

# WORLD TRADE ORGANIZATION

RESTRICTED

**IP/C/M/13**

27 June 1997

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

### MINUTES OF MEETING

Held in the Centre William Rappard  
from 26 to 30 May 1997

Chairperson: Ambassador Carmen Luz Guarda (Chile)

#### Subjects discussed:

- A. Observer status for international intergovernmental organizations
- B. Notifications under provisions of the Agreement
- C. Follow-up to the review of legislation:
  - (i) Copyright and related rights
  - (ii) Trademarks, geographical indications and industrial designs
- D. Implementation of Articles 70.8 and 70.9
- E. Technical cooperation
- F. Information on relevant developments elsewhere in the WTO
- G. Review of legislation in the areas of patents, layout-designs (topographies) of integrated circuits, protection of undisclosed information and control of anti-competitive practices in contractual licences

#### A. Observer Status for International Intergovernmental Organizations

1. The Chairperson reported on informal consultations that she had held concerning the pending requests for observer status from EFTA, the OAS, the OIV, SELA and SIECA. Those had shown that some Members were of the view that further information should be provided by the organizations in question so as to allow a proper assessment of their requests by the Council. She would consult with the Chairperson of the General Council about a suggestion that a general questionnaire might be developed for this purpose. The five organizations which had requested observer status in the TRIPS Council would be approached for further information, either through the questionnaire if it were developed by the General Council or through a letter to be sent to each of these organizations on behalf of the TRIPS Council.

2. The Council so agreed.

B. Notifications under Provisions of the Agreement

(i) *Notifications under Article 63.2*

3. The Chairperson informed Members that new notifications had been received from Bulgaria and Macau. These notifications were being processed and would be available as documents IP/N/1/BGR/1 and IP/N/1/MAC/1. Macau had made its notification without prejudice to Article 65.2. Apart from these new notifications, a number of Members had communicated to the Council under Article 63.2 and paragraph 2.2 of the procedures for the notification of legislation (document IP/C/2) amendments to laws and regulations that they had initially notified under Article 63.2 or the adoption of a new law in the area of intellectual property. Such notifications had been received from Austria, Belgium, Denmark, France, Greece, Italy, Norway and the Slovak Republic.

4. As regards the notification of responses to the checklist of issues on enforcement, the Chairperson recalled that, at the previous meeting, the Chair had reported that such notifications had been received from 16 Members. Since that meeting, Belgium had notified a revised version of its responses, which had been circulated as document IP/N/6/BEL/1/Rev.1, while Ireland had submitted additional responses, which could be found in document IP/N/6/IRL/1/Add.1. Apart from these updates of earlier notified responses to the checklist, new notifications had only been received from Germany, Spain and the United States. The notifications from Germany and Spain had been made available in documents IP/N/6/DEU/1 and IP/N/6/ESP/1; the notification from the United States was being processed. She stressed the importance of these notifications and urged those Members that still had to make this notification to do so without delay. Although the review of the legislation in the enforcement area was more than five months away, the submission of questions in the context of that review would be due soon after the summer break; consequently, if the notifications in question were not made soon, the checklist would lose much of its purpose as a tool for the preparation of the review exercise in November.

(ii) *Notifications under Article 63.2 relating to Articles 3, 4 and 5*

5. The representative of the United States said that his delegation was anxiously awaiting notifications under Article 63.2 relating to Articles 3, 4 and 5 of the Agreement. He underlined the importance of the national treatment and MFN obligations under the Agreement and their particular significance, at this point in time, for the protection of intellectual property in developing countries. Therefore, he urged delegations to make those notifications as soon as possible and enable other Members in the Council to assess whether national and most-favoured-nation treatment was provided to right holders as required by the Agreement.

6. The representative of the European Communities said that his delegation fully supported the statement made by the United States on notifications of national implementing legislation relating to Articles 3, 4 and 5 of the Agreement. At several previous meetings, Members had discussed a format for such notifications and it was now important that they were effectively presented to the Council. In due course, Members would have to decide in the Council how to review those notifications.

7. The representative of Singapore said that his delegation was in the process of finalizing its notification relating to Articles 3, 4 and 5, which would be submitted as soon as it was ready.

8. The representative of Korea informed the Council that consultations had commenced on the preparation of the Korean notification, in particular on which option referred to in document IP/C/9 to follow. He said that his delegation would make its notification as soon as possible.

9. The representative of Egypt said that his country was in the process of preparing the notification relating to Articles 3, 4 and 5 and thanked the Secretariat for the technical assistance provided to Egypt in this regard. The notification would be submitted as soon as it was ready.

10. The representative of Israel informed the Council that the Israeli notification relating to Articles 3, 4 and 5 of the Agreement was being prepared.

(iii) *Notifications under Article 69*

11. The Chairperson said that, since the last Council meeting, new notifications had been received from Egypt and the United Arab Emirates. Updated information concerning their contact points had been received from Cuba and the Czech Republic. She said that Members would be informed about the details of these notifications in a third addendum to the compilation of contact points notified under Article 69 which would be circulated shortly. Notifications of contact points under Article 69 had now been received from 77 Members.

(iv) *Notifications under Article 4(d)*

12. The representative of the United States expressed his delegation's satisfaction with the template that had been developed at the last meeting for notifications under Article 4(d). He reiterated his delegation's concern that some of the notifications under Article 4(d) were too broad to be of any use, while other notifications were puzzling since they were seeking an MFN exemption for all provisions of the Paris Convention that the Members in question were obliged to comply with under Article 2.1 of the Agreement. Article 4(d) would only be a useful provision if notifications under it could indicate which provisions in the agreements that were being notified were the subject of the exemption sought under Article 4(d). He recalled the detailed discussion on this matter at the previous meeting, which had resulted in the Council calling upon those delegations which had made broad notifications under Article 4(d) to refine those notifications as appropriate and as soon as possible.

13. The Council took note of the statements made under this agenda item.

C. Follow-up to the Review of Legislation

(i) *Copyright and related rights*

14. The Chairperson recalled that the Council had sought to focus the follow-up to the review of legislation on copyright and related rights on its meeting of 27 February 1997. Further follow-up questions had been posed by Brazil to Australia, Canada, Japan and the United States; by the European Communities and their Member States to the United States; and by Korea to the United States. The Secretariat had received responses to these questions from Canada, Japan and the United States, which had been circulated, respectively, in documents IP/Q/JPN/1/Add.1, IP/Q/USA/1/Add.1 and IP/Q/CAN/1/Add.1. Responses from Australia had not yet been received.

15. The representative of Australia said that his delegation was close to finalizing the replies to the questions from Brazil and would undertake to complete and present them before the next Council meeting in July.

16. The representative of Korea thanked the delegation of the United States for its responses which had been circulated in document IP/Q/USA/1/Add.1 and, while reserving his delegation's right to pose other follow-up questions to those responses, posed the following preliminary follow-up question. According to the United States' answers, if a work had been published before 1922, it would not be

protected under the United States Copyright Act, even though its author was a national of another WTO Member, if that author had died after 1947, i.e. less than 50 years ago; how could this be explained in the light of Article 9 of the TRIPS Agreement and Article 18 of the Berne Convention?

17. The representative of the United States said that he preferred to respond after he would have received the question in writing, while indicating that he was unaware of any individual who had failed to get full retroactive protection of copyright in accordance with Articles 9.1, 14.6 and 70.2 of the TRIPS Agreement.

18. The Chairperson proposed that the Council take note of the statements made and revert to the matter at the next meeting.

19. The Council so agreed.

(ii) *Trademarks, geographical indications and industrial designs*

20. The Chairperson recalled that, at the previous Council meeting in February, follow-up questions had been posed by the delegation of India to both the European Communities and the United States. These questions had been distributed in document IP/C/W/54. No responses had been received to date from the European Communities and the United States. Since that meeting, follow-up questions had been received from the European Communities to the delegations of the Czech Republic and South Africa. Both these delegations had provided answers to these questions, which could be found in documents IP/Q2/CZE/1/Add.1 and IP/Q2/ZAF/1.

21. The representative of the European Communities said that the replies of his delegation would be made available shortly.

22. The Chairperson proposed that the Council take note of the statements made and revert to the matter at the next meeting.

23. The Council so agreed.

D. Implementation of Articles 70.8 and 70.9

24. The Chairperson said that, at the previous Council meeting, the representative of Pakistan had informed the Council that legislation had been issued in his country on 4 February 1997 concerning the implementation of obligations under Articles 70.8 and 70.9 of the Agreement. This legislation had been notified by Pakistan under Article 63.2 of the Agreement and had been distributed in document IP/N/1/PAK/1. A notification concerning information on the filing of applications for pharmaceutical and agricultural chemical products had also been received from the United Arab Emirates. This information could be found in document IP/N/1/ARE/1.

25. The representative of the United States said that Pakistan and the United States had notified to the Dispute Settlement Body a mutually agreed solution to the matter concerning Articles 70.8 and 70.9 on which the United States had initiated consultations with Pakistan in April 1996.<sup>1</sup> Through that notification, Pakistan had made it clear that, since obligations under Article 70.8 had arisen for it on 1 January 1995 but an official mailbox filing system had not been established until early 1997, it had had to establish a system whereby persons who would have filed, had such a system been in place

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<sup>1</sup>See also under agenda item F below.

on time, could in fact file and receive the filing dates they would have received under such a system. He underlined the importance of this point, as well as of the fact that the mailbox system was meant to preserve future benefits under the TRIPS Agreement. Those countries which had not yet established a mailbox system should establish, as Pakistan had done, a system which would permit also those persons who would have filed had the system been put in place earlier to receive their proper filing dates. Secondly, Pakistan had made quite clear in its notification to the Dispute Settlement Body that Article 70.9 obliged it to provide exclusive marketing rights which were truly exclusive, without any qualification or limitation, i.e. would allow the owner of those rights to prevent other persons from marketing the particular product in question until the end of the period during which exclusive marketing rights would be available. He commended the approach that Pakistan had taken with respect to its obligations under Article 70.8 and 70.9 which was exactly in line with the obligations under the Agreement. Turning to other Members that his delegation believed, based on its informal research, would seem to be obliged to establish mailbox systems but had not notified such systems to the TRIPS Council, he informed the Council that his delegation had approached those countries with the request to take the necessary action as soon as possible. He also wished to reiterate that, with respect to the notifications that had been received regarding the mailbox system, there had been very little specificity as to Members' compliance with Article 70.9. Right holders needed to know how they were to apply for exclusive marketing rights in countries that had established a system for their grant. He stressed the urgency of this matter by indicating that his delegation knew that there was at least one company which had at least two products for which it was ready to submit requests for exclusive marketing rights under Article 70.9 but did not know the procedures for doing so in many WTO Members. If procedures were in place, they were unknown to potential applicants. He asked all those Members which had already notified under Article 70.8 to enhance and clarify their notifications with respect to the procedures for requesting exclusive marketing rights and those Members which had not yet notified under Article 70.8 and 70.9 to also include in their notification some information on the procedures for requesting exclusive marketing rights under Article 70.9.

26. The representative of the European Communities informed the Council that consultations under the DSU had been held between the European Communities and their Member States on the one hand, and India on the other, regarding the implementation of Article 70.8 and Article 70.9. While still in the process of analysing the Pakistani situation, he was pleased with the action taken by Pakistan concerning the implementation of Articles 70.8 and 70.9. His delegation shared the concerns expressed by the United States delegation with respect to Article 70.8 and 70.9 in general, adding that there might even be a number of countries which were not fully aware of the existence of Article 70 of the TRIPS Agreement and of the obligations flowing from its paragraphs 8 and 9. His delegation was considering a more systematic approach to this matter in due course. A review of the implementation of paragraphs 8 and 9 of Article 70 would probably be a good exercise in order to gain clarity on what had been done and had not been done in this area. He concurred with the United States' statement on paragraph 9 of Article 70 that obligations with respect to the implementation of exclusive marketing rights had been in place for some time already and that right holders must be enabled to make the necessary preparations well in advance of an actual application.

27. The representative of Morocco informed the Council that his country had recently submitted a new notification concerning this matter, complementing its previous notification. An industrial property bill was being reviewed by Parliament and would, if adopted, provide for the patentability of inventions concerning pharmaceutical and agricultural chemical products.

28. The Council took note of the statements made.

E. Technical Cooperation

29. The Chairperson said that, since the Council meeting in February, Ireland had complemented its earlier notification of a contact point for technical cooperation purposes relating to the TRIPS Agreement by providing a separate contact point for copyright and related rights matters. This additional information would be included in the next updated version of document IP/N/7. Notifications of contact points for technical cooperation had now been received from 18 developed country Members.

30. The Chairperson, recalling that the Secretariat had organized jointly with the International Bureau of WIPO a workshop on border enforcement on the afternoon of 17 September 1996, informed Members that the Secretariat intended to organize, again jointly with WIPO, a second such workshop, on the afternoon of 14 July 1997, i.e. the afternoon before the TRIPS Council meeting scheduled for 15 July. This time the subject of the workshop would be "technical cooperation aimed at improving human resources and institutional capacities required to implement the TRIPS provisions on domestic enforcement".

31. The representative of Japan said that, at the previous Council meeting, interest had been expressed in obtaining information about the Roundtable which had been held in Singapore in January 1997 with the assistance of the Japanese Patent Office and the International Bureau of WIPO. This Roundtable, which had focused on TRIPS implementation, had been very successful and informative and had had the participation of several policy-making officials from more than 20 countries in the Asia-Pacific region. Speakers had been invited from the WTO Secretariat, the International Bureau of WIPO, the United States and several European countries. The proceedings of the discussions would be made available soon by the International Bureau of WIPO. Delegates who wished to receive more detailed information on the Roundtable were welcome to contact the delegation of Japan. Another roundtable would take place in Tokyo, from 10 to 12 September 1997, with the assistance of the International Bureau of WIPO, to discuss "The Intellectual Property System Towards the 21st Century" and would include the promotion of technical cooperation for developing countries in their efforts to implement the TRIPS Agreement.

32. The Council took note of the statements made.

F. Information on Relevant Developments Elsewhere in the WTO

33. The Chairperson informed Members that the mutually satisfactory solution to the matter raised by the United States in April 1996 concerning patent protection for pharmaceutical and agricultural chemical products, that the United States had mentioned under agenda item D, as notified by the United States and Pakistan to the Council for TRIPS, had been circulated in document IP/D/2/Add.1.

34. She also drew the attention of Members to documents IP/D/7 to 9, through which the Council had been informed about the following requests for consultations under the Dispute Settlement Understanding: firstly, as already referred to by the European Communities under agenda item D, the European Communities and their Member States had requested, by means of a communication dated 28 April 1997, consultations with India regarding patent protection for pharmaceutical and agricultural chemical products; secondly, the United States had requested, by means of a communication dated 14 May 1997, consultations with Ireland regarding measures affecting the grant of copyright and neighbouring rights; and thirdly, the United States had requested, also by means of a communication dated 14 May 1997, consultations with Denmark regarding measures affecting the enforcement of intellectual property rights.

G. Review of Legislation in the Areas of Patents, Layout-designs (Topographies) of Integrated Circuits, Protection of Undisclosed Information and Control of Anti-competitive Practices in Contractual Licences

35. The Chairperson recalled that the procedures for this review could be found in the minutes of the Council meeting of 9 May 1996 (document IP/C/M/7, paragraph 6), with the adjustments agreed at the meetings of 22 to 25 July 1996 (document IP/C/M/8, paragraphs 69 and 70) and 11 to 15 November 1996 (document IP/C/M/11, paragraph 44). In accordance with these procedures, the Secretariat had circulated a proposed timetable in an informal note of 2 May 1997. The procedures for the review had been annexed to that note. Prior to the meeting, written questions concerning other Members' legislation had been received from the European Communities and their Member States, New Zealand, Japan, the United States, and India, while written responses had been received from the European Communities, Hungary, New Zealand, Bulgaria, Iceland, Slovenia, Australia, Switzerland, the United States, Liechtenstein, Japan, the Czech Republic, Norway and Canada. She suggested to proceed as had been done at the July and November 1996 meetings and invited each Member to provide, in introducing its legislation, a brief overview of the structure of its legislation on patents, layout-designs (topographies) of integrated circuits, protection of undisclosed information and control of anti-competitive practices in contractual licences and of the changes, if any, that it had had to bring about in order to make the legislation compatible with the TRIPS Agreement. After having done so, an introduction might be provided to the responses to the questions put to them by other Members. Where responses had already been made available in the three WTO languages, the Member in question might limit itself to a brief summary, drawing attention to any points that it wanted to highlight. After these presentations and introductions of responses, she would then offer the floor to other delegations for any comments or other questions.

36. The record of the introductory statements made by delegations, the questions put to them and the responses given (including certain written responses provided after the meeting) will be circulated in the following documents:

IP/Q3/AUS/1	Australia
IP/Q3/BGR/1	Bulgaria
IP/Q3/CAN/1	Canada
IP/Q3/CZE/1	Czech Republic
IP/Q3/EEC/1	European Communities
IP/Q3/AUT/1	Austria
IP/Q3/BEL/1	Belgium
IP/Q3/DNK/1	Denmark
IP/Q3/FIN/1	Finland
IP/Q3/FRA/1	France
IP/Q3/DEU/1	Germany
IP/Q3/GRC/1	Greece
IP/Q3/IRL/1	Ireland
IP/Q3/ITA/1	Italy
IP/Q3/LUX/1	Luxembourg
IP/Q3/NLD/1	Netherlands
IP/Q3/PRT/1	Portugal
IP/Q3/ESP/1	Spain
IP/Q3/SWE/1	Sweden
IP/Q3/GBR/1	United Kingdom
IP/Q3/HUN/1	Hungary
IP/Q3/ISL/1	Iceland
IP/Q3/JPN/1	Japan

IP/Q3/LIE/1	Liechtenstein
IP/Q3/NZL/1	New Zealand
IP/Q3/NOR/1	Norway
IP/Q3/POL/1	Poland <sup>2</sup>
IP/Q3/ROM/1	Romania
IP/Q3/SVK/1	Slovak Republic
IP/Q3/SVN/1	Slovenia
IP/Q3/ZAF/1	South Africa
IP/Q3/CHE/1	Switzerland
IP/Q3/USA/1	United States

37. After the consideration of the legislation of the above countries, the representative of Brazil said that the review exercise had proved to be a learning process for her country as well as for other developing countries in the process of adjusting their national legislation towards progressive compliance with the TRIPS Agreement. Her country had not been in a position to offer questions during the present meeting because the Brazilian National Industrial Property Office had been fully occupied with the implementation of the new Industrial Property Law, which had entered into force on 15 May 1997. Nevertheless, her delegation would wish to avail itself of the right set forth in the procedures established by the Council, which provided that at subsequent meetings of the Council an opportunity would be given to follow up any point emerging from the review sessions which delegations considered had not been adequately addressed.

38. The Chairperson said that a number of delegations had indicated that they would provide responses to some questions put to them in writing subsequent to the meeting. According to the procedures for the review, responses should be submitted within eight weeks after the meeting. She hoped that those responses, together with a necessary fine-tuning of preliminary responses already provided, would be made available to the Secretariat by the time of the Council's next meeting scheduled for 15 July 1997, so that the records of the review could be produced without undue delay.

39. The Chairperson said that, in the context of the review of national implementing legislation notified under Article 63.2 of the Agreement, Members had addressed the following question: "Does your country recognize a right of priority on the basis of an earlier trademark application filed in any other WTO Member by a national of a WTO Member?" A similar question had been posed to WTO Members with respect to patents. It appeared that in every case Members did or would (when the amendments to relevant national laws and/or regulations were in force) recognize priority rights based on an earlier application in any other WTO Member by a national of a WTO Member. A compilation of the replies received would be circulated as document IP/C/W/73. The question had also arisen as to whether WTO Members currently bound to apply all provisions of the TRIPS Agreement were obligated to extend protection under Article 6~~ter~~ of the Paris Convention to those WTO Members that were not members of the Paris Convention and were availing themselves of a transitional period under Article 65 or Article 66 of the TRIPS Agreement. All evidence suggested that this obligation currently existed.

40. Continuing, the Chairperson said that she would not attempt to summarize the work under this agenda item and took it that delegations would need time to digest the large volume of information obtained through the review process. In some cases, it had become clear that some Members still

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<sup>2</sup>The representative of Poland said that, although his country had invoked its entitlement to the transitional period under Article 65.3 of the Agreement and was not among the countries whose legislation was to be reviewed, his delegation had received questions from three Members. He said that his delegation would be in a position to answer only a part of the questions received, namely those relating the areas of undisclosed information and anti-competitive practices.



had some work to do to adapt their legislation fully and it was important that this should be done with a minimum of delay. In such cases, it might be possible that the Council needed to come back to consider the legislation of a given country once the amended text of its legislation had been received. She recalled that the procedures adopted for these reviews provided that at subsequent meetings of the Council an opportunity would be given to follow up any point emerging from the review sessions which delegations considered had not been adequately addressed.

41. Turning to the Council's next review meeting, the Chairperson recalled that the week of 17 to 21 November 1997 had been set aside for a Council meeting during which the review of legislation in the area of enforcement would be undertaken. She proposed that the Council use the same basic procedures as employed so far. The Council had, however, to agree on dates for the advance notice of questions and the submission of replies. She suggested a similar time path as agreed to for the review that Members had carried out this time and, therefore, proposed the following dates:

- submission of advance notice of questions to Member concerned and to the Secretariat: 12 September 1997;
- submission of responses to questions: 24 October 1997.

Furthermore, she invited Members, as agreed for the present review, to make an effort to give some form of advance notice of follow-up questions, prior to the review meeting. If these proposals were agreeable to Members, she wished to stress what she had said earlier about the notifications of responses to the checklist on enforcement still due by some Members. In many cases, these responses would be a main source of information about the enforcement procedures in the Member in question, since they would identify the relevant provisions in, for example, the Code of Civil Procedure; in the case of countries where this area of law was mainly governed by case law, it might be even the only source of information that could be notified by the country in question. If the responses due would not be notified without delay, the checklist would lose much of its purpose as a tool for the preparation of the November review exercise. Of the countries whose legislation had been reviewed at the present meeting, responses had not yet been received from Australia, Bulgaria, the Czech Republic, Finland, France, Hungary, Iceland, Luxembourg, Portugal, Romania, the Slovak Republic, South Africa and Switzerland.

42. The Council took note of the statements made and agreed to proceed as proposed by the Chairperson.

43. The Chairperson recalled that the Council had agreed in November 1996 that the Chair would consult in 1997 with individual Members whose legislation had not been subject to the present review, but whose legislation had already been, in whole or in large part, brought into conformity with the TRIPS Agreement. The purpose of these consultations would be to see the scope for the legislation of such Members to be progressively incorporated into the review process by the Council after the conclusion of the present review programme, i.e. at the earliest in 1998. It was understood that the agreement of a Member to this would be without prejudice to the legal situation regarding its entitlements under Article 65 and would be intended as a practical contribution to the work of the Council, in particular to even out its future workload. She informed the Council that she had initiated such consultations with individual delegations, with a view to developing a schedule for reviews in 1998 and 1999. In this regard, she was in contact not only with those Members whose legislation had, in whole or in large part, been brought into conformity in advance, but also with those Members who had joined the present review exercise late and whose legislation therefore would not have been fully reviewed by the end of this year and those Members who had recently acceded to the WTO. She hoped to be able to inform Members of the results of these consultations at the Council's meeting in July.

44. The Council took note of this statement.