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

DRAFT ANNUAL REPORT (1998) OF THE COUNCIL FOR TRIPS

I. GENERAL

1. Since the period covered by its last report¹, the Council for TRIPS has held [five] formal meetings, on 24 February, 12 May, 16 July, 17 September [and 1-2 December 1998]. The minutes of these meetings are to be found in documents IP/C/M/17-[21].

2. The first of the meetings referred to above was chaired by Ambassador Carmen Luz Guarda (Chile). The remainder were chaired by Ambassador István Major (Hungary).

3. The meetings of the Council were open to all WTO Members, other governments with observer status in WTO bodies and international intergovernmental organizations with regular observer status in the Council. [Decisions on requests for observer status from [ten] organizations are pending.²]

II. NOTIFICATIONS AND NOTIFICATION PROCEDURES

(i) Article 63.2³

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, [34] Members have made such notifications under Article 63.2 with respect to all or most of their implementing legislation relating to all provisions of the Agreement. [Eight] other Members have made notifications relating specifically to the implementation of Articles 3, 4 and 5 of the Agreement.⁴ Notifications concerning the implementation of Article 70.8 and, in some cases, Article 70.9 of the TRIPS Agreement have been received from [23] Members; some of them indicate that product patent protection for pharmaceutical and/or agricultural chemical products is already available in their territories.

5. The notification procedures also specify that a Member who has amended a law or regulation to bring it into conformity with provisions of the TRIPS Agreement in advance of its obligation under the TRIPS Agreement to start applying these provisions will use its best endeavours to notify such law or regulation as soon as possible after its entry into force. [Three] Members have made such notifications. Other notifications indicating that they are made without prejudice to a transition period under the provisions of Article 65 have been received from [five] Members.

¹ Document IP/C/12

² The organizations in question are listed in document IP/C/W/52/Rev.3.

³ Circulation of notifications referred to in paragraphs 4 and 5 below takes place in the IP/N/1/COUNTRY/- series of documents. Those referred to in paragraph 6 below have been circulated in the IP/N/6/COUNTRY/- series of documents.

⁴ A practical aid to assist delegations making the required notification is available in document IP/C/9.

6. 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, [35] Members have notified responses, two of which have been made without prejudice to entitlements under Article 65.

(ii) Articles 1.3 and 3.1⁵

7. 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, [25] Members have submitted such notifications.

(iii) Article 4(d)⁶

8. 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.⁷ To date, [49] notifications have been received under this provision from [34] Members.

(iv) Article 69⁸

9. 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, [86] Members have notified contact points.

(v) Notifications under other provisions of the Agreement

10. 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. To date, [two] Members have made notifications under the provisions of Article 14*bis*(2)(c) as applicable under the TRIPS Agreement and one Member has made notifications under provisions of the Appendix to the Berne Convention so applicable.⁹

11. Having received the first notifications relating to the provisions of the Appendix to the Berne Convention, the Council, at its May and July meetings, looked into how, under the TRIPS Agreement, the renewable ten-year periods for which such notifications remained valid should be calculated. At the request of the Council, the Secretariat prepared a background note¹⁰ on this question and, at its meeting in July 1998, the Council took note of the following statement by its Chairperson, in the light of informal consultations held on the matter¹¹:

"The provisions of Article I(2) of the Appendix as incorporated into the TRIPS Agreement can be understood so that, for the purposes of the TRIPS Agreement, the relevant periods are calculated by reference to the same date, i.e. 10 October 1974, as for the purposes of the Berne Convention. This would mean that renewable periods of ten years would be the same

⁵ Circulation of these notifications takes place in the IP/N/2/COUNTRY/- series of documents.

⁶ Circulation of these notifications takes place in the IP/N/4/COUNTRY/- series of documents.

⁷ 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.

⁸ The most recent compilation of these contact points is contained in document IP/N/3/Rev.3.

⁹ Circulation of these notifications takes place in the IP/N/5/COUNTRY/- series of documents.

¹⁰ Document IP/C/W/103

¹¹ See document IP/C/14

for the purposes of both Agreements, and that, also under the TRIPS Agreement, the period of ten years currently running would expire on 10 October 2004."

(vi) Other

12. The Council has also received, to date, a number of communications from Members providing information concerning their status under the transitional provisions of Article 65 of the Agreement. Some of these communications were made in conjunction with notifications made under Article 63.2 (see paragraph 4 above). Six other communications were made separately from any such notification.¹²

III. REVIEW OF NATIONAL LAWS AND REGULATIONS

13. As agreed at its meetings in September and November 1997, the Council continued in the first part of 1998 the review of six Members whose legislation had already been subject to the 1996/1997 review exercise but for whom the review had not been completed by the end of 1997. Including the questions of the Checklist of Issues on Enforcement (document IP/C/5), the review of the legislation of the 33 Members taken up in the period between 1996 and the first part of 1998 generated responses to some 5000 questions recorded in some 3000 pages of documentation.¹³ A number of responses to follow-up questions are still pending.

14. [Furthermore, the Council reviewed in the autumn of 1998 the legislation of three Members, who had negotiated their accession to the WTO and, while not applying a TRIPS transition period, had not yet been subject to the review.]

15. At its meeting in September 1998, the Council was informed that consultations by the Chairperson of the Council that had been held on possible advance reviews of the legislation of Members whose legislation had not been subject to the 1996/1997 review exercise, but whose legislation had already been, in whole or in part, brought into conformity with the TRIPS Agreement had not generated a consensus among all Members. In the light of further consultations that the Chairperson had held in order to explore the possibilities for spreading out the future workload that the Council would face in the year 2000, it was agreed that the Chair would consult with those Members that had been open to advance reviews of their legislation to see if they would be in a position to have their legislation reviewed in the first part of 2000, so as to initiate the post-2000 review of legislation. It was also agreed that consultations would be held on the practical arrangements that would need to be put in place for the reviews of the national implementing legislation of developing countries after 1 January 2000. [...]

IV. IMPLEMENTATION OF ARTICLE 70.8 AND 70.9

16. The Council continued its consideration of the implementation of Article 70.8 and the related provisions of Article 70.9. After the discussion at its meeting in February 1998 of a suggestion for a systematic review of the implementation of these provisions, the Chairperson noted that, while there was not a consensus among Members to follow the suggestion, it was open to delegations to put

¹² To the extent that these notifications were made in conjunction with a notification under Article 63.2, they have been circulated in the IP/N/1/COUNTRY/- series of documents. When made separately, they are available in an IP/C/- document.

¹³ 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. The responses to the Checklist of Issues on Enforcement are circulated in the IP/N/6/- series of documents.

questions on this matter on the floor of the Council or bilaterally. Since then, [one Member] has asked [a question] on the floor of the Council about the contents of a notification made [by another Member] relating to Article 70.8 and 70.9. [Another Member] informed the Council that it had communicated bilaterally questions regarding the obligations under these provisions to several Members, but had not received responses to these questions. The questions that this Member had asked bilaterally were subsequently circulated to all Members¹⁴ and the question of a review of the implementation of Article 70.8 and 70.9 was placed on the agenda of the Council's meeting in December 1998. [...]

V. IMPLEMENTATION OF ARTICLE 66.2

17. As a result of the discussion of the implementation of Article 70.8 and 70.9 at its meeting in September 1998, the Council agreed that the question of a review of the implementation of Article 6.2 be placed on the agenda of its meeting in December 1998. [...]

VI. RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

18. During the period under review, the Council was informed of four actions under the Dispute Settlement Understanding relevant to the TRIPS Agreement, as reflected in documents IP/D/11-14 and of the settlement of three disputes through the adoption by the DSB of, in [two] cases, panel reports (document IP/D/6/Add.1 and IP/D/7/Add.1 and corrigendum) and, in the other case, of a panel report together with, and as modified by, a report of the Appellate Body (document WT/DS50/9). At its meeting in February 1998, the Council took note of a number of statements made in relation to the adopted panel and Appellate Body reports in dispute WT/DS50. [...]

VII. TECHNICAL COOPERATION

19. The Council has continued its work in this area on the basis of the procedures agreed at its meeting in February 1996. During the period under review, several delegations informed 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 1998, which had a special focus on technical cooperation. For the sake of transparency, intergovernmental organizations observers to the TRIPS Council also presented, on the invitation of the Council, information on their activities. In addition, the WTO Secretariat provided information on its technical cooperation in the TRIPS area. This information can be found in documents IP/C/W/108-110 and Addenda. At its meeting in December 1998, the Council continued its discussion on technical cooperation in order to take into account the information on technical cooperation activities received just prior to or after the September meeting. [...]

20. At its meeting in July 1998, the Council was informed that the WTO Secretariat had been working with its colleagues in WIPO on how to enhance their existing cooperation in the field of technical cooperation based on the Agreement entered into between the two Organizations on 1 January 1996, particularly in the light of the imminence of the end of the general transition period for developing countries on 1 January 2000 and the need to be as efficient as possible in making available technical cooperation in the intervening period so as to maximize the assistance that they were in a position to provide. The WTO Secretariat had agreed with WIPO on a joint initiative to this effect. Under this joint initiative, the Directors-General of the two Organizations sent communications to Ministers of each of the countries concerned, underscoring the commitment of the two Organizations to do all within their capacity to provide, on request, technical assistance. Two annexes had been attached to this joint letter, aimed at facilitating a stocktaking, in the capitals of

¹⁴ As regards notifications relating to Article 70.8 and 70.9, reference is made to paragraph 4 above.

those Members that wished to do so, of where they were with TRIPS compliance, how far they needed to go in order to comply by the year 2000 and, therefore, what assistance would be useful to them. One annex concerned a checklist of main requirements of the Agreement and the other a list of the forms of assistance that could be offered by the two Secretariats. Both Secretariats reported in September that replies to the letter had begun to come in from developing country Members.

21. As agreed in July 1996, contact points in developed country Members' administrations which can be addressed by developing countries seeking technical cooperation on TRIPS are to be notified. To date, 27 Members have notified their contact points for technical cooperation.¹⁵

22. The Secretariat organized, jointly with the International Bureau of the World Intellectual Property Organization (WIPO), a third workshop on a specific aspect of technical cooperation with a view to enabling an exchange of views on technical cooperation needs and experiences related to the implementation of the TRIPS Agreement. The topic of the workshop, held on 16 September 1998, was "The Process of Implementation of the TRIPS Agreement".

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

23. The Council continued its consideration of this matter in 1998. Further informal consultations resulted in a draft Checklist of Questions about national regimes for the protection and enforcement of geographical indications. At its meetings in May and July 1998, the Council took note of the questions that had been suggested by individual Members for inclusion in this Checklist and invited those Members already under an obligation to apply the provisions of the Section on Geographical Indications to provide their responses by 16 November 1998, it being understood that other Members could also furnish replies on a voluntary basis.¹⁶ [...]

IX. IMPLEMENTATION OF ARTICLE 23.4

24. The Council continued its preliminary work initiated in 1997 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).¹⁷ The information-gathering process agreed by the Council in 1997 had generated 12 submissions from Members on systems for the registration of geographical indications which they operated¹⁸ and a background note, prepared by the Secretariat, on existing notification and registration systems for geographical indications relating to wines and spirits.¹⁹ During the period under review, the discussions focused on the question of what the next step should be for carrying forward work concerning negotiations for the establishment of a multilateral system for the notification and registration of geographical indications under Article 23.4. A proposal received from the European Communities in July 1998 was commented upon by many delegations at the Council's meeting in September. [...]

X. TRADE FACILITATION

25. Following a letter received in September 1998 from the Chairman of the Council for Trade in Goods, the Council agreed to take up this issue in December 1998. The purpose of the TRIPS

¹⁵ The most recent compilation of these contact points is contained in document IP/N/7/Rev.2 and addenda.

¹⁶ Document IP/C/13 and addendum

¹⁷ Document IP/C/8

¹⁸ Documents IP/C/W/76 and addenda

¹⁹ Document IP/C/W/85

Council's work on the matter should be to address those aspects of trade facilitation which the TRIPS Council regarded as being related to the TRIPS Agreement. The TRIPS Council is expected to convey the results of its discussions on the issue by March 1999 to the Council for Trade in Goods. [...]

XI. ELECTRONIC COMMERCE

26. In September 1998, the General Council adopted a work programme on electronic commerce²⁰, as a follow-up to the Declaration on Global Electronic Commerce adopted by Ministers at the Ministerial Conference in May 1998. As part of this work programme, the Council for TRIPS shall examine and report - by 30 July 1999 - on the intellectual property issues arising in connection with electronic commerce, including issues concerning the protection and enforcement of copyright and related rights; the protection and enforcement of trademarks; and new technologies and access to technology. [...]

XII. REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B)

27. At the Council's meeting in September 1998, the Chairperson drew the attention of the Council to the provisions of Article 27.3(b) of the Agreement, which require a review of the provisions four years after the entry into force of the WTO Agreement, i.e. in 1999. It was agreed to have an initial exchange of views in December 1998 on how this review should be carried out. [...]

XIII. ARTICLE 64.3

28. At the Council's meeting in September 1998, the Chairperson drew the attention of the Council to the provisions of Article 64.3, which require the examination, before the end of 1999, of the scope and modalities for complaints of the type provided for under Article XXIII:1(b) and (c) of GATT 1994 made pursuant to the TRIPS Agreement. It was agreed to have an initial exchange of views in December 1998 on the work to be done and to request the Secretariat to prepare a factual background note on the experience with disputes so far under the TRIPS Agreement, including any references made to non-violation issues, the negotiating history of paragraphs 2 and 3 of Article 64 of the TRIPS Agreement, the experience with non-violation complaints under the GATT/WTO, and any information available on the use of the non-violation concept in disputes on intellectual property elsewhere. [...]

²⁰ Document WT/L/274