invited Members to take the floor.

81. The representatives of Bangladesh; Bangladesh, on behalf of the LDC Group, Nepal; Mali; Cambodia; Angola; Afghanistan; Senegal; Jamaica, on behalf of the ACP Group; China; South Africa; Argentina; Egypt; Tanzania, on behalf of the African Group; Indonesia; Turkey; the United States of America; the European Union; Oman; India; Japan; Nigeria; the United Kingdom; Switzerland; and the World Health Organization (WHO) took the floor.

82. The Chair proposed that the LDC Group consult with the Members, that had intervened at the present meeting, to bridge the differences. She would also be available to consult with Members. Considering the time-sensitivity due to the upcoming deadline in 2021, she proposed to revert to the request at the next meeting.

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

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<sup>6</sup> Document IP/C/W/667.

<sup>7</sup> Document IP/C/W/668.

<sup>8</sup> Document IP/C/64.

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**15 PROPOSAL FOR A WAIVER FROM CERTAIN PROVISIONS OF THE TRIPS AGREEMENT FOR THE PREVENTION, CONTAINMENT AND TREATMENT OF COVID-19**

84. The Chair said that this item had been put on the agenda at the request of India and South Africa; and a communication had been circulated.<sup>9</sup> She invited India and South Africa to introduce their proposal.

85. The representatives of India and South Africa took the floor.

86. The Chair invited Members to take the floor.

87. The representatives of Kenya; Nigeria; Bangladesh; Sri Lanka; Pakistan; the Bolivarian Republic of Venezuela; Nepal; Philippines; Nicaragua; Chile; Turkey; Egypt; Indonesia; Argentina; Chad, on behalf of the LDC Group; China; Thailand; Tunisia; Tanzania, on behalf of the African Group; Ecuador; Senegal; Costa Rica; Mauritius; Colombia; El Salvador; Mali; Jamaica; the European Union; the United States of America; Switzerland; Japan; Norway; the United Kingdom; Brazil; Mozambique; Canada; Australia; Honduras; the Holy See; the World Health Organization (WHO) and the United Nations Programme on HIV/AIDS (UNAIDS) took the floor.

88. The Chair invited the Secretariat to share procedural requirements.

89. The representative of the Secretariat took the floor.

90. The representative of the United States of America took the floor.

91. The Chair noted that the proposal had been submitted to the Council on 2 October 2020. Thus, the 90-day time-period would expire on 31 December 2020. For practical purposes, this would mean that the last opportunity for the Council to adopt the report envisaged by Article IX:3 (b) of the Marrakech Agreement, was before the end-year-break in December. In order to facilitate reconvening the Council to consider a report in this regard, she proposed to keep the agenda item open. She encouraged Members to further consult on the proposal and explore possibilities to bridge the gap.

92. The Council took note of the statements made and agreed to keep the agenda item open.

93. At the Council for TRIPS' reconvened formal meeting of 10 December 2020, the Chair reported that, on 20 November and on 3 December, she had convened the Council in informal open-ended mode to take stock of developments since the suspension in October, and to continue the consideration of the agenda item in informal mode. At these meetings delegations had highlighted their common goal of providing access to high-quality, safe, efficacious and affordable vaccines and medicines for all. Delegations had also exchanged views, sought clarifications and provided information on the operation, implementation and impact of the requested waiver during these meetings.

94. The Chair said she also held consultations in the time-period between 26 November and 1 December, in order to seek delegations' views on (a) what kind of report the TRIPS Council could likely agree on at today's meeting, and (b) how substantive engagement could be further facilitated, given the importance of meaningful and focused discussions on the substance of the proposal. In these consultations she had detected an emerging agreement that the TRIPS Council should provide a communication to the General Council that would be neutral and factual, and reflect the state of play of discussions and the absence of consensus on the waiver proposal in the TRIPS Council at this time. Delegations had also seen a need to continue discussions on the matter within the TRIPS Council.

95. On the basis of these consultations, and after discussions in the informal open-ended meeting on 3 December, an agenda item for a status report on the consideration of the waiver request was put on the proposed agenda of the next General Council meeting scheduled for 16-17 December. During the informal meeting of 3 December, the Chair had circulated draft language for such an oral status report with an invitation to Members to comment on this language by 7 December. On the

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<sup>9</sup> Document IP/C/W/669.

basis of the comments that were received by the deadline, she had held further consultations on 8 and 9 December, and had circulated a revised draft status report.

96. In light of these informal meetings and consultations, she proposed the Council agree that she would deliver an oral status report to the General Council as follows:

At the meeting of the TRIPS Council on 15-16 October 2020, India and South Africa introduced document IP/C/W/669, requesting a waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19, which had been circulated on 2 October 2020 and has since been co-sponsored by the delegations of Kenya, Eswatini, Pakistan, Mozambique, and Bolivia. The Council continued its discussions under that agenda item at its resumed meeting on 10 December 2020.

At those meetings, and at informal meetings on 20 November and 3 December, delegations highlighted the common goal of providing access to high-quality, safe, efficacious and affordable vaccines and medicines for all. Delegations exchanged views, sought clarifications and provided information on the waiver request but could not reach consensus. Delegations indicated a need for further discussions on the waiver request and views exchanged by delegations.

This means that the TRIPS Council has not yet completed its consideration of the waiver request and may not be able to do so within the 90 days stipulated in Article IX:3 of the Marrakesh Agreement. Therefore, the TRIPS Council will continue its consideration of the waiver request and report back to the General Council as stipulated in Article IX:3 of the Marrakesh Agreement.

97. The Council so agreed.

98. The Chair thanked all delegations, particularly those involved in the consultations, for the constructive spirit in which they had engaged in the discussions on this report. As regards the TRIPS Council's next steps, she noted that the next regular meeting is scheduled for 10-11 March 2021. In order to allow for further consideration of the waiver request in the more immediate future, she proposed that the Council reserve 19 January and 4 February 2021 for meetings of the Council that could be dedicated to the discussion of the waiver request. The next regular meeting – with the usual complete agenda – would remain scheduled for 10-11 March.

99. The Council so agreed.

100. The representatives of Malaysia, Canada, Chile, Bolivia, Sri Lanka, Chad, Norway, Turkey, Singapore, Viet Nam, Eswatini, Egypt, Indonesia, the European Union, Japan, China, the United Kingdom, Oman, Mauritius, Bolivarian Republic of Venezuela, Ukraine, the United States of America, Ecuador, the Republic of Korea, El Salvador, New Zealand, Mozambique, Brazil, Jamaica, India, Pakistan, Switzerland, Israel, Colombia, Bangladesh, Tanzania, on behalf of the African Group, Botswana, South Africa, Nepal and Vanuatu took the floor.

## **16 WORK PROGRAMME ON ELECTRONIC COMMERCE**

101. The Chair recalled that the Work Programme on Electronic Commerce<sup>10</sup> mandated the TRIPS Council to examine and report on the intellectual property issues arising in connection with electronic commerce, including protection and enforcement of copyright and related rights, protection and enforcement of trademarks, and new technologies and access to technology. In the General Council Decision of 10 December 2019,<sup>11</sup> Members had agreed to reinvigorate the work under the Work Programme on Electronic Commerce, based on the existing mandate. The decision

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<sup>10</sup> Document WT/L/274.

<sup>11</sup> Document WT/L/1079.

foresaw structured discussions "based on all trade-related topics of interest brought forward by Members, including LDCs".

102. The other bodies that were directly mandated by the Work Programme – the Council for Trade in Services, the Council for Trade in Goods, and the Committee on Trade and Development – had retained this item on their regular agenda. In the TRIPS Council, the item had been taken up repeatedly since 1999, with some significant gaps, but Members had not agreed to treat this as a regular agenda item. More recently, there had been intermittent reference to, and discussion of, the item based on *ad hoc* agenda items in 2017 and 2018 and, most recently, at the last Council meeting on 30 July 2020.

103. During the consultations held in September 2020, several delegations had signalled their interest in re-engagement on this matter, including on discussing national digital policy efforts and the issue of access to digital technology. Some Members had encouraged delegations to provide proposals and submissions in advance of the meetings, echoing the General Council Decision's reference to "topics of interest brought forward by Members". Considering this feedback, she had proposed the item of electronic commerce, again, for the agenda of the present meeting in order to provide an opportunity to discuss how the Council should discharge its mandate under the Work Programme in the future.

104. She was under the impression that Members had brought forward a number of topics, both during the September 2020 consultations and at Council's meeting on 30 July 2020, on which the Council could have structured discussions, as mandated by the Work Programme, if Members were interested to pursue them. If this was the case, the TRIPS Council might wish to keep this item on the regular agenda, as was the case in the other regular bodies mandated by the Work Programme and establish a structure for its discussions, in order to respond to the Ministerial mandate in this regard. She invited Members to share any thoughts on the substance of the discussions on electronic commerce and on how to treat the item on the Council's agenda in the future.

105. The representatives of Chad, on behalf of the LDC Group; China; Bangladesh; South Africa; Tanzania, on behalf of the African Group; the United States of America; the European Union; Indonesia; Australia; and India took the floor.

106. The Council took note of the statements made.

## **17 INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO**

107. The Chair recalled that the purpose of this agenda item was to keep Members informed on developments in other WTO bodies, which were relevant to TRIPS matters. Therefore, no discussion was required. She invited the Secretariat to provide the regular briefing on IP-related issues considered in the context of individual Members' trade policy reviews, and in the Director-General's Monitoring Report.

108. The representative of the Secretariat took the floor.

109. The Council took note of the information provided.

## **18 OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS**

110. The Chair recalled that there were still 14 pending requests for observer status in the TRIPS Council by intergovernmental organizations.<sup>12</sup> Information provided by these organizations on their respective work and the reasons for their interest in observer status is available on the Members' website.<sup>13</sup> She invited Members and Observers to share any developments.

111. 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

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<sup>12</sup> The updated list is available in document IP/C/W/52/Rev.14.

<sup>13</sup> Available at [https://www.wto.org/english/tratop\\_e/trips\\_e/xtrips\\_e/igo\\_observer\\_e.htm](https://www.wto.org/english/tratop_e/trips_e/xtrips_e/igo_observer_e.htm).

(EFTA). Since then, the invitation had been renewed at each meeting. She suggested that EFTA be invited to attend the next formal meeting on an *ad hoc* basis.

112. The Council agreed to invite EFTA to attend the next meeting on an *ad hoc* basis.

## **19 ANNUAL REPORT**

113. The Chair noted that the draft Annual Report of the Council had been circulated for Members' review.<sup>14</sup> It would be updated in order to reflect the discussions at the present meeting. She invited Members to provide any comments on the draft.

114. She proposed that the Council agrees that the Secretariat be requested to update the draft to reflect the discussions at the present meeting. The draft would be faxed to Members; and delegations would have one week to comment on the updated parts of the draft report.

115. The Council took note of the information provided and so agreed.

## **20 OTHER BUSINESS**

### **20.1 Dates for 2021 Meetings**

116. The Chair said that the Secretariat had reserved meeting rooms for the following dates for meetings of the Council in 2021: 10-11 March, 8-9 June and 13-14 October.<sup>15</sup>

117. She enquired whether those dates were acceptable.

118. The Council so agreed.

119. She noted that the WTO Technical Workshop on "An Integrated Health, Trade and Intellectual Property Approach to Address the COVID-19 Pandemic" would be held on 21 October 2020; from 12:00 to 15:00.

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<sup>14</sup> Document JOB/IP/39.

<sup>15</sup> These dates have been coordinated with WIPO.