

## ANNUAL REPORT (2011) OF THE COUNCIL FOR TRIPS

### I. GENERAL

1. Since the period covered by its 2010 report<sup>1</sup>, the Council for TRIPS has held three formal meetings, on 1 March, 7 June, and 24-24 October. The minutes of these meetings are to be found in documents IP/C/M/65, IP/C/M/65/Corr.1, IP/C/M/66 and IP/C/M/67.<sup>2</sup>

2. The meeting in March was chaired by Mr. Martin Glass (Hong Kong, China) and the subsequent meetings by Ambassador Federico A. González (Paraguay).

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 Council for TRIPS. 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. Decisions on requests for observer status from 15 other organizations are pending.<sup>3</sup>

### 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, 128 Members have notified, pursuant to Article 63.2, all or part of their implementing legislation relating to all provisions of the Agreement. One hundred Members have provided responses to the Checklist of Issues on Enforcement. During the reporting period, some Members have updated their earlier notifications of laws and regulations. To date, 130 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 updated the information they had earlier provided.

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<sup>1</sup> Document IP/C/56.

<sup>2</sup> Document IP/C/M/67, to be circulated.

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

### **III. REVIEWS OF NATIONAL LAWS AND REGULATIONS**

5. At the Council's meeting in March, the Maldives informed the Council of its graduation from LDC status on 1 January 2011 and the state of play of its implementation of TRIPS. The Council agreed to come back to the arrangements for the review of the Maldives' implementing legislation later in 2011, once it had received the necessary notifications of laws and regulations. At its meeting in October, the Council agreed to review Maldives' implementing legislation at its meeting scheduled for 5-6 June 2012. The Council also took note of the outstanding material required to complete the pending reviews of three other Members.

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

6. At its October meeting, the Council undertook the final transitional review of the implementation by China of its WTO commitments pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432), and agreed that the Chair, acting on his own responsibility, would prepare a factual report on the review to the General Council.<sup>4</sup>

### **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. 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. At the Council's meeting in March, in its capacity as the host country of the tenth meeting of the Conference of the Parties to the CBD held in Nagoya, Japan in October 2010, Japan made a presentation on the "Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity" that was adopted at that meeting on 29 October 2010. The Council requested the Chair to continue consulting on the earlier suggestion that the CBD Secretariat be invited to brief the Council on the outcome of the Nagoya meeting, as well as on the suggestion that the WIPO Secretariat be invited to brief on the work of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. At the Council's meeting in October, the Chair reported that, in light of his consultations, there was no longer a need for such a briefing by the WIPO Secretariat at the Council's meeting. The Council requested him to continue consulting on the suggestion concerning the CBD Secretariat.

8. At the Council's meeting in June, the Plurinational State of Bolivia presented a paper entitled "Article 27.3(b) and the Legalization of Biopiracy: Trends, Impacts and Why It Needs to Be Amended" (IP/C/W/554), which it had initially introduced at the Council's meeting in March.

### **VI. NON-VIOLATION AND SITUATION COMPLAINTS**

9. The Council continued its consideration of this item. At its meeting in June, the Chair indicated that it was his intention to hold consultations in various formats on the matter prior to the Council's October meeting with a view to enabling the Council to agree on its recommendation to the Ministerial Conference at that meeting. At its meeting in October, the Council agreed to keep open this agenda item and that the Chair continue his consultations on the matter. The Chair said that he hoped to be able to reconvene the Council once the further work was sufficiently mature, with a view to the Council agreeing on a recommendation to the Ministerial Conference.

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<sup>4</sup> To be circulated in IP/C/ -series of documents.

**VII. REVIEW OF IMPLEMENTATION OF THE TRIPS AGREEMENT UNDER ARTICLE 71**

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

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

11. The Chair recalled that, at its meeting in March 2010, the Council had invited Members to share information on bilateral agreements related to the protection of geographical indications into which they had entered. He 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.

**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 in March, the Council followed up the annual review under paragraph 8 of the Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health it had held at its meeting in October 2010. In advance of the meeting, the Chair had faxed to Members a list of the issues that Members had identified at the Council's October 2010 meeting as requiring further discussion or information, so as to help delegations to prepare for the follow-up discussion. The Council requested the Chair to consult on any further follow-up and on preparations of the next annual review.

13. At the Council's meeting in June, the Chair reported under "Other business" on his consultations on any further follow-up to the 2010 annual review and the preparations of the next annual review to be held at the October 2011 meeting. He indicated that it was his intention to pursue further consultations on the preparations of the next annual review and the issue of a possible workshop.

14. At its meeting in October, 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 discussion was based on a list of topics and issues that the Chair had faxed to Members in advance of the meeting. The Council requested the Chair to consult on next steps, including the issue of a possible workshop. The Council's report to the General Council on the operation of the system set out in the Decision will be circulated in IP/C/- series of documents. The Council agreed to forward to the General Council a proposal for a decision to extend the period of acceptance by Members of the Protocol until 31 December 2013.<sup>5</sup>

15. As requested by the Council, the Secretariat periodically updated the note on the status of acceptances of the Protocol Amending the TRIPS Agreement.<sup>6</sup>

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<sup>5</sup> Document IP/C/58.

<sup>6</sup> The latest version has been circulated as document IP/C/W/490/Rev.8.

## **X. IMPLEMENTATION OF ARTICLE 66.2**

16. At its meeting in March, the Council followed up its eighth annual review pursuant to paragraph 2 of the "Decision on the Implementation of Article 66.2 of the TRIPS Agreement"<sup>7</sup> that it had taken up at its meeting in October 2010. It received an additional update to the third set of new detailed reports from the European Union and individual member States, namely Austria, Belgium, Finland, France, Germany, the Slovak Republic, Spain, Sweden, and the United Kingdom (IP/C/W/551/Add.7).

17. At its meeting in October 2011, the Council took up its ninth annual review of developed country Members' reports on their implementation of Article 66.2. For this review, the Council received the second set of updates to the third 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: Norway; Japan; New Zealand; Australia; Canada; Switzerland; the United States; and the European Union and individual member States, namely Austria, Denmark, Finland, France, Ireland, Lithuania, Slovakia, Spain, Sweden and the United Kingdom. This documentation is being circulated in document IP/C/W/558 and addenda. In addition, Angola presented on behalf of the LDC Group two new communications entitled "Proposed Format for Reports Submitted by the Developed Country Members under Article 66.2" (IP/C/W/561) and "Questions Posed by the LDC Group in the Context of the Ninth Annual Review under Paragraph 2 of the Decision on the Implementation of Article 66.2 of the TRIPS Agreement" (IP/C/W/562).

## **XI. TECHNICAL COOPERATION AND CAPACITY-BUILDING**

18. Following up the annual review of technical cooperation held at its meeting in October 2010, the Council received for its March meeting additional information from the African Regional Intellectual Property Organization (IP/C/W/549/Add.6). For its June meeting, it received additional information from the European Union and individual member States and agencies, namely Austria, Belgium, Bulgaria, the Czech Republic, Finland, France, Germany, Hungary, Portugal, Romania, Spain, Sweden, and the United Kingdom, as well as the European Patent Office (IP/C/W/550/Add.7).

19. 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 October meeting. Intergovernmental organizations that have observer status in the Council for TRIPS 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: Norway; Japan; New Zealand; Australia; Canada; Switzerland; the United States; and the European Union and individual member States and agencies, namely Austria, Belgium, Bulgaria, Czech Republic, Finland, France, Germany, Italy, Lithuania, Portugal, Romania, Slovenia, Spain and the United Kingdom, as well as the European Patent Office (being circulated in IP/C/W/560 and addenda). Updated information was also received from WCO, WHO, UNCTAD and WIPO (being circulated in IP/C/W/559 and addenda), as well as from the WTO Secretariat (IP/C/W/557).

20. 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", Senegal presented to the Council's June meeting information on its priority needs for technical and financial cooperation (IP/C/W/555). The 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.

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<sup>7</sup> Document IP/C/28.

## **XII. OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS**

21. The Council continued its consideration of the pending requests for observer status from international intergovernmental organizations. At its meeting in March, the Council agreed that the Chair consult on the issue of observer status for international intergovernmental organizations. At its meeting in June, 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. For the Council's meeting in October, such information was received from 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) and the South Centre. The Council requested that the Chair continue his consultations on the issue of observer status for international intergovernmental organizations.

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

22. 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.

## **XIV. AUSTRALIA: TOBACCO PLAIN PACKAGING BILL 2011 AND ITS COMPATIBILITY WITH THE TRIPS AGREEMENT**

23. At the request of the Dominican Republic, at its meeting in June the Council had on its agenda an item on "Australia: Tobacco Plain Packaging Bill 2011 and Its Compatibility with the TRIPS Agreement. At the request of Ukraine, at its meeting in October the Council had on its agenda an item on "Australia's Tobacco Plain Packaging Bill 2011".

## **XV. ENFORCEMENT TRENDS**

24. At the request of Australia, Canada, the European Union, Korea, Japan, New Zealand, Singapore, Switzerland and the United States, at its meeting in October the Council had on its agenda an item on "Enforcement Trends".<sup>8</sup> It received a communication from Australia, Canada, the European Union, Korea, Japan, New Zealand, Singapore, Switzerland and the United States (IP/C/W/563).

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<sup>8</sup> This was originally put forward on the proposed agenda as "Enforcement of Intellectual Property Rights (Part III of the TRIPS Agreement)".