

ANNUAL REPORT (2010) OF THE COUNCIL FOR TRIPS

I. GENERAL

1. Since the period covered by its 2009 report¹, the Council for TRIPS has held three formal meetings, on 2 March, 8-9 June, and 26-27 October. The minutes of these meetings are to be found in documents IP/C/M/62-64.²

2. The meeting in March was chaired by Ambassador Karen Tan (Singapore), and the subsequent meetings by Mr. Martin Glass (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. 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). Decisions on requests for observer status from 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, 127 Members have notified, pursuant to Article 63.2, all or part of their implementing legislation relating to all provisions of the Agreement. Ninety-nine 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, 128 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.⁴

¹ Document IP/C/52 and Add.1.

² Document IP/C/M/64 to be circulated.

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

⁴ This information on contact points is contained in document IP/N/3/Rev.11 and addenda.

III. REVIEWS OF NATIONAL LAWS AND REGULATIONS

5. During the reporting period, the Council completed its reviews of the legislation of Grenada and Suriname that had been initiated earlier, and 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. The Council continued its discussion of these three agenda items. For its March meeting, the Council received a new communication from Bolivia on the review of Article 27.3(b) (IP/C/W/545 and Corr.1).

V. NON-VIOLATION AND SITUATION COMPLAINTS

7. At its meeting in March, the Council agreed to keep the item on non-violation and situation complaints on the agenda as a regular item so as to allow Members who would have new thinking to share it, and also to enable the Council to revert to the question of further organization of its work in the light of any future suggestions.

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, the Council invited Members to share information on bilateral agreements related to the protection of geographical indications into which they had entered. For its meeting in June, the Council received such information from Peru and Korea (IP/C/W/547 and Add.1, respectively). The Chair urged those delegations that had not yet provided responses to the Checklist of Questions (IP/C/13 and Add.1) to do so, and said also 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. At its meeting in June, the Council had before it responses from Croatia (IP/C/W/117/Add.33).

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 the Council's meeting in March, the Chair reported under "Other business" on the consultations on the operation of the Paragraph 6 System that she had held as requested by the Council at its meeting in October 2009.

11. At the request of Brazil, China, Cuba, Ecuador, India, Indonesia, Peru and Venezuela, the Council had on the agenda of its June meeting an item on "Implementation of Paragraph 6 System". The Council agreed to set aside the second day of its meeting in October for the next 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", and requested the Chair to continue his consultations on how to proceed with the preparations of that review.

12. 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 Council set aside the second day of that meeting for the review. The discussion was based on a list of topics that the Chair had faxed to Members in advance of the meeting. The Council requested the Chair to consult on follow-up to the review. The Council's report to the General Council on the operation of the system set out in the Decision is being circulated as document IP/C/57.

13. As requested by the Council, the Secretariat periodically updated the note on the status of acceptances of the Protocol Amending the TRIPS Agreement.⁵

IX. IMPLEMENTATION OF ARTICLE 66.2

14. At its meetings in March and June, the Council followed up its seventh annual review pursuant to paragraph 2 of the "Decision on the Implementation of Article 66.2 of the TRIPS Agreement"⁶ that it had taken up at its meeting in October 2009. For its March meeting, it received an additional new detailed report from the European Union and individual member States (namely Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Spain, Sweden and the United Kingdom) (IP/C/W/536/Add.7).

15. At its meeting in October 2010, the Council took up its eighth annual review of developed country Members' reports on their implementation of Article 66.2. For this review, the Council received 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, Australia, Switzerland, Japan, New Zealand, the United States and Canada. This documentation is being circulated in document IP/C/W/551 and addenda.

X. TECHNICAL COOPERATION AND CAPACITY-BUILDING

16. Following up the annual review of technical cooperation held at its meeting in October 2009, the Council received for its March meeting additional updated information from the European Union and individual member States and agencies (namely Austria, Bulgaria, the Czech Republic, Finland, France, Germany, Hungary, Italy, Portugal, Spain, Sweden, and the United Kingdom, as well as the European Patent Office) (IP/C/W/539/Add.7). As regards intergovernmental organizations, further updated information was received from UPOV and the WCO (IP/C/W/541/Add.3 and 4).

17. 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. 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: Norway, Australia, Switzerland, Japan, New Zealand, the United States and Canada (being circulated in IP/C/W/550 and addenda). Updated information was received also from OECD, WCO, FAO, UNCTAD, WHO and WIPO (being circulated in IP/C/W/549 and addenda), as well as from the WTO Secretariat (IP/C/W/553).

18. 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", the Council received information on the individual priority needs for technical and financial cooperation from the following Members: for its March meeting from Bangladesh (IP/C/W/546), for its June and October meetings from Rwanda

⁵ The latest version has been circulated as document IP/C/W/490/Rev.7.

⁶ Document IP/C/28.

(IP/C/W/548 and Add.1), and for its October meeting from Tanzania (IP/C/W/552). 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. The Council also continued its discussion of communications Brazil had presented at its meetings in June 2008 and October 2009 entitled "Technical Cooperation and Capacity Building: 'Cluster' A of the Development Agenda" (IP/C/W/513 and Add.1).

XI. OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

19. The Council continued its consideration of the pending requests for observer status from international intergovernmental organizations. At its meeting in June, the Council agreed to grant ad hoc observer status on a meeting-by-meeting basis to the African Regional Industrial Property Organization (ARIPO) and the African Intellectual Property Organization (OAPI). At each meeting, the Chair informed the Council on the Chair's consultations on the request for observer status received from the CBD Secretariat. At its meeting in October, the Council agreed that the Chair continue his consultations on the issue of observer status for international intergovernmental organizations.

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

20. 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, including the launch of the TRIPS transparency toolkit, clarification of preferred formats for submission of texts, and the creation of the WIPO-WTO Common Portal. At the June meeting, also the WIPO Secretariat provided an update on its related activities.

XIII. ENFORCEMENT TRENDS

21. At the request of China and India, at its meeting in June the Council had on its agenda an item on "Enforcement Trends".⁷

XIV. OTHER BUSINESS

22. At its meeting in March, the Council considered, under "Other business", the issue of "Public health dimension of the TRIPS Agreement" raised by Brazil and India.

23. At its meeting in June, Ecuador informed the Council, under "Other business", on its recent experience in using flexibilities under the TRIPS Agreement.

24. At its meeting in October, the Council considered, under "Other business", the issue of "IP enforcement trends" raised by India and Indonesia.

⁷ This was originally put forward on the proposed agenda as "TRIPS-plus Enforcement Trends".