

ANNUAL REPORT (2007) OF THE COUNCIL FOR TRIPS

I. GENERAL

1. Since the period covered by its 2006 report¹, the Council for TRIPS has held three formal meetings, on 13 February, 5 June, and 23-24 October. The minutes of these meetings are to be found in documents IP/C/M/53-55.²

2. The meeting in February was chaired by Ambassador C. Trevor Clarke (Barbados), and the subsequent meetings by Ambassador Yonov Agah (Nigeria).

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-eight Members have provided responses to the Checklist of Issues on Enforcement. During the reporting period, some Members have updated their initial notifications, or updated or supplemented their responses to the Checklist of Issues on Enforcement. To date, 122 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/44.

² Document IP/C/M/55 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.9 and addenda.

5. The Council received a notification⁵ under paragraph 2(a) of the Decision of 30 August 2003 on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, and a related notification⁶ under paragraph 2(c) of the same Decision.

III. REVIEWS OF NATIONAL LAWS AND REGULATIONS

6. During the reporting period, the Council reviewed the legislation of Saudi Arabia, completed its reviews of the legislation of Mauritius and Swaziland that had been initiated earlier, and took note of the outstanding material required to complete the pending reviews of six other Members. It also made arrangements for the review of the implementing legislation of Viet Nam, to be held at the Council's first meeting in 2008, and agreed to revert to the arrangements for the review of the legislation of Tonga, a newly acceded Member, at its second meeting in 2008.

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

7. At its October meeting, the Council undertook the sixth 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 factual report on the review to the General Council.⁷

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

8. The Council continued its discussion of these three agenda items. The Council received the following new submissions relating to them: for its June meeting, a written version of Norway's responses to the questions posed to it by Switzerland (IP/C/W/491); and for its October meeting a communication from Peru on "Combating Biopiracy – the Peruvian Experience" (IP/C/W/493), and from Japan a communication containing additional explanations on its earlier paper on "The Patent System and Genetic Resources" circulated in document IP/C/W/472 (IP/C/W/504). Venezuela, the African Group, Paraguay and the LDC Group informed the Council that they had joined the list of co-sponsors of a disclosure proposal circulated as document IP/C/W/474 (issued with the joint symbols WT/GC/W/564/Rev.2 and TN/C/W/41/Rev.2); addenda 3-6 were issued to that effect.⁸

VI. NON-VIOLATION AND SITUATION COMPLAINTS

9. At its March 2006 meeting, 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. During the reporting period, no statements were made or documents submitted by delegations under this agenda item.

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.

⁵ IP/N/9/RWA/1.

⁶ IP/N/10/CAN/1.

⁷ The report is being circulated as document IP/C/47.

⁸ Addendum 6 to be circulated.

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

11. At its meeting in February, the Council agreed that the Chair hold further consultations in due course on how the Council should organize its future work on the review of the application of the provisions of the Section on geographical indications under Article 24.2. At its meetings in June and October, the Chair informed the Council that, given that he had not received any representations from delegations on the issue, he had not yet held such further consultations, but that he remained ready to hold such consultations once he would sense an active interest in pursuing the matter. 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 Honduras to the Checklist of Questions.

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's report to the General Council on the operation of the system set out in the Decision is being circulated as document IP/C/46. 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 2009.⁹

13. As requested by the Council, the Secretariat prepared and updated a note on the status of acceptances of the Protocol Amending the TRIPS Agreement.¹⁰

X. IMPLEMENTATION OF ARTICLE 66.2

14. At its meetings in February and June, the Council followed up its fourth annual review pursuant to paragraph 2 of the "Decision on the Implementation of Article 66.2 of the TRIPS Agreement"¹¹ that it had taken up at its meeting in October 2006.

15. At its meeting in October, the Council took up its fifth annual review of developed country Members' reports on their implementation of Article 66.2. For this review, the Council received updated reports on actions they had taken or planned in pursuance of their commitments under Article 66.2 from the following developed country Members: Switzerland, Japan, the European Communities and individual member States (namely Austria, Belgium, the Czech Republic, Finland, France, Germany, Ireland, Spain, Sweden, and the United Kingdom), as well as from New Zealand, Norway, the United States, Canada and Australia. This documentation is being circulated in document IP/C/W/497 and addenda. Different views were expressed as to whether the information provided fulfilled the objectives of Article 66.2.

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

⁹ Document IP/C/45.

¹⁰ The latest version is available as document IP/C/W/490/Rev.1.

¹¹ Document IP/C/28.

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: Switzerland, Japan, the European Communities and individual member States (namely Austria, the Czech Republic, Finland, France, Germany, Hungary, Italy, Poland, Portugal, Slovenia, Spain, Sweden and the United Kingdom), as well as from New Zealand, Norway, the United States, Canada and Australia (being circulated in IP/C/W/496 and addenda). Updated information was received also from UNCTAD, UPOV and the WIPO (being circulated in IP/C/W/495 and addenda), as well as the WTO Secretariat (IP/C/W/494). Views were expressed regarding some of the information provided which could not be categorized as Article 67 activities, as well as to whether the information reflected an adequate implementation of Article 67.

17. The Council received information on priority needs for technical and financial cooperation from Sierra Leone and Uganda pursuant to paragraph 2 of the decision on the "Extension of the Transition Period under Article 66.1 for Least-Developed Country Members"¹² (IP/C/W/499 and 500, respectively). It agreed that an item on LDCs' priority needs for technical and financial cooperation would be placed on the agenda of the Council's next meeting as a separate agenda item.

XII. COMMUNICATIONS RECEIVED FROM THE UNITED STATES, SWITZERLAND AND JAPAN: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

18. At the request of the United States, at its meeting in February the Council had on its agenda an item on "Enforcement of Intellectual Property Rights (Part III of the Agreement) – Communication from the United States (IP/C/W/488)". It had before it a submission from the United States on "Enforcement of Intellectual Property Rights (Part III of the Agreement) – Experiences of Border Enforcement" (IP/C/W/488). At the request of Switzerland, at its meeting in June the Council had on its agenda an item on "Enforcement of Intellectual Property Rights (Part III of the Agreement) – Communication from Switzerland". It had before it a submission from Switzerland on "Enforcement of Intellectual Property Rights: Communication and Coordination as a Key to Effective Border Measures" (IP/C/W/492). At the request of Japan, at its meeting in October the Council had on its agenda an item on "Enforcement of Intellectual Property Rights (Part III of the Agreement) – Communication from Japan". It had before it a submission from Japan on "Enforcement of Intellectual Property Rights" (IP/C/W/501). Different views were expressed on the appropriateness of dealing with the issues raised in those communications in the Council, as well as on whether the item should be on the Council's agenda.

XIII. OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

19. At its meeting in June, the Council agreed that the Chair hold consultations on the issue of observer status for intergovernmental organizations, in particular on the request from the CBD Secretariat. At its meeting in October, the Chair informed the Council on his consultations on this matter. The Council agreed that the Chair inform the Executive Secretary of the CBD Secretariat of the latest situation regarding the request of the CBD and continue his consultations.

¹² Document IP/C/40.