

## DRAFT ANNUAL REPORT (2001) OF THE COUNCIL FOR TRIPS

### I. GENERAL

1. Since the period covered by its last report<sup>1</sup>, the Council for TRIPS has held three formal meetings, on 2-5 April, 18-22 June and [19-21 September] 2001. The minutes of these meetings are to be found in documents IP/C/M/30-[33].<sup>2</sup>

2. The first meeting referred to above was chaired by Ambassador Chak Mun See (Singapore), the second by Ambassador Boniface Chidyausiku (Zimbabwe) and the third by [...].

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. Since February 1997, 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; and in June 2000 the World Health Organization (WHO) was granted ad hoc observer status by the Council, subject to certain conditions. At its meeting in June 2001, the Council agreed to a request from the Joint United Nations Programme on HIV/AIDS (UNAIDS) to be admitted as an observer to that meeting for the discussion under the agenda item concerning intellectual property and access to medicines. Decisions on requests for observer status from 15 Organizations are pending.<sup>3</sup>

### II. NOTIFICATIONS AND NOTIFICATION PROCEDURES

#### (i) Article 63.2<sup>4</sup>

4. The notification procedures, adopted by the Council at its meeting in November 1995, 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). To date, [93] Members have made such notifications under Article 63.2 with respect to all or part of their implementing legislation relating to all provisions of the Agreement. [Thirteen] other Members have made notifications relating specifically to the implementation of Articles 3, 4 and 5 of the Agreement.<sup>5</sup> Notifications concerning the implementation of Article 70.8 and, in some cases, Article 70.9 of the TRIPS Agreement have been received from [26] Members; some of them indicate

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<sup>1</sup> Document IP/C/22.

<sup>2</sup> Document IP/C/M/33 to be circulated.

<sup>3</sup> The Organizations in question are listed in document IP/C/W/52/Rev.9.

<sup>4</sup> Circulation of notifications referred to in paragraph 4 below takes place in the IP/N/1/COUNTRY/-series of documents. Those referred to in paragraph 5 below have been circulated in the IP/N/6/COUNTRY/-series of documents.

<sup>5</sup> A practical aid to assist delegations making the required notification is available in document IP/C/9.

that product patent protection for pharmaceutical and/or agricultural chemical products is already available in their territories.

5. At its November 1995 meeting, the Council also agreed that Members would provide responses to a checklist of issues on enforcement (IP/C/5). To date, [76] Members have notified responses.

(ii) Articles 1.3 and 3.1<sup>6</sup>

6. Articles 1.3 and 3.1 of the TRIPS Agreement, relating to the definition of beneficiary persons under the Agreement and to national treatment, allow certain exceptions to the normal rules on these matters, provided that notifications are made to the Council for TRIPS. Under these provisions, [29] Members have submitted such notifications.

(iii) Article 4(d)<sup>7</sup>

7. Article 4(d) of the TRIPS Agreement requires a Member seeking to justify an exception to the MFN rule on the basis of an international agreement relating to the protection of intellectual property which had entered into force prior to the entry into force of the WTO Agreement to notify that agreement to the Council for TRIPS.<sup>8</sup> To date, [49] notifications have been received under this provision from [34] Members.

(iv) Article 69<sup>9</sup>

8. Article 69 of the TRIPS Agreement requires Members to establish and notify contact points for the purposes of cooperating with each other with a view to eliminating international trade in goods infringing intellectual property rights. Procedures for such notifications were agreed by the Council in September 1995. To date, [105] Members have notified contact points.

(v) Notifications under other provisions of the Agreement

9. A number of notification provisions of the Berne and the Rome Conventions are incorporated by reference into the TRIPS Agreement but without being explicitly referred to in it.<sup>10</sup> To date, three Members have made notifications under the provisions of Article 14*bis*(2)(c) as applicable under the TRIPS Agreement and two Members have made notifications under provisions of the Appendix to the Berne Convention so applicable.<sup>11</sup>

### III. REVIEW OF NATIONAL LAWS AND REGULATIONS

10. On 1 January 2000, the transitional periods of Article 65.2 and 65.3 expired and obligations entered into effect for a large number of Members who had been availing themselves of these general transitional periods. The Council scheduled its reviews of these Members' national implementing legislation in 2000 and 2001. It took up and completed the reviews of the legislation of 13 Members in 2000. The reviews of the legislation of eight Members, commenced in November 2000, were continued in 2001 and, by the time of the Council's meeting in September 2001, [six] of these reviews had been completed. In April, the Council took up the reviews of a further 11 Members and

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<sup>6</sup> Circulation of these notifications takes place in the IP/N/2/COUNTRY/- series of documents.

<sup>7</sup> Circulation of these notifications takes place in the IP/N/4/COUNTRY/- series of documents.

<sup>8</sup> An informal guideline to assist individual Members in making or reviewing their notifications under Article 4(d) is available in the Annex to document IP/C/M/12.

<sup>9</sup> These contact points are contained in document IP/N/3/Rev.4 and addenda.

<sup>10</sup> Circulation of these notifications takes place in the IP/N/5/COUNTRY/- series of documents.

<sup>11</sup> For the calculation of the renewable ten-year period for which notifications under the Appendix remain valid, reference is made to document IP/C/14.

completed [two] of these reviews within the reporting period. In June, the Council took up the reviews of a further 24 Members and completed [two] of these reviews within the reporting period.<sup>12</sup> The reviews of the remainder of these Members are scheduled to be taken up at the Council's meeting in November 2001.

#### **IV. IMPLEMENTATION OF ARTICLE 70.8 AND 70.9**

11. During the reporting period, the Council received [three] new notifications concerning this matter and continued its consideration of the implementation of Article 70.8 and the related provisions of Article 70.9.<sup>13</sup>

#### **V. IMPLEMENTATION OF ARTICLE 66.2**

12. The Council continued to discuss the implementation of this Article throughout the reporting period, which requires developed country Members to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base. The matter has been under discussion in the Council since December 1998 and the Council has received information from 20 developed country Members on how the provision is being implemented in their territories. Since June 2000, has also before it a Secretariat note prepared upon a request from the Council, setting out the types of incentive measures that had been notified, with cross-references to where further details could be found<sup>14</sup>, as well as a proposal received from Zambia relating to special and differential treatment in respect of technology transfer.<sup>15</sup>

13. In October 2000, the Special Session of the General Council on Implementation invited the TRIPS Council, with a view to facilitating full implementation of Article 66.2, to give consideration to drawing up an illustrative list of incentives of the sort envisaged by Article 66.2; and to put on a regular and systematic basis its procedure for the notification and monitoring of measures in accordance with the provisions of Article 66.2 and, in doing so, to give consideration to avoiding unnecessary burdens in notification procedures. The TRIPS Council was also requested to give consideration to inviting other intergovernmental organizations to provide information on their activities aimed at technology capacity-building (see under VI below). The TRIPS Council discussed the matter for the first time at its meeting in November/December 2000 and reported on these discussions to the General Council on Implementation in December 2000.<sup>16</sup> At the TRIPS Council's meeting in April 2001, least-developed country representatives indicated that they needed more time to be able to crystallise their thinking and prepare a proposal for how the work on this matter should be carried forward. At its meeting in June 2001, the TRIPS Council had a further discussion on the issue after having received a communication relevant to the matter from the delegation of Zambia.<sup>17</sup> [...]

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<sup>12</sup> The records of the introductory statements made by delegations, the questions put to them and the responses given, including follow-up questions and responses thereto, are circulated in, respectively, the IP/Q/COUNTRY/- (copyright and related rights), IP/Q2/COUNTRY/- (trademarks, geographical indications and industrial designs), IP/Q3/COUNTRY/- (patents, layout-designs of integrated circuits, undisclosed information and the control of anti-competitive practices in contractual licences) and IP/Q4/COUNTRY/- (enforcement) series of documents.

<sup>13</sup> As regards notifications relating to Article 70.8 and 70.9, reference is made to paragraph 4 above.

<sup>14</sup> Document IP/C/W/169.

<sup>15</sup> Documents IP/C/W/199 and 200.

<sup>16</sup> Document IP/C/21.

<sup>17</sup> Document IP/C/W/298.

## **VI. INFORMATION ON TECHNOLOGY CAPACITY-BUILDING**

14. The Council was requested by the Special Session of the General Council on Implementation of 18 October 2000 to invite other intergovernmental organizations to provide information on their activities aimed at technology capacity-building (see under V above). In this connection, the Council for TRIPS agreed at its meeting in November/December 2000 to invite the secretariats of UNCTAD, WIPO, UNIDO, the World Bank and the CBD to provide written information on their activities on technology capacity-building prior to the Council's meeting in April 2001. In the reporting period, the TRIPS Council received such information from the CBD Secretariat, UNCTAD, UNIDO and WIPO<sup>18</sup> and a communication from the delegation of Zambia relevant to this information<sup>19</sup>. It discussed the matter at its meeting in June. [...]

## **VII. RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO**

15. During the period under review, the Council was informed of [four] actions relating to proceedings in [five] cases initiated under the Dispute Settlement Understanding relevant to the TRIPS Agreement, as reflected in documents IP/D/9/Add.1, IP/D/13/Add.1, IP/D/14/Add.1, IP/D/23/Add.1 [and] IP/D/24 [...]. These documents concern three mutually agreed solutions [and] one new request for consultations [...].

16. Proceedings in [nine] cases initiated under the Dispute Settlement Understanding relevant to the TRIPS Agreement are ongoing, namely those concerning disputes IP/D/8, IP/D/12, IP/D/15 IP/D/18, IP/D/19, IP/D/20, IP/D/21, IP/D/22 [and] IP/D/24.

## **VIII. TECHNICAL COOPERATION**

17. The Council has continued its work in this area on the basis of the procedures agreed at its meeting in February 1996 and delegations have continued to inform the Council of specific technical cooperation activities made available to them or by them, or which had taken place in their territories. The Council agreed that this year developed country Members would update the information on their technical and financial cooperation activities pursuant to Article 67 of the Agreement in time for the Council's meeting in September 2001. As in previous years, intergovernmental organizations observers to the TRIPS Council also presented, on the invitation of the Council, information on their activities, as well as the WTO Secretariat on its technical cooperation in the TRIPS area. This information can be found in documents [...].<sup>20</sup>

18. At its meeting in November 2000, the delegation of Hong Kong, China had presented a non-paper outlining a proposal for "Technical Assistance on TRIPS Notifications between WTO Members", which it had jointly submitted to the Council with a number of other Members. The discussion that had followed had shown that there was no objection in the Council to this proposal for assistance on a voluntary basis and that the sponsors should feel free to proceed. Since then, a formal submission on the matter had been received from the delegations of Australia; Bangladesh; the European Communities and their member States; Hong Kong, China; Norway; and Zambia.<sup>21</sup> As outlined in this document, Members who were interested in offering assistance under the scheme were invited to notify the TRIPS Council through the Secretariat as soon as possible with a designated contact point. During the reporting period, [five] such notifications have been received and have been circulated under the IP/N/7- series of documents. The current list of Members offering assistance

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<sup>18</sup> Documents IP/C/W/243 and addenda.

<sup>19</sup> Document IP/C/W/298.

<sup>20</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.

<sup>21</sup> Document IP/C/W/241.

under the scheme is available in document IP/C/W/256/Rev.1. Updates of the list will be issued whenever other donor Members join the scheme.

19. At its meeting in June, the Council was informed that, at a ceremony with representatives of least-developed countries at the headquarters of WIPO held on 14 June 2001, the respective Directors-General of WTO and WIPO had launched a new joint initiative to provide technical assistance to least-developed countries (LDCs). This joint initiative was aimed at helping LDC Members to comply with their obligations under the TRIPS Agreement. It was also open to other LDCs and was aimed at helping LDCs make best use of the intellectual property system for their economic, social and cultural development. The new joint initiative was being taken under the auspices of the WIPO-WTO Cooperation Agreement which entered into force on 1 January 1996, which provided for cooperation, *inter alia*, in the provision of technical assistance. It built on existing cooperation between WIPO and the WTO and their respective technical cooperation programmes, and on their experience from the joint initiative on technical cooperation launched in July 1998 to assist developing country Members to meet their commitments under the TRIPS Agreement by 2000. Under the joint initiative in favour of LDCs, the two Organizations, together with countries requesting assistance and, where appropriate, donor countries, would endeavour to maximize the use of available resources in the coming critical period by ensuring that technical cooperation programmes were efficiently planned and coordinated. The joint initiative envisaged assistance in two phases: in the first phase, the two Organizations would organize two regional workshops during the course of 2002: one for the LDCs in sub-Saharan Africa and Haiti and the other for LDCs in the Asia-Pacific region. The objective of these workshops would be to ensure that officials from these countries were fully familiar with the basic concepts, principles and obligations laid down in the TRIPS Agreement, in particular with a view to facilitating implementation and identifying critical implementation challenges. Invitations to these workshops would be extended also to LDCs that were not WTO Members nor WIPO member states. These workshops, together with bilateral contacts, would, in a second phase, help in drawing up a list of priority forms of assistance that would be provided under the joint initiative in the form of specific country action plans. Requests for technical cooperation under the joint initiative can be sent by LDCs to either the WTO or WIPO.

## **IX. IMPLEMENTATION OF ARTICLE 23.4**

20. The Council continued, throughout the period under review, its discussions on issues relevant to the negotiations specified in Article 23.4 of the Agreement concerning the establishment of a multilateral system of notification and registration of geographical indications for wines, and on issues relevant to a notification and registration system for spirits, in accordance with paragraph 34 of the Council's report (1996)<sup>22</sup>, and the agreement reached in the General Council at its meeting of 7 and 8 February 2000. In addition to the documentation on the basis of which these discussions are taking place, as summarized in paragraph 23 of the Council's annual report (2000), the Council received three new communications, i.e., in April, one from Hungary<sup>23</sup> and, in June, two from the European Communities<sup>24</sup> including a comparative table juxtaposing the proposals that were before the Council concerning the notification and registration system for geographical indications to be negotiated under Article 23.4. [...]

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<sup>22</sup> Document IP/C/8.

<sup>23</sup> Document IP/C/W/255.

<sup>24</sup> Documents IP/C/W/259 and 260.

## **X. IMPLEMENTATION OF ARTICLE 24.1**

21. This matter is under discussion in the Council since September 2000, following a request by Switzerland and the submission of a paper a number of delegations<sup>25</sup>, outlining the views of these delegations on the implementation of Article 24.1, in particular in regard to the extension of additional protection for geographical indications to products other than wines and spirits, and making reference to paragraph 26 of the Council's report (1996)<sup>26</sup>. During the reporting period, the Council received two new documents, i.e., first, a proposal with regard to the issue of, specifically, the extension of additional protection for geographical indications to products other than wines and spirits, which is sponsored by the delegations Bulgaria, Cuba, the Czech Republic, Egypt, Iceland, India, Jamaica, Kenya, Liechtenstein, Mauritius, Nigeria, Pakistan, Slovenia, Sri Lanka, Switzerland, Turkey and Venezuela<sup>27</sup> and, in reaction to that proposal, a paper jointly submitted by the delegations of Argentina, Australia, Canada, Chile, Guatemala, New Zealand, Paraguay and the United States, outlining opposing views with regard to the mandate and need for an extension of the scope of Article 23.1.<sup>28</sup> [...]

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

22. As regards its review of the application of the Agreement's provisions on geographical indications under Article 24.2, following the circulation by the Secretariat, in September 2000, of a preliminary version of the paper that the Council had requested it to prepare summarizing, on the basis of an agreed outline, the responses to the Checklist of Questions adopted in 1998<sup>29</sup>, the Secretariat received additional information from nine of the 35 Members whose answers had formed the basis of the Secretariat's preliminary version of the summary paper while two additional Members submitted their responses to the Checklist. On the basis of the information thus received from these 37 Members, the Secretariat prepared the final version of its summary paper, which was circulated, in April, as document IP/C/W/253. Subsequently, the Council received responses to the Checklist from one other Member.

23. In November 2000, the Council initiated a detailed review of the experience and practice with the application of the provisions in the TRIPS Agreement on geographical indications, with the aid of the main section headings of the Secretariat's summary paper (document IP/C/W/253) as suggested by the Chairperson. [...]

## **XII. REVIEW OF THE PROVISIONS OF ARTICLE 27.3(b)**

24. During the reporting period, the Council received [five] new contributions, namely from the European Communities and their member States, Norway, Peru, Switzerland and the United States<sup>30</sup>, in addition to the documents the Council already had before it from Brazil, India, Japan, Mauritius (on behalf of the African Group), Singapore and the United States<sup>31</sup>. Members continued their discussion on both a number of substantive issues and a number of procedural questions relating to how the Council should handle its further work on this matter. The Council also had a discussion about the extent to which all the issues that had been raised under Article 27.3(b) should be pursued in that context or whether some might more suitably form part of the items to be taken up in the context of the review of the implementation of the TRIPS Agreement under Article 71.1. The Council requested the Secretariat to re-issue the illustrative list of questions that it had circulated in December 1998

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<sup>25</sup> Document IP/C/W/204/Rev.1.

<sup>26</sup> Document IP/C/8.

<sup>27</sup> Document IP/C/W/247/Rev.1.

<sup>28</sup> Document IP/C/W/289.

<sup>29</sup> Documents IP/C/13 and Add.1.

<sup>30</sup> Documents IP/C/W/254, 293, 246, 284 and 257, respectively.

<sup>31</sup> Documents IP/C/W/164, 161, 236 and 206, JOB(00)/7583 and IP/C/W/209, respectively.

upon a request from the Council. The Secretariat did so in document IP/C/W/273, which also contains the synoptic tables that had been prepared in May 1999 reflecting the responses to the questionnaire received by that time. Members who had not yet done so were invited by the Council to provide responses, in particular developing countries. Additional responses to this questionnaire were since received from [one] Member. [...]

### **XIII. REVIEW OF THE IMPLEMENTATION OF THE AGREEMENT UNDER ARTICLE 71.1**

25. This Article requires the Council for TRIPS to review the implementation of the Agreement after the end of the five-year transition period provided for in Article 65.2. During the period under review, the Council continued its discussions concerning how it should approach this general review of the implementation of the Agreement. It received [one] new paper on the matter, namely from Zambia<sup>32</sup>, in addition to the documents it had already before it from Cuba, Honduras, Paraguay and Venezuela, jointly, as well as from Australia and India.<sup>33</sup> [...]

### **XIV. NON-VIOLATION AND SITUATION COMPLAINTS**

26. During the period under review, the Council continued its discussions on this matter and received two new submissions, namely from Canada and Hungary<sup>34</sup>, in addition to the documents it had already received before from Canada, the Czech Republic, the European Communities and their member States, Hungary and Turkey, jointly, as well as from Australia, Korea and the United States.<sup>35</sup> In June, the Council had before it a note from the Chairperson suggesting, on the basis of informal consultations conducted by his predecessor, some headings that could be used as a way of organizing the further discussion on this matter (JOB(01)/70). [...]

### **XV. ELECTRONIC COMMERCE**

27. The Council continued its discussions on this matter throughout the reporting period, following the invitation from the General Council, in July 2000, to the TRIPS Council and three other subsidiary bodies, namely the Council for Trade in Goods, the Council for Trade in Services and the Committee on Trade and Development, to pick up where they had left off in their work on e-commerce within their respective spheres of competence, to identify cross-sectoral issues, and to report back to the General Council at its regular meeting in December 2000.<sup>36</sup> The Council addressed the matter at its meetings in September and November 2000 and submitted a second Progress Report to the General Council in December 2000.<sup>37</sup> In the reporting period, the Council discussed, at its meeting in April, the communications it had received from Australia and the European Communities on the matter<sup>38</sup>. At the Council's meeting in June, the Chairperson recalled that the General Council, when it had discussed the issue of electronic commerce on 8-9 May 2001, had invited the various subsidiary bodies concerned, including the Council for TRIPS, to continue their work and report back to the General Council.<sup>39</sup> Given that a dedicated discussion on electronic commerce had been held on 15 June 2001<sup>40</sup> under the auspices of the General Council, for the purpose of examining cross-cutting issues related to electronic commerce identified by delegations, he suggested that the TRIPS Council

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<sup>32</sup> Document IP/C/W/298.

<sup>33</sup> Documents IP/C/W/166, 210 and 214, respectively.

<sup>34</sup> Documents IP/C/W/249 and JOB(01)/43, respectively.

<sup>35</sup> Documents IP/C/W/191, 194 and 212 as well as JOB(00)/6166.

<sup>36</sup> Paragraphs 94 and 131 of document WT/GC/M/57.

<sup>37</sup> Document IP/C/20.

<sup>38</sup> Documents IP/C/W/233 and 224, respectively.

<sup>39</sup> WT/GC/M/65.

<sup>40</sup> A summary by the Secretariat of issues raised in that discussion has been circulated in document WT/GC/W/436.

focus more on the TRIPS-specific issues. New communications on electronic commerce were received from Cuba and Switzerland.<sup>41</sup>

## **XVI. INTELLECTUAL PROPERTY AND ACCESS TO MEDICINES**

28. Following a request from Zimbabwe on behalf of the African Group, the Council agreed to devote a full day's special discussion at its meeting in June to intellectual property issues relevant to access to medicines. While leaving Members free to address any aspect that they considered relevant to this agenda item, the Council identified two specific sub-items as topics on which Members would exchange their views. One was the interpretation and application of the relevant provisions of the TRIPS Agreement with a view to clarifying the flexibility to which Members were entitled under that Agreement; and the other was the relationship between the TRIPS Agreement and affordable access to medicines. In addition to those intergovernmental organizations granted observer status in the Council, the Council agreed to a request from UNAIDS to be present for this discussion.<sup>42</sup> It received two papers on the matter, one from the European Communities and their member States and another from the Africa Group, Barbados, Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Honduras, India, Indonesia, Jamaica, Pakistan, Paraguay, the Philippines, Peru, Sri Lanka, Thailand and Venezuela.<sup>43</sup> The Council had also before it an information paper prepared by the Secretariat upon a request from the Council.<sup>44</sup> As agreed by the Council, the Secretariat gave priority to the preparation and circulation of the minutes of this special discussion.<sup>45</sup> The Council requested the WTO Secretariat to compile a checklist of all the TRIPS provisions mentioned in the discussion and the issues identified in connection with them, so as to allow the Council to discuss the matter in a more structured and systematic way, in preparation for its further discussion of the matter at its meeting in September.<sup>46</sup> Following a full day's informal meeting of the Council on 25 July 2001, the Chairperson concluded that there was general agreement that the Council needed to have a more focused and prioritized approach to its work at the one-day special discussion that it had scheduled in September and that this focus should be on the objectives and principles as enshrined in Articles 7 and 8, the provisions relating to compulsory licensing and the provisions relating to parallel imports.<sup>47</sup> [...]

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<sup>41</sup> Documents IP/C/W/264 and IP/C/W/286, respectively.

<sup>42</sup> See paragraph 3 above.

<sup>43</sup> Documents IP/C/W/280 and 296, respectively.

<sup>44</sup> Document JOB(01)/82.

<sup>45</sup> The minutes concerning the special discussion were circulated separately in document IP/C/M/31.

<sup>46</sup> Document JOB(01)/113.

<sup>47</sup> Document JOB(01)/119.