

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

ANNUAL REPORT (1997) 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 six formal meetings, on 11-15 November 1996 and on 27 February, 26-30 May, 15 July, 19 September and 17-21 November 1997. The minutes of these meetings are to be found in documents IP/C/M/11-16.<sup>2</sup>

2. The first two of the meetings referred to above were chaired by Ambassador Wade Armstrong (New Zealand). The remainder were chaired by Ambassador Carmen Luz Guarda (Chile).

3. Meetings of the Council were open to all WTO Members. In addition, governments observers to WTO bodies were invited. The Council, at its meeting of 27 February 1997, noted that the General Council, at its meeting of 7 February 1997, had granted to the IMF and the World Bank observer status in the General Council and other WTO bodies as provided for in the agreements between the WTO and these two institutions. In addition, it decided to grant regular observer status to the other organizations that the Council had invited to its meetings in 1995 and 1996 on an *ad hoc* basis. Those organizations are the FAO, the OECD, UPOV (International Union for the Protection of New Varieties of Plants), the United Nations, UNCTAD, the WCO and WIPO. The decision was made on the basis that there would be reciprocity with respect to proceedings, documents and other aspects of observership. Decisions on requests for observer status from the Cooperation Council of the Arab States of the Gulf, EFTA (European Free Trade Association), the OAS (Organization of American States), the OIV (Office International de la Vigne et du Vin), the Organization of the Islamic Conference, SELA (Latin American Economic System) and SIECA (Permanent Secretariat of the General Treaty for Central American Economic Integration) are pending.

II. NOTIFICATIONS AND NOTIFICATION PROCEDURES

(i) Article 63.2

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, 31 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. Ten other Members have notified legislation while indicating that this is without prejudice to their transition period under the provisions of Article 65. Notifications concerning the implementation of Article 70.8 and, in some cases, Article 70.9 of the

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<sup>1</sup>Document IP/C/8

<sup>2</sup>Document IP/C/M/16 to be issued

TRIPS Agreement have been received from 20 Members; some of them indicate that product patent protection for pharmaceutical and/or agricultural chemical products is already available in their territories. Four notifications relating specifically to the implementation of Articles 3, 4 and 5 of the Agreement have also been received to date. Circulation of notifications under Article 63.2 takes place in the IP/N/1/COUNTRY/- series of documents.

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, 30 Members have notified responses, one of which without prejudice to its entitlements under Article 65. These responses have been circulated in the IP/N/6/COUNTRY/- series of documents.

6. 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. At its meeting in February 1997, the Council took note of a text which it had developed as a practical aid to assist delegations making notifications of laws and regulations relating to Articles 3, 4 and 5 of the Agreement. The text was subsequently circulated in document IP/C/9 entitled "Notifications of Laws and Regulations relating to Articles 3, 4 and 5 of the TRIPS Agreement: Format for One Option". As noted in the document, the Council for TRIPS has recognized that Members have a number of options for meeting their obligation to notify those laws and regulations that correspond to the national treatment and MFN obligations of Articles 3, 4 and 5 of the Agreement. Three options in particular have been identified:

- notifying the specific provisions of laws and regulations that implement the obligations set out in Articles 3, 4 and 5;
- making a general statement that nationals of other WTO Members enjoy non-discriminatory treatment, together with a list of any exceptions to that principle; or
- notifying all intellectual property laws and regulations.

In respect of the second of these options, the document contains a format, which was developed as a practical aid to assist Members availing themselves of this option, without adding to or subtracting from the rights and obligations of Members under the Agreement.

(ii) Articles 1.3 and 3.1

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. Twenty-five notifications have been submitted under these provisions. These notifications are contained in the IP/N/2/COUNTRY/- series of documents.

(iii) Article 4(d)

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. To date, 43 notifications have been received under this provision. These notifications are contained in the IP/N/4/COUNTRY/- series of documents.

9. At its meeting in February 1997, the Council noted the existence of the informal background note by the Secretariat entitled "The Most-Favoured-Nation Treatment Clause of the TRIPS Agreement

(Article 4)", the last paragraph of which was intended as an informal guideline to assist individual Members in making or reviewing their notifications under Article 4(d).<sup>3</sup> The text of this note, revised as requested by the Council to take into account points made at the meeting, was circulated as document No. 1548, dated 20 March 1997. The Council agreed to revert to the issue in the autumn of 1997 so as to take stock of the situation at that time and in the light of any new or revised notifications that had been made. The Council had a further exchange of views on the matter at its September 1997 meeting. For the November meeting of the Council, two modified notifications were submitted.

(iv) Article 69

10. 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, 81 Members have notified contact points. The most recent compilation of these is contained in document IP/N/3/Rev.2 and addenda.

(v) Notifications under other provisions of the Agreement

11. 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, one Member has made a notification under these provisions. Notifications of this kind are being circulated in the IP/N/5/COUNTRY/- series of documents.

(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.

### III. REVIEW OF NATIONAL LAWS AND REGULATIONS

13. The Council continued its review of national laws and regulations in accordance with the "Schedule for the Consideration of National Implementing Legislation in 1996/1997" it had adopted at its meeting in November 1995 (IP/C/3). The procedures, originally agreed at its May 1996 meeting in respect of the review of legislation in the area of copyright and related rights, were applied to the subsequent reviews with necessary modifications. 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. At subsequent meetings of the Council, an opportunity was given to follow-up points that had emerged from the review sessions which delegations considered had not been adequately addressed.

14. Legislation in the areas of trademarks, geographical indications and industrial designs of 30 Members was reviewed at the Council's meeting of 11-15 November 1996. Legislation in the areas of patents, layout-designs (topographies) of integrated circuits, protection of undisclosed information and control of anti-competitive practices in contractual licenses of 33 Members was reviewed at the Council's meeting of 26-30 May 1997. At the Council's meeting of 17-21 November 1997, legislation of 32 Members in the area of enforcement was reviewed. 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/Q2/COUNTRY/-, IP/Q3/COUNTRY/-

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<sup>3</sup>See the Annex to document IP/C/M/12.

and IP/Q4/COUNTRY/- series of documents. A number of responses to follow-up questions are still pending.

15. The minutes of the Council's May 1997 meeting record the following statement by the Chairperson on the issue of priority rights (IP/C/M/13, paragraph 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 6ter 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."

16. According to the schedule for the review of national implementing legislation currently taking place, as adopted in November 1995 (document IP/C/3), the Council would normally terminate this exercise by the end of 1997. At its meeting in September 1997, the Council agreed to complete in the spring of 1998 the review of four Members, whose legislation was already subject to the on-going review but for whom the review would not have been completed by the end of the year, because they joined the exercise late. Furthermore, the Council agreed to review in the autumn of 1998 the legislation of three Members, who had acceded to the WTO during the period of the current review and who, while not applying a TRIPS transition period, had not yet been subject to the review.

17. At its meeting in November 1996, the Council agreed that the Chair would consult in 1997 with individual Members whose legislation had not been subject to the present review exercise, but whose legislation would have been, in whole or in large part, brought into conformity with the TRIPS Agreement in advance. The purpose of those consultations by the Chair would be to see whether there was 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, with it being clearly 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 the light of further discussion on this matter at the Council's July meeting, the Chairperson said the Council should develop ground rules for such advance reviews so as to give security to all Members that the review would be taken up on a voluntary basis and without prejudice to their entitlements under Article 65, and that reviewed legislation would not be submitted to a second review exercise in the year 2000. At the Council's November 1997 meeting, the Chair informed the Council that the Chair's informal consultations on this matter had clarified the readiness of at least five Members to be taken up in such early reviews in late 1998 or early 1999, on the conditions laid down in the draft ground rules proposed by the Chair, but had still not yet yielded the necessary consensus among Members as a whole.

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

18. The Council considered at each of its meetings the implementation of Article 70.8 and the related provisions of Article 70.9, and 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.

19. At its meeting in May, the Council was informed of a mutually agreed solution to a matter concerning these Articles, on which consultations had been initiated under the Dispute Settlement Understanding (IP/D/2/Add.1).

#### V. RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

20. At its meetings in February and September 1997, the Council was informed of provisions in the protocols of accession and reports of working parties on the accession of three countries to the WTO under Article XII of the WTO Agreement concerning the application of the provisions of the TRIPS Agreement.

21. At its meeting in November 1996, the Council took note, under "other business", of statements concerning the terms of accession of Ecuador to the WTO concerning application of the provisions of the TRIPS Agreement. At its meeting in July 1997, the Council took note of a communication from Ecuador on the matter (IP/C/W/74).

22. During the period under review, the Council was informed of six actions under the Dispute Settlement Understanding relevant to the TRIPS Agreement, as reflected in documents IP/D/6-10 and WT/DS50/6, and of three mutually agreed solutions, as reflected in documents IP/D/1/Add.1, IP/D/2/Add.1 and IP/D/4/Add.1.

#### VI. TECHNICAL COOPERATION

23. The Council has continued its work in this area on the basis of the procedures agreed at its meeting in February 1996. 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 1997, 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/77-79 and addenda. In the discussion, the attention of the Council was drawn to the provisions of Article 66.2 of the Agreement and the obligations of developed country Members under those provisions. At its meeting in November 1997, 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.

24. Developed country Members have notified contact points in their administrations which can be addressed by developing countries seeking technical cooperation on TRIPS. To date, 22 developed country Members have notified their contact points for technical cooperation. The most recent compilation of these is contained in document IP/N/7/Rev.1 and addenda.

25. The Secretariat organized, jointly with the International Bureau of the World Intellectual Property Organization (WIPO), the second workshop on a specific aspects of technical cooperation, which enabled 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 14 July 1997, was "Technical Cooperation

Aimed at Improving Human Resources and Institutional Capacities Required to Implement the TRIPS Provisions on Domestic Enforcement".

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

26. As agreed at its meeting in September 1996, the Council took up work on this matter by including on the agenda of its November 1996 meeting an item "Review of the Application of the Provisions of the Section on Geographical Indications under Article 24.2" and addressed this agenda item after and taking into account the review of national implementing legislation in the areas of trademarks, geographical indications and industrial designs scheduled for that meeting. The Council agreed to give further consideration to how the issue of reviewing the application of the provisions of the Section on geographical indications under Article 24.2 would be handled through informal consultations, the timing of which would need to take into account the submission of proposals which delegations had foreshadowed. At its meeting in February 1997, the Council had a further exchange of views on this matter in the context of a follow-up to its 1996 report and confirmed these arrangements for carrying forward the work. At the Council's July 1997 meeting, it had an exchange of views on this matter on the basis of a communication from a delegation (IP/C/W/75) and two non-papers. The Chair announced her intention to hold informal consultations prior to the Council's September meeting. Following these consultations, the Chair called on delegations to contribute either by posing questions or by submitting suggestions on the purpose of, and the procedures for, the review foreseen under Article 24.2. At the Council's meeting in November 1997, the Chair informed the Council that seven Members had presented their views in writing in the period July to November 1997. The Chair is continuing to hold informal consultations on this matter with a view to proposing a decision at the Council's second meeting in 1998.

## VIII. IMPLEMENTATION OF ARTICLE 23.4

27. In its report (1996), the Council agreed to initiate in 1997 preliminary work 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 that issues relevant to a notification and registration system for spirits would be part of this preliminary work (IP/C/8, paragraph 34). At its meeting in February, the Council initiated this work by agreeing on an information-gathering activity. Members were invited to submit information on any systems for the registration of geographical indications which they operated. To date, information has been received from eleven Members, which can be found in documents IP/C/W/76 and Addenda 1-11. At its meeting in September 1997, the Council considered this information and agreed to request the Secretariat to prepare a background note on notification and registration systems for the Council's work under Article 23.4 in accordance with an outline reproduced in an Annex to document IP/C/M/15. This note has been circulated as document IP/C/W/85; it will be considered at the Council's first meeting in 1998.