



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

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 23 FEBRUARY 2021

Chair: H.E. Ambassador Xolelwa Mlumbi-Peter

The present document contains the record of the meeting of the Council for TRIPS held on 23 February 2021. The statements made during the meeting will be circulated in an addendum to the present document.

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

1. The Chair said that the "Proposal for A Waiver from Certain Provisions of The TRIPS Agreement for the Prevention, Containment and Treatment of Covid-19" had been circulated in document IP/C/W/669 by India and South Africa on 2 October 2020 and had since been co-sponsored by the delegations of Kenya, Eswatini, Mozambique, Pakistan, Bolivia, Venezuela, Mongolia, Zimbabwe, Egypt and – most recently – the African Group and the LDC Group.

2. At the Council's last formal meeting on 10 December 2020, the Council had agreed to provide a 'Status Report on the consideration by the TRIPS Council of the waiver proposal' to the General Council meeting of 16-17 December 2020. That Status Report provided a factual overview of the waiver discussions in this Council and highlighted Members' common goal of providing access to high-quality, safe, efficacious and affordable vaccines and medicines for all. It reported that Members had exchanged views, had provided information and sought clarifications, but had not been able to reach consensus. It concluded that,

"[T]herefore, 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."

3. Since then, the Council had continued its consideration of the waiver request at informal open-ended meetings on 19 January and 4 February 2021, including on the basis of three new submissions circulated by the co-sponsors on 15 January 2021, and which bear the document numbers IP/C/W/672, IP/C/W/673 and IP/C/W/674.

4. She said that, after the informal open-ended meeting on 19 January, she had held consultations with a number of delegations on 27 January 2021 to encourage more solution-oriented discussions and to explore in concrete terms whether a possible landing zone could exist – in terms of concrete elements and outcomes – and to hear views on our report to the General Council. In preparation of that meeting, she had requested delegations consider three questions, namely (1) which elements of the Waiver were critical to deliver a multilateral solution on the common objective of ensuring swift, timely, affordable and equitable access to the vaccines and therapeutics to combat the COVID-19 pandemic, (2) whether the discussion had provided clarifications about core elements of the TRIPS Agreement in relation to public health and how these can be captured to establish a common understanding; and (3) what were delegations' views on the timing and format of deliberations towards a report to the GC as communicated by the TRIPS Council in December 2020.

5. While delegations' responses to these questions did not indicate any significant shifts in positions, a number of delegations signalled openness to hearing concrete evidence of any IP-related challenges that would be related to or arising from the TRIPS Agreement, and to seek consensual, proportionate and commensurate solutions to any such problems where necessary. The co-sponsors also indicated that they were ready to consider the contours, the scope and the time frame of the waiver proposal, and indicated that they would once again reach out to delegations individually for further discussions.

6. At the informal open-ended meeting on 4 February 2021, Members had continued their consideration of the waiver request. She said that, from the discussions at these meetings, it seemed that there remained differences in Members' approaches to the waiver proposal. A number of delegations had indicated a need for more evidence-based discussions in the TRIPS Council to understand the issues underlying the waiver request, as well as clarifying the impact and operation of the waiver in practise. The co-sponsors had made numerous interventions – and circulated a number of new documents – in response to questions and concerns raised by delegations and had indicated that they would wish to advance to text-based negotiations.

7. She said that, as regards the question about the Council's report to the General Council, most delegations indicated a preference for a factual report that would once again reflect the state of play of discussions among Members, following the same lines as the status report delivered in December 2020.

8. As foreshadowed at the informal open-ended meeting on 4 February, she had circulated draft language for such a report on 9 February, with an invitation for Members to comment on this language by 12 February 2021. On the basis of the comments that were received by the deadline, she had held further consultations on 16 February, and circulated a revised draft status report in document JOB/IP/42 on 17 February, which she hoped could be adopted today. The item had also been placed on the agenda of the General Council meeting scheduled for 1 March. This concluded the summary of the Council's activities since its last formal meeting.

9. Turning to the revised language for the oral status report to the General Council which had been circulated in document JOB/IP/42 on 17 February 2021, she noted that the African Group and the LDC Group had now been listed as co-sponsors of the waiver proposal, and she suggested that this be also reflected in the first paragraph of the status report for the purposes of accuracy. She therefore 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, Mozambique, Pakistan, Bolivia, Venezuela, Mongolia, Zimbabwe, Egypt, the African Group and the LDC Group. The Council continued its discussions under that agenda item at informal meetings on 20 November and 3 December, as well as at its resumed meeting on 10 December 2020. Following the status report to the General Council on 16-17 December 2020, the Council continued its consideration of the waiver request at informal meetings on 19 January and 4 February 2021, and at its formal meeting on 23 February 2021.

At those meetings, delegations highlighted the common goal of providing timely and secure access to high-quality, safe, efficacious and affordable vaccines and medicines for all. Delegations exchanged views, asked questions, sought clarifications and provided replies, clarifications, and information, including through documents IP/C/W/670, IP/C/W/671, IP/C/W/672, IP/C/W/673 and IP/C/W/674, on the waiver request but could not reach consensus, including on whether it is appropriate to move to text-based negotiations. 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. The TRIPS Council will therefore continue its consideration of the waiver request and report back to the General Council as stipulated in Article IX:3 of the Marrakesh Agreement.

10. The Council so agreed.

11. 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 in this regard, this item would now be on the agenda of the next regular meeting, scheduled for 10-11 March 2021. After that, the next regular meeting of the TRIPS Council was scheduled for 8-9 June 2021. She said delegations might wish to consider how to organize the Council's consideration of this issue going forward, would be invited to also share their views in this regard, so that the Secretariat and the Chair could make any appropriate arrangements.

12. In her view, the single most important priority of the global community was to stop the COVID-19 pandemic, halt its rapid transmission, reduce the risks of variants and reverse the trend of consequential global distress. This goal is only achievable when everyone, everywhere can access the health technologies they need for COVID-19 detection, prevention, treatment and response. This was a goal that Members of the WTO have consistently repeated in their statements. Now more than ever, international cooperation and solidarity were vital to restore global health security, now and in future.

13. The business community is calling for a coordinated approach to vaccine access in view of the risks to the global economy inherent in an uncoordinated approach. The WTO's four DDGs have also

issued a statement calling for heightened international cooperation, including ensuring the global availability of vaccines. Importantly, that the war against the pandemic can only be won when universal coverage in vaccination is achieved. The new WTO DG had stated that for the global economy to return to sustained growth, the global community would need to get a tight grip on the pandemic by intensifying cooperation to make equitable and affordable access to vaccines, therapeutics, and diagnostics a key plank of the recovery.

14. In the informal meeting of 4 February 2021, many Members had recognized the challenge arising from limited manufacturing capacity of vaccines and the inability of existing manufacturers to meet global demand. She urged Members to engage in a candid and good-faith discussion on what is required to scale up global production in these unprecedented times of a public health crisis. She expressed her hope that Members would engage in a solution-oriented process that will provide an effective solution to boosting productive capacity for products that are essential to deal with COVID-19 across the world. The WTO membership should demonstrate its commitment to the overarching goals of universal and equitable access to COVID-19 medical products not only in words, but through action. She also reminded Members of the heightened public interest and concern in this regard.

15. The Chair invited Members to take the floor.

16. The representatives of Chile; Tanzania; South Africa; Egypt; Colombia; Chad; Pakistan; Bangladesh; Mozambique; India; Indonesia; El Salvador; Venezuela; Sri Lanka; Namibia; Nepal; Nigeria; China; the European Union; the United States; Norway; Switzerland; Mali; Singapore; Canada; the United Kingdom; Australia; Japan; and the Holy See took the floor.

17. The Chair said that it seemed from delegations' statements that there was still no consensus on this waiver request at this point. She noted that the proponents had made further efforts to address a number of questions on the functioning and the impact of the requested waiver, which delegations have raised in the last meetings and in a recent submission. In light of this, she encouraged delegations to continue to engage with each other, and to seek common ground in regard to the subject matter of the waiver request, including in relation to scope and substance – as indicated by proponents in order to achieve the common objective shared by all.

18. She emphasized that the detailed exchanges and discussions that Members had had in the context of the waiver proposal were extremely useful and valuable. While Members were still discussing the waiver proposal before them, it was her impression that these discussions had highlighted a number of shared understandings with respect to TRIPS flexibilities which Members might wish to reflect on and explore further. COVID-19 may not be the only pandemic. Therefore, the TRIPS Council might wish to highlight and communicate such shared understandings on the role of IP in the context of a pandemic, as these could provide valuable elements and could help prepare for future pandemics.

19. She said that she herself, and the Secretariat, were always available to help facilitate any path forward that Members might wish to explore in this regard

2 OTHER BUSINESS

20. The United States took the floor.

21. The Chair noted that the next formal meeting of the Council was scheduled for 10-11 March 2021 and would have a full, regular agenda, including the item discussed today. She reminded delegations that the agenda for that meeting closed at close of business on 25 February 2021.
