

# WORLD TRADE ORGANIZATION

RESTRICTED

**IP/C/W/33/Rev.1**

18 September 1996

(96-3668)

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

## REPORT (1996) OF THE COUNCIL FOR TRIPS

Draft

Revision

Please find attached a revised draft for the report of the Council for TRIPS for 1996 reflecting the work of the Council in the period up to its meeting of 18 September 1996. **The modifications made are indicated on the text. The draft may need to be updated to reflect the outcome of the discussion in the Council on the various agenda items at its meeting of 18 September.**

## REPORT (1996) OF THE COUNCIL FOR TRIPS

### Draft

## **I General**

1. Since the period covered by its last report<sup>1</sup>, the Council for TRIPS has held **five** formal meetings, on 11 December 1995 and on 22 February, 9 May, 22-25 July **and 18 September** 1996. The minutes of these meetings are to be found in documents IP/C/M/5-9<sup>2</sup>. This report covers this period, but also contains references to the work done by the Council for TRIPS in 1995.

2. The first two of the meetings referred to above were chaired by Mr. Stuart Harbinson (Hong Kong). The remainder were chaired by Ambassador Wade Armstrong (New Zealand).

3. Meetings of the Council were open to all WTO Members. In addition, government observers to WTO bodies were invited. WIPO was invited to all meetings, in accordance with the recommendation of the Preparatory Committee as confirmed by the General Council. Pursuant to the interim procedure on observer status for intergovernmental organizations evolved under the auspices of the General Council, the FAO, the IMF, the OECD, the UNCTAD, the United Nations, the UPOV (International Union for the Protection of New Varieties of Plants), the World Bank and the WCO were invited to meetings of the Council.

## **II Implementation**

### (i) Notifications and Notification Procedures

#### (a) Article 63.2

4. At its meeting in November 1995, the Council adopted the following decisions to give effect to the obligation to notify implementing legislation under Article 63.2: Procedures for Notification of, and Possible Establishment of a Common Register of, National Laws and Regulations under Article 63.2 (document IP/C/2); Format for Listing of "Other Laws and Regulations" to be Notified under Article 63.2 (document IP/C/4); and Checklist of Issues on Enforcement (document IP/C/5).

5. These procedures 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. A very substantial volume of legislation has been notified under these procedures. As of the date of this report, 29 Members have notified some or all of their implementing legislation. Most of the material to be notified by Members whose legislation, in the area of copyright and related rights, was the subject of review at the Council's July meeting (see paragraph 14 below) has been notified; three other countries have notified some of their legislation while indicating that this is without prejudice to their transition period under the provisions of Article 65; and ~~40~~ **11** Members have notified legislation relating to the implementation of Article 70.8 and, in some cases, Article 70.9 of the TRIPS Agreement. These notifications are circulated in the IP/N/1/COUNTRY/- series of documents.

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<sup>1</sup>Document WT/GC/W/25, Section VI

<sup>2</sup>Document IP/C/M/9 to be issued

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). In recognition of the fact that preparation of the responses would take time, the procedures require them to be submitted "as soon as possible" after the time that a Member is obliged to start applying the provisions of the TRIPS Agreement on enforcement. Eight Members have notified responses. These responses have been circulated in the IP/N/6/COUNTRY/- series of documents. At the July 1996 meeting of the Council, the Chairman urged the Members concerned to provide their responses soon and in any case before the end of 1996.

7. The national treatment and MFN obligations of Articles 3, 4 and 5 of the TRIPS Agreement became applicable to all Members from 1 January 1996. So far, no notifications have been received under Article 63.2 relating specifically to the implementation of these provisions, except in so far as such notifications have formed part of the comprehensive notifications by developed country Members of their general implementing legislation. The Council has considered whether there may be technical difficulties with meeting this notification requirement. At the Council's July meeting, a proposal was made for a simplified procedure in this connection and the Council agreed that the matter be taken up in informal consultations.

(b) Articles 1.3 and 3.1

8. 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. ~~23~~ **24** Members have submitted notifications under these provisions. These notifications are contained in the IP/N/2/COUNTRY/- series of documents.

(c) Article 4(d)

9. 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. At the meeting of the Council in November 1995, the Chairman drew the attention of Members to the need to make notifications under Article 4(d) by 1 January 1996 if Members wished to have legal cover from that date for any exceptions to MFN treatment that they seek to justify by reference to the provisions of Article 4(d). To date, ~~25~~ **28** Members have made notifications under this provision. These notifications are contained in the IP/N/4/COUNTRY/- series of documents.

10. In discussions at the Council's meetings of February, May and July 1996, some Members expressed concern about some of the notifications made, in particular that the absence of sufficient guidelines for such notifications meant that the notifications did not always enable the other Members to understand the specific element of discrimination that was being sought to be justified. As agreed at the Council's February meeting, the Chairman held informal consultations on this matter. To facilitate these consultations, he circulated an informal background note by the Secretariat ~~on the drafting history of Article 4 and identifying a number of factors that might be relevant to consideration of whether a notification should be made under subparagraph (d).~~

(d) Article 69

11. 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, ~~65~~ **67** Members have notified contact points. The most recent compilation of these is contained in document IP/N/3/Rev.2.

(e) Notifications Under Other Provisions of the Agreement

12. A number of notification provisions of the Berne and Rome Convention are incorporated by reference into the TRIPS Agreement but without being explicitly referred to in it. At its meeting in February 1996, the Council invited each Member wishing to make such notifications to make them to the Council for TRIPS, even if the Member in question had already made a notification under the Berne or Rome Convention in regard to the same issue, and drew the attention of Members to the discussion relating to the timing of such notifications in paragraphs 16 through 21 of document IP/C/W/15, a Secretariat background note on the subject. To date, one Member has made a notification under this procedure. **These Notifications of this kind are contained being circulated** in the IP/N/5/COUNTRY/- series of documents.

(ii) Monitoring the Operation of the Agreement

(a) Review of National Laws and Regulations

13. At its meeting in November 1995, the Council adopted a schedule for the consideration of national implementing legislation in 1996/1997 (IP/C/4). This provided for legislation in the area of copyright and related rights to be reviewed by the Council in July 1996. Following informal consultations, the Council agreed at its May 1996 meeting on procedures for the Council's review of legislation in this area. These procedures provided for written questions and replies prior to the review meeting, with follow-up questions and replies during the course of the meeting.

14. At the Council's meeting of 22-25 July 1996, the legislation in the area of copyright and related rights of 29 Members was reviewed. **A number of these Members indicated that they still had steps to take to comply fully with their TRIPS obligations in this area.** The record of the introductory statements made by delegations, the questions put to them and the responses given is being circulated in the IP/Q/COUNTRY/- series of documents. At subsequent meetings of the Council, an opportunity will be given to follow-up points emerging from the review session which delegations consider have not been adequately addressed. **In this connection, it was recognized that the review of national implementing legislation implied quite a heavy workload and that it was important to allow an adequate opportunity for a follow-up to all Members, in particular to developing country Members that had constraints on their resources and on their ability to analyse and digest some of the material.**

15. The procedures adopted by the Council for the review provided that the review would apply to the copyright and related rights legislation of Members obliged to comply with the TRIPS Agreement under Article 65.1 and of any other Members not still availing themselves in respect of this area of legislation of any longer transition period to which they may be entitled. During the course of the review, questions were put to a number of Members which did not consider that they fell into either of these categories and which did not provide answers in the Council's meeting.

16. In accordance with the "schedule for consideration of national implementing legislation in 1996/1997" (IP/C/3), the Council will review legislation in the areas of trademarks, geographical indications and industrial designs at its meeting scheduled for 11-15 November 1996. Legislation in the areas of patents, layout-designs of integrated circuits, undisclosed information and the control of anti-competitive practices in contractual licences is scheduled for review in the first half of 1997, and that in the area of enforcement in the second half of 1997.

(b) Implementation of Article 70.8 and 70.9

17. At its meetings in February, May and July 1996, the Council considered the implementation of Article 70.8 and the related provisions of Article 70.9. At these meetings the Council took note of statements by some Members of their concern that not all Members to which these provisions applied were giving effect to them or, in the event that they had done so, had not notified the relevant legislation under Article 63.2. At the Council's meetings of May and July 1996, ~~the Council was~~ **some Members** ~~informed of the initiation of the Council that they were engaged in~~ dispute settlement proceedings on this matter ~~by a Member~~ with two other Members (IP/D/2 and IP/D/5).

(c) Implementation of Article 70.2

18. At the Council's February meeting, statements were made concerning compliance with Article 70.2 in regard to the patent term and in respect of rights in sound recordings. Dispute settlement proceedings initiated in connection with these matters have been notified to the TRIPS Council in documents IP/D/1, 3 and 4. **[On ... 1996, the Council was informed of a mutually agreed solution reached between the parties on the first of these issues (document .....).]**

(d) Revocation of Patents

19. At the Council's July meeting, a Member stated its understanding of the TRIPS Agreement in regard to the circumstances under which Members could justify the revocation of a patent (statement subsequently circulated as document IP/C/W/32). A number of other Members spoke on this matter. The Council took note of the statements and agreed that this item be placed on the agenda of its September meeting.

(iii) Technical Cooperation

20. In accordance with a decision taken by the Council in November 1995, the Chairman made available for the February 1996 meeting of the Council an informal discussion note outlining and structuring the issues which had been raised in the Council's various discussions on the subject of technical cooperation and identifying possible options for carrying forward the Council's work in this area (subsequently distributed as IP/C/W/21). As a result of the ensuing discussion, the Council agreed on the following:

- that the Council would seek the annual updating by developed country Members of information on their technical cooperation activities pursuant to Article 67 of the Agreement, and that in 1996 the updating would be sought in time for the Council's meeting scheduled for September 1996;
- that the Council's September 1996 meeting would have a special, but not exclusive, focus on the issue of technical cooperation;
- that the Secretariat would prepare an analytical summary of the information on technical cooperation activities already presented and, on this basis, consideration would be given to whether Members would be invited to use a common list of basic headings in presenting an overview of their technical cooperation activities;
- that the Secretariat would be invited to present a suggestion for a specific pilot project for a workshop, to be held in the margins of the Council meeting, that would permit a more in-depth, thematic discussion of a particular aspect of technical cooperation.

21. At its May meeting, the Council considered a proposal for a pilot project for an in-depth discussion of a specific aspect of technical cooperation. The Council agreed that the Secretariat should go ahead, hopefully in cooperation with the International Bureau of the WIPO, to organize a workshop on border enforcement, to be held immediately before or after the Council's meeting of 18 September 1996. The workshop, organized jointly by the WTO Secretariat and the International Bureau of WIPO, was held on the afternoon of 17 September 1996.

22. At the Council's July meeting, it was agreed that developed country Members, in submitting updated information on their technical cooperation activities prior to the Council's September meeting, would notify a contact point or contact points which could be addressed by a developing country Member seeking technical cooperation. The contact point could be the same as the one that the developed country Member in question had notified under Article 69 of the Agreement, or it could be different, depending on the structure of the Members' administrations.

(iv) Cooperation with WIPO

23. Article 68 of the TRIPS Agreement provides that the Council shall, in consultation with WIPO, seek to establish, within one year of its first meeting appropriate arrangements for cooperation with the bodies of that Organization. At its December 1995 meeting, the Council for TRIPS approved a draft agreement drawn up as a result of consultations between the Chairman of the Council for TRIPS, assisted by the WTO Secretariat, and the Chairman of the WIPO Coordination Committee, assisted by the International Bureau of WIPO. The draft agreement was approved by the General Council at its meeting of 13 and 15 December 1995. Following approval by the competent bodies of the WIPO and the signature by the Director's-General of the two Organizations, the Agreement between the World Intellectual Property Organization and the World Trade Organization (IP/C/6) entered into force on 1 January 1996. The Agreement provides for cooperation in the following three areas: the notification of, access to and translation of national laws and regulations; the implementation of Article 6*ter* of the Paris Convention (relating to national emblems) for the purposes of the TRIPS Agreement; and legal-technical assistance and technical cooperation.

24. At its December 1995 meeting, the Council adopted a decision on the implementation of the obligations under the TRIPS Agreement stemming from the incorporation of the provisions of Article 6*ter* of the Paris Convention 1967 (IP/C/7). This decision has as its purpose giving legal effect under the TRIPS Agreement to the procedures relating to the administration of TRIPS obligations regarding Article 6*ter* of the Paris Convention that are incorporated in the Agreement between WIPO and WTO.

### III In-built Agenda

(i) Article 24.1

25. **Under Article 24.1, Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. No time-frame is specified for such negotiations. At the July meeting of the Council, some Members addressed Article 24.1, but no specific suggestions have been made as yet in the Council with regard to such negotiations.**

(ii) Article 24.2

26. Article 24.2 requires the Council for TRIPS to keep under review the application of the provisions of the Section of the Agreement on geographical indications, and states that the first such review shall take place within two years of the entry into force of the WTO Agreement. At the Council's May and July meetings, the Chairman raised the questions of when and how this review should be undertaken.

**As mentioned in paragraph 16 above, the Council will review legislation in the area of geographical indications at its meeting scheduled for 11-15 November 1996.**

**(iii) Article 23.4**

27. Article 23.4 calls on the Council for TRIPS to undertake negotiations concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection by those Members participating in the system, **but does not specify a time-frame for such negotiations.** At the July meeting of the Council, a number of delegations addressed the question of how and when these negotiations might be initiated. **[The Council has agreed that these negotiations should be initiated at the beginning of 1997 and completed by the end of that year.] [The Council has agreed to initiate in 1997 preparatory discussions on this matter, but considers that would be premature to move to negotiations.] [It has been agreed that in this work consideration will also be given to geographical indications for spirits.]**

**(iv) Article 27.3(b)**

28. Article 27.3(b) states that the provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement. At the Council's meeting in July, ~~some~~ **a number** of delegations addressed the question of when this work should be initiated.

**(v) Article 64.3**

29. Article 64.3 requires the Council for TRIPS to examine, during the five years from the date of entry into force of the WTO Agreement, the scope and modalities for the complaints provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to the TRIPS Agreement, and to submit its recommendations to the Ministerial Conference for approval. No suggestions regarding this aspect of the Council's work were made during the course of 1996.

**(vi) Article 71.1**

30. Article 71.1 requires the Council for TRIPS to review the implementation of the TRIPS Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65, namely after 1 January 2000.

**[IV Issues, Problems and Recommendations if any, to be Brought to the Attention of Ministers]**