

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

ANNUAL REPORT (2005) OF THE COUNCIL FOR TRIPS

I. GENERAL

1. Since the period covered by its 2004 report¹, the Council for TRIPS has held three formal meetings, on 8-9 and 31 March; 14-15 June; and 25, 26 and 28 October. It agreed to suspend its October meeting to keep three agenda items open for further consideration and discussion, as indicated below. The minutes of these meetings are to be found in documents IP/C/M/47-49.²

2. The meeting in March 2005 was chaired by Mr. Tony Miller (Hong Kong, China) and the subsequent meetings by Ambassador Hyuck Choi (Korea).

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 June meeting, the Council received a request for observer status from the ACP Group and, at its October meeting, it took note of a letter received from the South Centre reiterating its request of November 1998 for observer status. Decisions on requests from the ACP Group, the South Centre and 15 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, 125 Members have notified pursuant to Article 63.2 all or part of their implementing legislation relating to all provisions of the Agreement. Ninety-six Members have provided responses to the Checklist of Issues on Enforcement. During the reporting period, a number of Members notified amendments to laws and regulations they had notified earlier.⁴ To date,

¹ Document IP/C/32.

² Document IP/C/M/49 to be circulated.

³ The Organizations in question are listed in document IP/C/W/52/Rev.11.

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; any subsequent amendments of a Member's laws and regulations shall be notified without delay after their entry into force (IP/C/2). At that meeting, the Council also agreed that Members would provide responses

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.⁵

III. REVIEW OF NATIONAL LAWS AND REGULATIONS

5. During the reporting period, the Council completed its reviews of the legislation of Armenia, Egypt, the Former Yugoslav Republic of Macedonia and Zimbabwe, and took note of the new responses received from and the outstanding material required to complete the pending reviews of ten other Members.

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

6. At its October meeting, the Council undertook the fourth 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.⁶

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. The Council received a number of new submissions relating to these agenda items: for its March meeting, communications from Peru focusing on its experience in fighting biopiracy through its National Commission against Biopiracy (IP/C/W/441); from Bolivia, Brazil, Colombia, Cuba, the Dominican Republic, Ecuador, India, Peru and Thailand 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 Benefit-Sharing under the Relevant National Regime" (IP/C/W/442); and from Brazil and India entitled "Technical Observations on Issues Raised in a Communication by the United States (IP/C/W/434)" (IP/C/W/443); for its June meeting, communications from Switzerland containing questions on proposals submitted by other Members relating to the three agenda items (IP/C/W/466); from Peru on its position in relation to the disclosure of origin and legal provenance (IP/C/W/447); and from the United States relating to the three agenda items (IP/C/W/449); and for its October meeting communications from Peru containing a case study (IP/C/W/458), and from Bolivia, Brazil, Colombia, Cuba, India and Pakistan containing technical observations on an earlier US submission circulated as document IP/C/W/449 (IP/C/W/459). At its October meeting, the Council agreed to keep these agenda items open in order to allow further consultation on how it should report on these matters.

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.

to a Checklist of Issues on Enforcement (IP/C/5). 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.

⁵ These contact points are contained in document IP/N/3/Rev.8 and addenda.

⁶ This will be circulated in document IP/C/39.

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

9. The Council continued its discussion under this agenda item. No documents were submitted by delegations.

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 and Corr.1) on the preparation of an amendment to the TRIPS Agreement to replace the provisions of the waiver Decision.

11. At its meeting in March 2005, the Council had before it communications from the African Group entitled "Legal Arguments to Support the African Group Proposal on the Implementation of Paragraph 11 of the 30 August 2003 Decision" (IP/C/W/440 and Corr.1); from the delegation of Barbados, on behalf of the Group of Commonwealth Developing Countries, containing a "Report on the Workshop on the WTO Decision on Access to Medicines at Affordable Prices for Countries with no or Insufficient Manufacturing Capacities", that was organized by the Commonwealth Secretariat in cooperation with the ACP Geneva Office and the Agency for International Trade Information and Cooperation (AITIC) in Geneva from 12 to 14 October 2004 (IP/C/W/439); and from the United States entitled "Comments on Implementation of the August 30, 2003 Agreement (Solution) on the TRIPS Agreement and Public Health" (IP/C/W/444).

12. On 9 March 2005, the Council agreed to suspend its meeting so as to allow the Chair to continue his consultations with a view to meeting the March 2005 time-frame agreed by the Council in June 2004. At the request of some delegations, the Chair reconvened the meeting on 31 March to provide an opportunity for delegations to make statements on TRIPS and public health. The Council agreed that the Chair continue his consultations in the period until the General Council meeting of 26 May with a view to enabling the General Council to take action at that time. At that meeting, the Chair of the TRIPS Council reported to the General Council that the question of the preparation of an amendment continued to be actively under consideration in the TRIPS Council but some more time was necessary before the Council was to be in position to make a recommendation.

13. At the Council's meeting in June, Canada and India introduced the notifications of their legislation implementing the Decision, and Norway recalled the information it had provided on its implementation. Korea informed the Council of a revision of its patent law, that was to enter into force on 1 December 2005, and the European Communities and Switzerland referred to the preparatory work with respect to amendments to their legislation to give effect to the provisions of the Decision. At that meeting, the Council agreed that the Chair continue his consultations on the preparation of an amendment with a view to agreeing on a recommendation as soon as possible. He informed the General Council of these arrangements at its meeting of 27 July. Furthermore, he reported to the General Council on his further consultations at its meeting of 19 October.

14. At its meeting in October, the Council agreed, in the light of the current situation, to keep open this agenda item. 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 General Council in good time in advance of the Hong Kong Ministerial Conference.

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

15. At its meeting in October 2005, 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, of the functioning of the system set out in the Decision. It had before it a communication from Canada providing a description of the functioning of Canada's system with respect to the implementation of the Decision (IP/C/W/464). The Council's report to the General Council on the operation of the system set out in the Decision has been circulated as document IP/C/37.

X. IMPLEMENTATION OF ARTICLE 66.2

16. At its first two meetings in 2005, the Council followed up its second 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 December 2004, and took note of a further report from Norway (IP/C/W/431/Add.6) and a supplement to the earlier report from the European Communities, providing information on the relevant activities of the European Investment Bank (IP/C/W/431/Add.3/Suppl.1).

17. At its meeting in October 2005, the Council took up its third annual review of developed country Members' reports on their implementation of Article 66.2. For this review, the Council received updated information from the following developed country Members: Japan; Switzerland; Canada; New Zealand; the European Communities and certain member States (the Czech Republic, Denmark, Finland, France, Germany, the Slovak Republic, Spain, Sweden and the United Kingdom); as well as from Norway; and the United States. The documentation is being circulated in document IP/C/W/452 and addenda.

XI. TECHNICAL COOPERATION AND CAPACITY-BUILDING

18. 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 special review of this matter that was held at its October 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: Switzerland; Australia; Japan; Canada; New Zealand; Norway; the European Communities and certain member States (Austria, the Czech Republic, Denmark, Finland, France, Germany, Portugal, Spain, Sweden and the United Kingdom); as well as from the United States (being circulated in IP/C/W/445 and addenda). Updated information was received also from the OECD, WHO, UPOV, and WIPO (being circulated in IP/C/W/456 and addenda), as well as the WTO Secretariat (IP/C/W/454).

XII. TRANSITION PERIOD FOR LEAST-DEVELOPED COUNTRIES; REQUESTS FOR EXTENSION

19. At its meeting in June, the Council agreed to extend the Maldives' transition period under Article 66.1 of the TRIPS Agreement until 20 December 2007 (IP/C/35).

20. At its meeting in October, the Council had before it a communication from the delegation of Zambia on behalf of the least-developed country Members of the WTO containing a request for an extension of the transitional period under Article 66.1 of the TRIPS Agreement (IP/C/W/475). The Council agreed to keep this agenda item open so as to allow time for further consultations on the matter.

XIII. NON-VIOLATION AND SITUATION COMPLAINTS

21. At its March and June meetings, the Council continued its discussion of non-violation and situation complaints, *inter alia*, on the basis of an updated Secretariat summary note on the points raised in the Council's substantive discussions of this matter so far (IP/C/W/349/Rev.1). At its October meeting, it considered in particular what kind of recommendation it could provide to the Hong Kong Ministerial Conference. In concluding the discussion, the Chair noted that the Council was not in a position to make any recommendations at this stage. This meant that further work might need to take place in the period leading up to the Ministerial Conference. He indicated that he would report accordingly to the Chairman of the General Council.

XIV. SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS REFERRED TO THE COUNCIL

22. At its meeting in June, the Council agreed to authorize the Chair to report to the General Council that the TRIPS Council reiterated its recommendation concerning the text that was forwarded to the General Council for appropriate action by the Chair of the TRIPS Council in August 2003, and to provide a brief factual report on what has happened with regard to the other proposals. The Chair's report was circulated as document IP/C/36. At its meeting in October, the Council authorized the Chair to report, if requested to do so, that the situation remained as described in the aforementioned report.

XV. ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS – COMMUNICATION FROM THE EUROPEAN COMMUNITIES

23. At its meetings in June and October, the Council discussed a communication from the European Communities on "Enforcement of Intellectual Property Rights" (IP/C/W/448).

XVI. REQUESTS FOR INFORMATION PURSUANT TO ARTICLE 63.3 OF THE AGREEMENT

24. At its meeting in October, the Council had before it, under "Other business", requests from the United States, Switzerland and Japan asking China to provide certain information pertaining to the subject-matter of the Agreement pursuant to its Article 63.3 (IP/C/W/461-463, respectively).
