



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

MINUTES OF MEETING

HELD IN THE CENTRE WILLIAM RAPPARD ON 30 APRIL 2021

Chair: H.E. Ambassador Dagfinn Sørli

The present document contains the record of the meeting of the Council for TRIPS held on 30 April 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, the African Group, the LDC Group, the Maldives, Fiji and Namibia. He said the purpose of this formal meeting was threefold: first, to report on his activities since he had taken office; second, to adopt the status report to the General Council; and third, to continue consideration of the waiver proposal on the record.

2. The Chair said that, since his election at the end of the TRIPS Council meeting on 11 March, he had held a number of consultations with delegations in different formats to encourage more solution-oriented discussions and to explore in concrete terms whether a possible landing zone could exist.

3. On 24 March 2021 he had held group consultations with around 24 delegations on the waiver request and other topics where he solicited delegations' views on how to move discussions forward and find a common approach to this topic. Delegations' responses in these consultations had reiterated known positions and showed some frustration with the repetitive nature of exchanges in the recent open-ended meetings. A number of delegations had indicated a willingness to try a format of smaller consultations to address outstanding issues.

4. Following up on these indications, the Chair had held two small group consultations with 14 delegations on 12 and 13 April to permit discussing individual aspects of the waiver proposal in a smaller setting. The first session focused on "examples of IP-related challenges, including in using TRIPS flexibilities", while the second session intended to address the "operation of the proposed waiver". These discussions clearly showed delegations' agreement that production and distribution of COVID-19-related medical products, including vaccines, are facing serious challenges and that rapid scaling-up of production and ensuring safe supply of all countries is essential. Delegations also shared the common goal of providing timely and secure access to high-quality, safe, efficacious and affordable vaccines and medicines for all.

5. However, delegations continued to differ on the fundamental question whether, and to what extent, intellectual property protection represents barriers or challenges to the achievement of our common objective, which could not be overcome by using the existing flexibilities. Co-sponsors were of the clear opinion that such challenges do exist and can only be effectively addressed by waiving certain TRIPS obligations. Other delegations remained unconvinced about the necessity of a waiver at the international level, with some arguing that a waiver might be counterproductive in relation to ongoing collaborative efforts.

6. He said that, in his intervention at the Director General's event "COVID-19 and Vaccine Equity: What can the WTO contribute?" on 14 April, which had been circulated to all delegations, he shared that assessment and indicated that these in his opinion, remained the key questions. In her summary of that event, the Director General also called on WTO Members to advance work in the TRIPS Council "on the waiver proposal and on incentives for research and innovation" and expressed her hope that the ideas and the open dialogue heard at the event will move us closer to agreement.

7. He said that Members had continued their consideration of the waiver request at an informal open-ended meeting on 22 April 2021. At that meeting, many exchanges had reiterated known positions regarding the role of voluntary licensing in scaling up production of vaccines, and the application of existing TRIPS flexibilities in domestic situations of vaccine shortages in the pandemic. However, the co-sponsors had also indicated that they were working on an updated waiver proposal, and that they had initiated bilateral discussions in this regard. A number of delegations also requested the Secretariat to compile data on existing and future voluntary license agreements, and on the projected and actual production of vaccine doses produced by such arrangements over time.

8. Other delegations had acknowledged the co-sponsors' responses to questions circulated in recent documents but felt that questions posed subsequently – particularly with respect to the operation of a potential waiver – remained unanswered. While these delegations had reiterated that cooperation

and voluntary licensing were key to ensuring the technology transfer needed for scaling up production, they said it was equally clear that governments do play a role in facilitating such cooperation, and that the use of TRIPS flexibilities such as compulsory licensing was the sovereign right of all WTO Members. Some had considered whether there might be value in a confirmation by the TRIPS Council how these flexibilities apply in a pandemic, and in stepping up technical support for Members to use them, including by reinforcing cooperation with other international organizations on domestic implementation legislation of flexibilities. Overall, it was his impression that although significant differences remain, there was willingness on all sides to find a constructive consensual approach to these questions.

9. The Chair said that, as also foreshadowed at that informal open-ended meeting on 22 April, he had circulated draft language for an oral status report to the General Council, with an invitation to Members to comment on this language by 26 April 2021. Having received no textual comments in this regard, this draft status report had been circulated in document JOB/IP/44 on 27 April 2021, which he hoped delegations would be able to adopt at the present meeting. He informed Members that the item had also been placed on the agenda of the General Council meeting scheduled for 5-6 May 2021 in the usual fashion. This concluded his summary of the Council's activities since our last formal meeting.

10. Turning to the language for the oral status report to the General Council which had been circulated in document JOB/IP/44 on 27 April 2021, he said that Fiji and Namibia had recently been added as co-sponsors of the waiver proposal, and suggested that this be also reflected in the first paragraph of the status report for the purposes of accuracy.

11. He proposed the Council agree that he 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 Maldives, Fiji and Namibia. 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. Following the status report to the General Council on 3-4 March 2021, the Council continued its consideration of the waiver request at its formal meeting on 10-11 March 2021, at an informal meeting on 22 April and at its formal meeting on 30 April 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. In April 2021, the co-sponsors indicated that they were considering an update of their proposal and were in the process of consulting with Members. 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.

12. The Council so agreed.

13. The Chair thanked all delegations for their support in this regard. He gave the floor to the Secretariat to react to the requests for data collection and compilation that were raised at the last informal meeting.

14. A representative of the Secretariat took the floor.

15. The Chair invited delegations to take the floor to continue their consideration of this request and the associated issues, and to share their views on how the work of the Council should be organized on this matter going forward.

16. The representatives of South Africa, Egypt, Bolivia, India, Maldives, Tanzania on behalf of the African Group, Chad on behalf of LDC Group, Pakistan, Zimbabwe, Bangladesh, Nepal, Saudi Arabia, Tunisia, Nigeria, Sri Lanka, Namibia, Fiji, China, Vanuatu, Switzerland, Paraguay, European Union, Uruguay, United Kingdom, Indonesia, Chinese Taipei, Cameroon, Singapore, New Zealand, Japan, Australia, the United States, and Angola took the floor.

17. In summing up, the Chair said that he had heard some well-known views and positions repeated also at this meeting so that the assessment of the state of play reflected in the oral status report to the General Council was indeed correct. At the same time, he also saw reason for some careful optimism, first and foremost as a result of the co-sponsors' announcement that they are considering revisions to the waiver proposal, and that they were currently consulting with other Members on the basis of such revisions. He noted the co-sponsors' request for time to continue such consultations to reflect on what they heard, and to develop a revised proposal on that basis, which – as they indicated – might be circulated in the second half of May. He said he would stay in close contact with the delegations concerned, consult them on the progress of their efforts, and would try to find a suitable timing for such a meeting, which would be communicated to all Members as it becomes clearer.

18. He noted and commended delegations on their expressed willingness to engage directly with each other - and encouraged constructive engagement on all sides in these engagements.

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

2 OTHER BUSINESS

20. The Chair reported on his consultations on the LDCs Group's request for an extension of the transitional period for least developed country Members under Article 66.1, which had been circulated in document IP/C/W/668. Since taking office on 11 March, upon the LDC Group's request, he had held individual and group meetings with the LDC coordinators and other delegations on 22 and 24 March, and on 7 and 21 April, to help facilitate the LDC Group's discussion with Members, and to address outstanding question.

21. As mentioned on previous occasions, his aim was to help secure a decision on the extension of LDC transition period at the June Council meeting, and he said he had seen a lot of goodwill from delegations in this regard. He said he would continue to assist the LDC Group by facilitating consultations in various formats and would endeavour to keep the Council informed as appropriate. He was hopeful that this process would continue to progress smoothly going forward.
