

ANNUAL REPORT (2009) OF THE COUNCIL FOR TRIPS

I. GENERAL

1. Since the period covered by its 2008 report¹, the Council for TRIPS has held three formal meetings, on 3 March, 8-9 June, and 27-28 October. The minutes of these meetings are to be found in documents IP/C/M/59-61.²

2. The meeting in March was chaired by Ambassador Dennis Francis (Trinidad and Tobago), and the subsequent meetings by Ambassador Karen Tan (Singapore).

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. Decisions on requests for observer status from 17 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, 126 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, 123 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

III. REVIEWS OF NATIONAL LAWS AND REGULATIONS

5. During the reporting period, the Council reviewed the legislation of Tonga and Ukraine, completed its review of the legislation of Saint Vincent and the Grenadines that had been initiated

¹ Document IP/C/51.

² Document IP/C/M/61 to be circulated.

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

⁴ This information on contact points is contained in document IP/N/3/Rev.10 and addenda.

earlier, and took note of the outstanding material required to complete the pending reviews of five 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 eight annual 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 her own responsibility, would prepare a factual report on the review to the General Council.⁵

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. At the Council's meeting in March 2006, the Chair recalled that, in paragraph 44 of the Hong Kong Ministerial Declaration, Ministers had taken note of the work undertaken by the TRIPS Council pursuant to paragraph 19 of the Doha Ministerial Declaration and agreed that this work shall continue on the basis of paragraph 19 of the Doha Ministerial Declaration and the progress made in the TRIPS Council to date. The Council agreed to maintain its present method of work on these matters at that stage, and to keep this method under review to assess whether any change might prove appropriate in the light of developments.

8. Accordingly, since the practice in the Council's past meetings had been that delegates address these three agenda items together, it has continued to discuss these three agenda items together on the basis of contributions by Members. The Council's work in 2006-2008 is described, respectively, in paragraph 7 of document IP/C/44, paragraph 8 of document IP/C/48, and paragraph 7 of document IP/C/51 (Annual Reports 2006-2008). In 2009, the Council continued its examination of the proposals by Members, in particular on the relationship between the TRIPS Agreement and the Convention on Biological Diversity. In these discussions, some delegations referred to a communication from Albania, Brazil, China, Colombia, Croatia, Ecuador, the European Communities, Georgia, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, the Former Yugoslav Republic of Macedonia, Moldova, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, the ACP Group and the African Group to the Trade Negotiations Committee on "Draft Modalities for TRIPS Related Issues" circulated in July 2008 in document TN/C/W/52 and addenda 1-3. No new submissions were made to the Council.

VI. NON-VIOLATION AND SITUATION COMPLAINTS

9. At its meeting in March 2006, the Council had 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 enable the Council to consider improved ways of organizing its work on this matter. At its meetings in March and June 2009, the Council requested the Chair to hold consultations on the matter. At its meeting in October 2009, the Council agreed to keep open this agenda item and that the Chair continue her consultations on the matter. The Chair said that she 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.

⁵ The report will 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. No statements were made or documents submitted by delegations under this agenda item. 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.

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 October, 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. The Council requested the Chair to hold consultations on the operation of the Paragraph 6 system. 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 2011.⁶

13. As requested by the Council, the Secretariat periodically updated the note on the status of acceptances of the Protocol Amending the TRIPS Agreement.⁷

X. IMPLEMENTATION OF ARTICLE 66.2

14. At its meetings in March, the Council followed up its sixth annual review pursuant to paragraph 2 of the "Decision on the Implementation of Article 66.2 of the TRIPS Agreement"⁸ that it had taken up at its meeting in October 2008.

15. At its meeting in October 2009, the Council took up its seventh annual review of developed country Members' reports on their implementation of Article 66.2. For this review, the Council received 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: Japan, the United States, Australia, Switzerland, Norway, Canada and New Zealand. This documentation is being circulated in document IP/C/W/536 and addenda.

XI. TECHNICAL COOPERATION AND CAPACITY-BUILDING

16. 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

⁶ To be circulated in IP/C/- series of documents.

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

⁸ Document IP/C/28.

information from the following developed country Members: Japan, the United States, Australia, Switzerland, Norway, Canada and New Zealand (being circulated in IP/C/W/539 and addenda). Updated information was received also from the OECD, WIPO and UNCTAD (being circulated in IP/C/W/541 and addenda), as well as from the WTO Secretariat (IP/C/W/535).

17. The Council continued its discussion on LDC priority needs for technical and financial cooperation. At its meeting in October, it had before it a note by the Secretariat on "Least Developed Country Members' Priority Needs Assessments: the Aid-for-Trade Initiative and the Enhanced Integrated Framework" (IP/C/W/544). 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 on the "Extension of the Transition Period under Article 66.1 for Least-Developed Country Members" to do so. The Council also continued its discussion of a communication Brazil had presented at its meeting in June 2008 entitled "Technical Cooperation and Capacity Building: 'Cluster' A of the Development Agenda" (IP/C/W/513). For its meeting in October, it received additional information from Brazil in relation to this communication (being circulated in IP/C/W/513/Add.1).

XII. OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

18. The Council continued its consideration of the pending requests for observer status for international intergovernmental organizations. At each meeting, the Chair informed the Council on the Chair's consultations on the request for observer status received from the CBD Secretariat.

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

19. At its meeting in March, the Chair informed the Council, under "Other business", of a letter received 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. This matter was put on the agenda of the Council's subsequent meetings. At its meeting in June, the Council invited the Secretariat to prepare a factual background note summarizing the relevant procedures and providing references to the relevant decisions, as well as providing information on the use of these procedures by Members, and also prepare suggestions for the Council's consideration at its next meeting on how to improve the transparency and user-friendliness of the notification system, for example by making notifications more easily accessible on the WTO webpage. This Secretariat note (IP/C/W/543) was presented to the Council's meeting in October.

XIV. OTHER BUSINESS

20. 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, and the issue of the "Effective operation of the Paragraph 6 system" raised by India.

21. At its meeting in June, it considered, under "Other business", the issue of "Seizure of generic drug consignments at EC ports" raised by Brazil and India.

22. At its meeting in October, it considered the issue of "Public health dimension of the TRIPS Agreement" raised by India and Brazil.
