

ANNUAL REPORT (2012) OF THE COUNCIL FOR TRIPS

I. GENERAL

1. Since the period covered by its 2011 report¹, the Council for TRIPS has held three formal meetings, on 28-29 February, 5 June and 6-7 November. The minutes of these meetings are to be found in documents IP/C/M/69, IP/C/M/70 and IP/C/M/71.²

2. The meetings were chaired by Ambassador Dacio Castillo (Honduras).

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. At its meeting in June 2010, the Council agreed to grant ad hoc observer status on a meeting-by-meeting basis to the African Regional Intellectual Property Organization (ARIPO) and the African Intellectual Property Organization (OAPI). Pursuant to this, ARIPO and OAPI were invited to attend each formal meeting on an ad hoc basis. At its meeting in November 2012, the Council agreed to grant ad hoc observer status on a meeting-by-meeting basis to the Cooperation Council of the Arab States of the Gulf (GCC) and the European Free Trade Association (EFTA). Decisions on requests for observer status from 13 other 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. To date, 129 Members have notified, pursuant to Article 63.2, all or part of their implementing legislation relating to all provisions of the Agreement. 102 Members have provided responses to the Checklist of Issues on Enforcement. During the reporting period, several Members have updated their earlier notifications of laws and regulations. 132 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. A number of Members have

¹ Document IP/C/59 and addenda 1-2.

² Document IP/C/M/71 to be circulated.

³ The organizations in question are listed in document IP/C/W/52/Rev.12.

updated the information they had earlier provided. In addition, during the reporting period, the Council received two notifications from the Russian Federation under Article 1.3.

III. REVIEWS OF NATIONAL LAWS AND REGULATIONS

5. At the Council's meeting in June, the Council initiated the review of the Maldives' implementing legislation. At its meeting in November, the Council agreed to review the implementing legislation of the Russian Federation at its meeting scheduled for 11-12 June 2013. It also took note of the outstanding material required to complete the pending reviews of three other Members.

IV. 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

6. Following the practice in its past meetings that delegates address these three agenda items together, the Council continued to discuss them together on the basis of contributions by Members. As requested by the Council, the Chair continued consulting on the earlier suggestion that the Secretariat of the Convention on Biological Diversity (CBD) be invited to brief the Council on the outcome of the tenth meeting of the Conference of the Parties to the CBD held in Nagoya, Japan in October 2010.

V. NON-VIOLATION AND SITUATION COMPLAINTS

7. At its meeting in February, the Council requested the Chair to consult on how the Council should organize its continued examination of the scope and modalities for such complaints. At its meeting in June, the Council requested the Secretariat to update its earlier summary note on the points raised in its substantive discussions on the issue of non-violation and situation complaints. This updated summary note was circulated for the November meeting as document IP/C/W/349/Rev.2.

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 meeting in March 2010, the Council invited Members to share information on bilateral agreements related to the protection of geographical indications into which they had entered. During the reporting period, Australia shared information on a bilateral agreement at the Council's June meeting. The Chair encouraged any Member that was party to any such bilateral agreement and had not yet shared such information with the Council to do so. The Chair also invited those delegations that had not yet provided responses to the Checklist of Questions (IP/C/13 and Add.1) to do so, and said that those Members that had already provided responses could provide updates to the extent there had been any significant changes to the way they provided protection to geographical indications.

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

10. At its meeting in November, the Council took up the annual review, pursuant to paragraph 8 of the Decision, of the functioning of the system set out in the Decision. The Council's report to the General Council on the operation of the system set out in the Decision is to be found in document IP/C/63.

11. As requested by the Council, the Secretariat periodically updated the note on the status of acceptances of the Protocol Amending the TRIPS Agreement.⁴

IX. IMPLEMENTATION OF ARTICLE 66.2

12. At its meeting in November, the Council took up its tenth annual review of developed country Members' reports on their implementation of Article 66.2. For this review, the Council received the fourth set of new detailed reports on actions they had taken or planned in pursuance of their commitments under Article 66.2 from the following developed country Members: Japan; New Zealand; Australia; Norway; Switzerland; Canada; the United States; and the European Union and individual member States, namely Austria, Belgium, France, Germany, Ireland, Slovakia and the United Kingdom. This documentation is being circulated in document IP/C/W/580 and addenda. In addition, Angola presented on behalf of the LDC Group a communication entitled "Questions Posed by the LDC Group in the Context of the Tenth Annual Review under Paragraph 2 of the Decision on the Implementation of Article 66.2 of the TRIPS Agreement" (IP/C/W/578). The Chair said that he intended to consult on the request by Haiti on behalf of the LDC Group that the Council adopt the proposed format for reports submitted by developed country Members under Article 66.2 contained in a communication by Angola on behalf of the LDC Group in document IP/C/W/561.

X. TECHNICAL COOPERATION AND CAPACITY-BUILDING

13. At its meeting in June, the Council invited developed country Members to supply information on their activities pursuant to Article 67 of the TRIPS Agreement prior to the annual review of technical cooperation at the November meeting. Intergovernmental organizations that have observer status in the TRIPS Council were 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: Japan; New Zealand; Australia; Norway; Switzerland; Canada; the United States; and the European Union and individual member States, namely Austria, Bulgaria, the Czech Republic, Finland, France, Germany, Hungary, Italy, Lithuania, the Netherlands, Slovenia, Spain, Sweden and the United Kingdom (being circulated in IP/C/W/582 and addenda). Updated information was also received from the WCO, FAO, WHO, UPOV and OECD (being circulated in IP/C/W/581, addenda and corrigenda), as well as from the WTO Secretariat (IP/C/W/577).

14. The Council continued its discussion on LDC priority needs for technical and financial cooperation. Pursuant to paragraph 2 of the decision on the "Extension of the Transition Period under Article 66.1 for Least-Developed Country Members", Mali presented to the Council's November meeting information on its priority needs for technical and financial cooperation (IP/C/W/575). The

⁴ The latest version has been circulated as document IP/C/W/490/Rev.9. The Secretariat also maintains a list of Members that have accepted the Protocol at http://www.wto.org/english/tratop_e/trips_e/amendment_e.htm.

Chair urged those least developed country Members that had not yet provided information to the Council on their individual priority needs pursuant to paragraph 2 of the Decision to do so.

15. In addition to the regular annual report on its technical cooperation activities, the European Union provided for the February meeting a complementary report specifically focusing on its technical cooperation activities for the benefit of LDCs (IP/C/W/568). Japan and Canada provided such complementary reports for the November meeting (IP/C/W/572/Rev.1 and IP/C/W/579, respectively).

XI. OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

16. The Council continued its consideration of the pending requests for observer status from international intergovernmental organizations. At its meeting in June 2011, the Council requested the Secretariat to contact the international intergovernmental organizations whose requests for observer status are pending to request up-to-date information, including on the nature of their work and the reasons for their interest in being accorded observer status. Since then, the Secretariat has received updated information from the European Free Trade Association (EFTA), the South Centre, the Conférence des Ministres de l'Agriculture de l'Afrique de l'Ouest et du Centre (CMA/AOC), the Cooperation Council of the Arab States of the Gulf (GCC), the United Nations Environment Programme (UNEP), and the International Organization of Vine and Wine (OIV). Furthermore, the CBD Secretariat has informed the Secretariat that it felt that no update was necessary since it had already renewed its request as recently as 24 November 2010 by means of a letter addressed to the WTO Director-General. At its meeting in November, the Council agreed to grant ad hoc observer status on a meeting-by-meeting basis to EFTA and the GCC, and to request that the Chair continue his consultations on the requests from the other five IGOs that had recently provided updated information, as well as on the requests from the remaining eight organizations that had not yet updated their information.

XII. LETTER FROM THE CHAIR OF THE GENERAL COUNCIL CONCERNING WAYS TO IMPROVE THE TIMELINESS AND COMPLETENESS OF NOTIFICATION AND OTHER INFORMATION FLOWS

17. The Council continued its consideration of a letter received in February 2009 from the Chair of the General Council requesting the Chair to consult with Members on ways to improve the timeliness and completeness of notifications and other information flows on trade measures falling within the Council's competence. The Secretariat provided information on further enhancements to its services improving the transparency and user-friendliness of the notification system. At the Council's meeting in November, the Chair said that, as requested in the letter from the Chair of the General Council, he would inform the Chair of the Trade Policy Review Body of the results of the continued consideration by the Council of the matter. He noted that this matter was closely related to the implementation of the recommendations for savings and more efficient use of resources made by the Budget Committee, and said that he was continuing to informally explore with delegations further ways to improve cost-effectiveness. The Council requested the Secretariat to inform the Council at its future meetings on any further enhancements to its services improving the transparency, timeliness, completeness and user-friendliness of the notification system under the Council's regular item A, which relates to notifications under TRIPS in general.

XIII. AUSTRALIA: TOBACCO PLAIN PACKAGING BILL 2011 AND ITS COMPATIBILITY WITH THE TRIPS AGREEMENT

18. At the request of the Dominican Republic, at its meeting in February the Council had on its agenda an item on "Australia: Tobacco Plain Packaging Bill 2011 and Its Compatibility with the

TRIPS Agreement". It had before it document IP/C/W/565 containing the Dominican Republic's statement on the same topic at the Council's October 2011 meeting. The Chair drew the Council's attention to a communication from Moldova entitled "Australia's Tobacco Plain Packaging Bill 2011" (IP/C/W/567).

XIV. IP ENFORCEMENT TRENDS

19. At the request of Australia, Canada, the European Union, Japan, Korea, Mexico, New Zealand, Singapore, Switzerland and the United States, at its meeting in February the Council had on its agenda an item on "IP Enforcement Trends". It had before it the text of the Anti-Counterfeiting Trade Agreement circulated in document IP/C/W/563.

XV. EXCHANGE OF INFORMATION ON SECURING SUPPLY CHAINS AGAINST COUNTERFEIT TRADEMARKS

20. At the request of the United States, at its June meeting the Council had on its agenda an item on "Exchange of Information on Securing Supply Chains against Counterfeit Trademarks". It had before it a communication from the United States on the matter (IP/C/W/570). In addition, Japan presented a communication on enforcement of intellectual property rights (IP/C/W/571), which provided an update of its earlier communication dated 8 October 2007 (IP/C/W/501).

XVI. COPYRIGHT LIMITATIONS AND EXCEPTIONS: ONGOING NEGOTIATIONS AT WIPO - BRIEFING BY BRAZIL AND THE UNITED STATES

21. At the request of Brazil and the United States, at its June meeting the Council had on its agenda an item on "Copyright Limitations and Exceptions: Ongoing Negotiations at WIPO - Briefing by Brazil and the United States".

XVII. INTELLECTUAL PROPERTY AND INNOVATION

22. At the request of Brazil and the United States, at its meeting in November the Council had on its agenda an item on "Intellectual Property and Innovation".

XVIII. OTHER BUSINESS

23. At the Council's meeting in February, the Secretariat provided, under "Other business", information on the implementation of the recommendations for savings and more efficient use of resources made by the Budget Committee (WT/BFA/128) and adopted by the General Council. The Chair said that he intended to informally explore with delegations further ways to improve cost-effectiveness.

24. At the Council's meeting in June, Cuba raised, under "Other business", the issue of compliance with the TRIPS Agreement.

25. At the Council's meeting in November, under "Other business", Cuba raised the issue of compliance with the TRIPS Agreement, Haiti on behalf of the LDC Group presented a request for an extension of the transitional period under Article 66.1 of the TRIPS Agreement (IP/C/W/583), and Switzerland announced an event on "TRIPS/CBD and Geographical Indications" organized by the co-sponsors of the proposal circulated in documents TN/C/W/52 and addenda 1-3.
