

WORLD TRADE ORGANIZATION

IP/C/32
8 December 2004

(04-5392)

Council for Trade-Related Aspects of Intellectual Property Rights

ANNUAL REPORT (2004) OF THE COUNCIL FOR TRIPS

I. GENERAL

1. Since the period covered by its 2003 report¹, the Council for TRIPS has held four formal meetings, on 8 March, 16 June, 21 September and 1-2 December. The minutes of these meetings are to be found in documents IP/C/M/43-46.²

2. The meeting in March 2003 was chaired by Ambassador Vanu Gopala Menon (Singapore) and the meeting in June by Mr. Joshua C.K. Law (Hong Kong, China). Since the latter Chair had relinquished his post, the Council elected the Chair of the Trade Policy Review Body, Ambassador Puangrat Asavapisit (Thailand), to act as interim Chair of the meeting in September. The meeting in December was chaired by Mr. Tony Miller (Hong Kong, China).

3. The meetings of the Council were open to all WTO Members, other governments with observer status in WTO bodies and certain international intergovernmental organizations granted observer status in the Council. The Food and Agriculture Organization (FAO), the International Monetary Fund (IMF), the International Union for the Protection of New Varieties of Plants (UPOV), the Organisation for Economic Co-operation and Development (OECD), the United Nations (UN), the United Nations Conference on Trade and Development (UNCTAD), the World Bank, the World Customs Organization (WCO) and the World Intellectual Property Organization (WIPO) enjoy regular observer status in the TRIPS Council. The World Health Organization (WHO) has *ad hoc* observer status in the Council. At its meeting in March 2002, the Council agreed to a request from the Joint United Nations Programme on HIV/AIDS (UNAIDS) for observer status during the Council's discussions on the TRIPS Agreement and public health at that and future meetings. Decisions on requests for observer status from 16 Organizations are pending.³

II. NOTIFICATIONS UNDER THE PROVISIONS OF THE AGREEMENT

4. The Council took note of new notifications under various provisions of the TRIPS Agreement.⁴ To date, 124 Members have notified pursuant to Article 63.2 all or part of their implementing legislation relating to all provisions of the Agreement. In addition, a number of other Members have made notifications relating specifically to the implementation of Articles 3, 4 and 5 of the Agreement, or concerning the implementation of Article 70.8 and, in some cases, Article 70.9 of

¹ Document IP/C/30.

² Document IP/C/M/46 to be circulated.

³ The Organizations in question are listed in document IP/C/W/52/Rev.10.

⁴ At its meeting in November 1995, the Council adopted procedures for notification of laws and regulations under Article 63.2. These procedures require that, as of the time that a Member is obliged to start applying a provision of the TRIPS Agreement, the corresponding laws and regulations shall be notified without delay (IP/C/2). At that meeting, the Council also agreed that Members would provide responses to a Checklist of Issues on Enforcement (IP/C/5).

the Agreement. 96 Members have provided responses to the Checklist of Issues on Enforcement.⁵ During the reporting period, a number of Members have notified amendments to laws and regulations they had notified earlier.⁶ To date, 121 Members have notified pursuant to Article 69 contact points for the purposes of cooperating with each other with a view to eliminating international trade in goods infringing intellectual property rights.⁷

III. REVIEW OF NATIONAL LAWS AND REGULATIONS

5. During the reporting period, the Council took up the review of the legislation of Armenia and the Former Yugoslav Republic of Macedonia, completed its review of Nigeria and Pakistan, and took note of the new responses received from and the outstanding material required to complete the pending reviews of 14 other Members.⁸

IV. TRANSITIONAL REVIEW UNDER SECTION 18 OF THE PROTOCOL ON THE ACCESSION OF PEOPLE'S REPUBLIC OF CHINA

6. At its December meeting, the Council undertook the third annual transitional review of the implementation by China of its WTO commitments pursuant to Section 18 of the Protocol on the Accession of People's Republic of China (WT/L/432), and agreed that the Chair, acting on his own responsibility, would prepare a brief, factual report on the review to the General Council.⁹

V. REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B); RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CONVENTION ON BIOLOGICAL DIVERSITY; AND PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE

7. The Council continued its discussion of these three agenda items. It took note of information from Moldova on how the matters addressed in Article 27.3(b) were presently treated in its national law (IP/C/W/125/Add.24). The Council received a number of new submissions relating to these agenda items: for its March meeting, a communication from Bolivia, Brazil, Cuba, Ecuador, India, Pakistan, Peru, Thailand and Venezuela entitled "the Relationship between the TRIPS Agreement and the Convention on Biological Diversity; Checklist of Issues" (IP/C/W/420 and Add.1); for its June meeting, a communication from Switzerland relating to its proposals submitted to WIPO regarding the declaration of the source of genetic resources and traditional knowledge in patent applications (IP/C/W/423); for its September meeting, a communication from Bolivia, Brazil, Colombia, Cuba, Ecuador, India, Pakistan, Peru, Thailand and Venezuela entitled "Elements of the Obligation to Disclose the Source and Country of Origin of Biological Resource and/or Traditional Knowledge Used in and Invention" (IP/C/W/429/Rev.1 and Add.1 and 2¹⁰); and for its December meeting a communication from Switzerland informing the Council of the further observations it had submitted to WIPO on its proposals regarding the declaration of the source of genetic resources and traditional

⁵ A table attached to document JOB(04)/117, dated 8 September, sets out the status, as of 3 September 2004, of notifications of national laws and regulations received under Article 63.2 of the TRIPS Agreement from Members whose transitional period under Article 65.2 or 65.3 expired on 1 January 2000 or who have acceded to the WTO after that date.

⁶ Notifications of laws and regulations are being circulated in the IP/N/1/COUNTRY/- series of documents, and responses to the Checklist of Issues on Enforcement in the IP/N/6/COUNTRY/- series of documents.

⁷ These contact points are contained in document IP/N/3/Rev.8 and addendum.

⁸ A table attached to document JOB(04)/178, dated 30 November 2004, lists those Members whose reviews were initiated at the Council's meetings since April 2001 but which remained on the Council's agenda at the time of the circulation of the note. All reviews of legislation initiated in the year 2000 have been completed.

⁹ This will be circulated in document IP/C/34.

¹⁰ To be circulated.

knowledge in patent applications" (IP/C/W/433), and a communication from the United States relating to these three agenda items (IP/C/W/434); and a communication from Bolivia, Brazil, Cuba, Ecuador, India, Pakistan, Peru, Thailand and Venezuela entitled "The Relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD) and the Protection of Traditional Knowledge – Elements of the Obligation to Disclose Evidence of Prior Informed Consent under the Relevant National Regime" (IP/C/W/438)¹¹.

VI. REVIEW OF IMPLEMENTATION OF THE TRIPS AGREEMENT UNDER ARTICLE 71

8. No statements were made or documents submitted by delegations under this agenda item.

VII. REVIEW OF THE APPLICATION OF THE PROVISIONS OF THE SECTION ON GEOGRAPHICAL INDICATIONS UNDER ARTICLE 24.2

9. At its March meeting, the Council took note of the responses to a checklist of questions related to this review received from Moldova (IP/C/W/117/Add.29) and of an updated Secretariat note summarizing the information received from Members in response to this checklist (IP/C/W/253/Rev.1). For its June meeting, the Council received responses to this checklist from Chinese Taipei (IP/C/W/117/Add.30).

VIII. PARAGRAPH 6 OF THE DOHA DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH

10. The Council continued its work pursuant to paragraph 11 of the "Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health" (WT/L/540). This paragraph instructed the TRIPS Council to initiate by the end of 2003 work on the preparation of an amendment to the TRIPS Agreement to replace its provisions with a view to its adoption within six months, i.e. by June 2004. At its meeting in June 2004, the Council agreed to continue its work, initiated at its meeting in November 2003, on the preparation of the amendment with a view to the TRIPS Council making a recommendation by the end of March 2005 so that the General Council could conclude its work on the amendment at its first meeting thereafter. The Chair informed the General Council of these arrangements at its meeting on 27 July 2004.¹²

11. At its meeting in September, the Council had before it a submission from Norway containing information on Norway's implementation of the Decision (IP/C/W/427). A number of other Members provided information on their implementation at the Council's meetings. At its December meeting, the Council had a further exchange of views on the preparation of the amendment to the TRIPS Agreement. In this connection, the Council received a proposal from the delegation of Nigeria on behalf of the African Group (IP/C/W/437).¹³ The Council agreed that the Chair hold intensive consultations in various formats prior to the Council's next meeting with a view to carrying forward the work expeditiously so as to meet the March 2005 time-frame.

¹¹ Made available as an advance copy, final document to be circulated.

¹² Paragraphs 86-88 of the minutes of the General Council's meeting of 27 July and 1 August 2004 in document WT/GC/M/87.

¹³ Made available as an advance copy, final document to be circulated.

IX. REVIEW UNDER PARAGRAPH 8 OF THE DECISION ON THE IMPLEMENTATION OF PARAGRAPH 6 OF THE DOHA DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH

12. At its meeting of 1-2 December 2004, the Council took up the annual review, pursuant to paragraph 8 of the Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health (WT/L/540), of the functioning of the system set out in the Decision. The Council's report to the General Council on its operation is being circulated as document IP/C/33.

X. IMPLEMENTATION OF ARTICLE 66.2

13. At its first three meetings in 2004, the Council followed up its first annual review pursuant to paragraph 2 of the "Decision on the Implementation of Article 66.2 of the TRIPS Agreement" that it had taken up at its meeting in November 2003, and took note of a further report received from New Zealand (IP/C/W/412/Add.6).

14. At its meeting in December 2004, the Council took up its second annual review of developed country Member's reports on their implementation of Article 66.2. For this review, the Council received updated information from the following developed country Members: New Zealand; Japan; Switzerland; the European Communities and certain member States (the Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, the Slovak Republic, Spain, and Sweden); Canada; and the United States. The resulting documentation is being circulated in document IP/C/W/431 and addenda.

XI. TECHNICAL COOPERATION AND CAPACITY-BUILDING

15. The Council followed up its annual special review of technical cooperation held at its meeting in November 2003 and took note of further reports received from New Zealand and Australia (IP/C/W/408/Add.6 and 7) and the World Health Organization (IP/C/W/407/Add.4).

16. At its meeting in June 2004, the Council invited developed country Members to supply information on their activities pursuant to Article 67 of the TRIPS Agreement prior to the annual special review of this matter that was held at its September meeting. Other Members who also make available technical cooperation were encouraged to share information on these activities if they so wished. Intergovernmental organizations that have observer status in the TRIPS Council were also invited to provide information on their activities of relevance and, further, the WTO Secretariat was instructed to report on its activities. The Council received updated information from the following developed country Members: New Zealand; Switzerland; Japan; the United States; Norway; and the European Communities and certain member States (Austria, Denmark, Finland, France, Germany, Italy, Portugal, Spain, Sweden and the United Kingdom, as well as the Office for Harmonization in the Internal Market and the European Patent Office); and Australia (IP/C/W/426, addenda and supplements). Updated information was received also from the IMF, the OECD, the WHO and UPOV (IP/C/W/424 and addenda), as well as the WTO Secretariat (IP/C/W/428).

17. The Council was informed about an updated notification of a contact point for technical cooperation on TRIPS (IP/N/7/Rev.2/Add.6). In addition, at each meeting, the WTO and WIPO Secretariats provided information on the implementation of the WIPO-WTO Joint Initiative in favour of least-developed countries.

XII. REQUEST FROM MALDIVES FOR AN EXTENSION OF THE TRANSITION PERIOD UNDER ARTICLE 66.1 OF THE TRIPS AGREEMENT

18. At its meeting in September, the Council had before it a request from the Maldives for an extension of the transition period under Article 66.1 of the TRIPS Agreement (IP/C/W/425). The Council agreed that consultations be held on this request, and that the arrangements for these be coordinated between the Chair of the TRIPS Council and the Chair of the Committee on Trade and Development.

XIII. NON-VIOLATION AND SITUATION COMPLAINTS

19. At its September meeting, the Council considered what action it should take pursuant to the decision on the Doha Work Programme adopted by the General Council on 1 August 2004, in particular in regard to non-violation and situation complaints in the area of TRIPS. The Council agreed that the item on non-violation and situation complaints be put on the agenda of its December meeting, and that the Secretariat be requested to update its earlier summary note, circulated in June 2002 as document IP/C/W/349, on the points raised in the Council's substantive discussion of this matter so far. This updated summary note was circulated for the December meeting as document IP/C/W/349/Rev.1.

XIV. SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS REFERRED TO THE COUNCIL

20. At its September meeting, the Council considered what action it should take pursuant to the decision on the Doha Work Programme adopted by the General Council on 1 August 2004, in particular in regard to special and differential treatment. The Council agreed to request the Secretariat to summarize in an informal note the Council's work so far on the Category 2 proposals on special and differential treatment referred to it¹⁴, and to revert to the matter at its next meeting. This note was circulated for the December meeting in JOB(04)/164.

¹⁴ A proposal by least-developed countries concerning Article 66.1 of the TRIPS Agreement in document TN/CTD/W/4/Add.1, and a proposal by the African Group on Articles 65, 66.1, 70.8 and 70.9 in document TN/CTD/W/3/Rev.2.