

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

### ANNUAL REPORT (2003) OF THE COUNCIL FOR TRIPS

#### I. GENERAL

1. This document takes into account and updates the information contained in the report submitted by the Council for TRIPS to the General Council on its work in the first part of the year in document IP/C/27/Add.1 of 2 July 2003. This was presented as an update to the Council's 2002 report (IP/C/27).

2. Since the period covered by its 2002 report, the Council reconvened, on 20 December 2002, its end-of-year meeting held on 25-27 and 29 November 2002 to continue its work on agenda items "Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health" and "Implementation of Article 66.2". In the year 2003, the Council has so far held four formal meetings, on 18-19 February, 4-5 June, 28 August and 18 November. The minutes of these meetings are to be found in documents IP/C/M/38-42.<sup>1</sup> The meeting of 28 August was dedicated to the consideration of the item "Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health".

3. The reconvened meeting in December 2002 and the meeting in February 2003 were chaired by Ambassador Eduardo Pérez Motta (Mexico) and the subsequent meetings by Ambassador Vanu Gopala Menon (Singapore).

4. 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.<sup>2</sup>

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<sup>1</sup> Document IP/C/M/42 to be circulated.

<sup>2</sup> The Organizations in question are listed in document IP/C/W/52/Rev.10.

## **II. NOTIFICATIONS UNDER THE PROVISIONS OF THE AGREEMENT**

5. At its meeting in February, June and November, the Council took note of new notifications under various provisions of the TRIPS Agreement.<sup>3</sup> 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, an 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 the Agreement. 96 Members have provided responses to the Checklist of Issues on Enforcement.<sup>4</sup> During the reporting period, a number of Members have notified amendments to laws and regulations they had notified earlier.<sup>5</sup> To date, 118 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.<sup>6</sup> In addition, during the reporting period, the Council received notifications from Denmark and the Former Yugoslav Republic of Macedonia under Article 1.3.<sup>7</sup>

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

6. During the reporting period, the Council completed its reviews of Brazil, Cameroon, China, Kenya and the Philippines, and took note of the new responses received from and the outstanding material required to complete the pending reviews of 15 other Members.<sup>8</sup>

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

7. At its November meeting, the Council undertook the second 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.<sup>9</sup>

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<sup>3</sup> 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).

<sup>4</sup> A table attached to document JOB(03)/102, dated 28 May 2002, sets out the status, as of 26 May 2003, 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.

<sup>5</sup> 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.

<sup>6</sup> These contact points are contained in document IP/N/3/Rev.7 and addenda.

<sup>7</sup> Circulation of notifications under Articles 1.3 and 3.1 takes place in the IP/N/2/COUNTRY/- series of documents.

<sup>8</sup> A table attached to document JOB(03)/209, dated 12 November 2003, 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.

<sup>9</sup> This will be circulated in document IP/C/31.

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

8. At the Council's reconvened meeting on 20 December 2002, the Chair informed the Council that the intensive consultations he had held had not led to a resolution of the language concerning the scope of diseases/public health problems in paragraph 1(a) of the draft text he had tabled on 16 December 2002 (JOB(02)/217). The Council authorized him to report this to the General Council and to recommend that the TRIPS Council be asked to resume work on this matter at the beginning of 2003 in order to resolve the outstanding issues in the Chairman's text of 16 December 2002 and to report to the General Council in order to enable it to take a decision implementing a solution to the problem identified in paragraph 6 at its meeting scheduled for 10 February 2003.<sup>10</sup>

9. Three new documents were submitted prior to the Council's meeting in February 2003, one by the United States (IP/C/W/396/Corr.1), the second by the European Communities and their member States (JOB(03)/9) and the third by Japan (JOB(03)/19). At that meeting, the Chair reported that he was not in a position to put forward any further suggestions or ideas to bridge the remaining gap in the 16 December 2002 text and that he would report the state of play on this subject to the Chair of the General Council, leaving it to his successor to decide on further consultations on this subject.

10. At its meeting in June, the Council had before it two new submissions: a communication on behalf of the ACP countries (IP/C/W/401) and a communication from the European Communities (IP/C/W/402). After the discussion, the Chair expressed his intention to remain in close contact with delegations with a view to resuming consultations as soon as developments showed signs of renewed consultations being useful. He urged delegations to continue to dialogue with each other so that a solution could be found based on the 16 December 2002 text. He hoped that a solution could be found before the Cancun Ministerial Conference and preferably in time for the next General Council meeting scheduled for 24 July 2003.

11. At its meeting of 28 August 2003, the Council for TRIPS approved the draft Decision on "Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health" contained in document JOB(02)/217<sup>11</sup> and agreed to forward it to the General Council for adoption. Furthermore, the TRIPS Council approved forwarding, along with the draft Decision, the text of the statement contained in document JOB(03)/177 to be made by the Chairman of the General Council prior to the adoption of the Decision.<sup>12</sup>

12. 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), the Council initiated work on the preparation of an amendment of the TRIPS Agreement replacing the provisions of that Decision. The Council had before it a submission from the European Communities (IP/C/W/416). The Chair indicated his intention to hold informal consultations on the matter in various formats, in small groups as well as in open-ended sessions, before the Council's next meeting.

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<sup>10</sup> The General Council considered this matter on 20 December 2002, and invited the TRIPS Council to resume work on it promptly at the beginning of 2003 to resolve the outstanding issues in the Chairman's text of 16 December 2002 and to report to the General Council so that a decision implementing a solution to the problem identified in paragraph 6 could be taken at the first General Council meeting in 2003.

<sup>11</sup> Subsequently circulated in document IP/C/W/405.

<sup>12</sup> At its meeting of 30 August 2003, the General Council adopted the Decision in the light of the statement read out by its Chairman (WT/L/540; the statement has been reproduced in paragraph 29 of the minutes of the General Council issued as WT/GC/M/82).

**VI. 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**

13. The Council continued its discussion of these three agenda items at its meetings in February, June and November 2003. Given the consultations under way in the context of the TNC on outstanding TRIPS implementation issues, the examination of these matters at the meetings in question did not include consideration of outstanding implementation issues relating to them. For the February meeting, the Secretariat had prepared a note containing an updated synoptic table summarizing the information Members had provided in response to a questionnaire on the implementation of Article 27.3(b) (IP/C/W/273/Rev.1). At its June meeting, the Council had before it three new communications: one from Switzerland expressing its views on these three agenda items (IP/C/W/400/Rev.1); one received from India on behalf of Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, India, Peru, Thailand and Venezuela concerning the relationship between the TRIPS Agreement and the Convention on Biological Diversity and the Protection of Traditional Knowledge (IP/C/W/403); and one received from Morocco on behalf of the African group suggesting ways of taking forward the review of Article 27.3(b) (IP/C/W/404). The consideration of these communications was continued at the Council's November meeting.

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

14. The Council continued its consideration of this agenda item. No new written submissions were made.

**VIII. IMPLEMENTATION OF ARTICLE 66.2**

15. At its meeting in February 2003, the Council adopted a decision on "Implementation of Article 66.2 of the TRIPS Agreement" (IP/C/28), giving effect to the instructions of the Doha Ministerial Conference in paragraph 11.2 of the Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/17) to put in place a mechanism for ensuring the monitoring and full implementation of the obligations in question.

16. In addition, the Council took note of information developed countries had provided on their implementation of Article 66.2 (IP/C/W/388 and addenda 1-8) and of a related "Reflection Paper on Transfer of Technology to Developing and Least-Developed Countries" submitted by the European Communities and their member States (IP/C/W/398).

17. Pursuant to paragraph 2 of the above-mentioned Decision, the Council took up its first annual review of developed country Member's reports on their implementation of Article 66.2. Information was received from Japan; the Czech Republic; Switzerland; the United States; Norway; and the European Communities and the following EC members States: France, Finland, Germany, Ireland, Spain and Sweden (IP/C/W/412 and addenda).

**IX. NON-VIOLATION AND SITUATION COMPLAINTS**

18. The Council continued its discussion under this agenda item at its meetings in February and June, including on options for the recommendations on non-violation and situation complaints it was to make to the Cancun Ministerial Conference, as called for in paragraph 11.1 of the Decision on Implementation-Related Issues and Concerns. While further consultations in July and August 2003 led to a narrowing of differences on the way forward, the Council was not able to submit agreed recommendations to the Cancun Ministerial Conference.

## **X. ELECTRONIC COMMERCE**

19. At its meeting in June, the Council took note of an update to the Secretariat's factual background note on intellectual property and electronic commerce (IP/C/W/128/Add.1), and adopted its report to the General Council on the "Work Programme on Electronic Commerce" (IP/C/29).

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

20. At its meetings in February, June and November, the Council considered how to carry forward this review. In June, the Council agreed to request the Secretariat to update its summary note (IP/C/W/253) on the information provided by Members in response to a checklist of questions (IP/C/13 and Add.1) on the way they provided protection for geographical indications to take into account the information received from Members since the circulation of that summary note. In addition, the Council invited those Members that had not yet provided such information in response to the checklist to do so. At the November meeting, the Chair indicated his intention to hold informal consultations on how to carry forward this review before the Council's next meeting.

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

21. 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 the November 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 Japan; the Czech Republic; the United States; Norway; Switzerland; and the European Communities and the following EC member States: Austria, Denmark, Finland, France, Germany, Italy, Spain, Sweden and the United Kingdom (being circulated in document IP/C/W/408 and addenda). Updated information was also received from the OECD, IMF, FAO and UPOV (being circulated in document IP/C/W/407 and addenda), as well as the WTO Secretariat (IP/C/W/406).<sup>13</sup> In addition, the WTO and WIPO Secretariats provided, at the February, June and November meetings, information on the implementation of the WIPO-WTO Joint Initiative in favour of least-developed countries.

## **XIII. SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS REFERRED TO THE COUNCIL**

22. At its June meeting, the Council considered the special and differential treatment proposals made in the context of the negotiations in the Special Session of the Committee on Trade and Development and referred to it by the Chair of the General Council in a letter dated 20 May 2003.<sup>14</sup> The Chair of the TRIPS Council encouraged Members to continue their mutual dialogue on the matter. The Council authorized the Chair to report on the further consultations to the General Council in advance of its meeting of 24 July on his own responsibility. As regards the proposals by the African Group, the Chair informed the General Council, at its meeting of 24 July, that the African Group had been consulting with other delegations on their proposal dealing with exclusive marketing rights, and that the delegations concerned had informed him that they were close to an agreement

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<sup>13</sup> Contact points in developed country Members' administrations which can be addressed by developing countries seeking technical cooperation on TRIPS are contained in document IP/N/7/Rev.2 and addenda. In addition, this document contains contact points for technical assistance on TRIPS notifications between WTO Members notified by Members pursuant to paragraph 11 of document IP/C/W/241.

<sup>14</sup> 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/W3/Rev.2.

between them. The African Group conveyed to the Chair on 19 August a text which modified its original proposal in the light of discussions it had held with some other delegations. The Chair forwarded this text by fax for the consideration of the Members of the TRIPS Council. No comments were made in response to this fax. The Chair, therefore, forwarded the text, by means of a letter dated 21 August 2003, to the Chair of the General Council for appropriate action.<sup>15</sup>

#### **XIV. INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO**

23. During the period under review, the Council was informed of actions relating to proceedings in cases initiated under the Dispute Settlement Understanding relevant to the TRIPS Agreement (documents WT/DS160/23; IP/D/19/Add.1 and WT/DS174/20; and IP/D/25 and WT/DS290/18) as well as of other developments elsewhere in the WTO relating to the TRIPS Agreement.

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<sup>15</sup> The text of the letter has been reproduced in document JOB(03)/171.