

Council for Trade-Related Aspects of Intellectual Property Rights

ANNUAL REPORT TO THE GENERAL COUNCIL

Draft

I General

1. This report is submitted pursuant to the decision taken by the General Council at its meeting on 15 November 1995, which requires the sectoral councils to report in November each year to the General Council on the activities in the Council. The period covered in this Report is January-October 1995.
2. The Council for TRIPS held three formal meetings, on 9 March, 24 May, 21 September [and 20-21 November] 1995. The minutes of these meetings are to be found in documents IP/C/M/1-[4].
3. Meetings of the Council were open to all WTO Members. In addition, the non-voting participants and government observers to WTO bodies were invited as agreed by the General Council at its meeting of 31 January 1995. Pursuant to the interim procedure on observer status for intergovernmental organizations evolved under the auspices of the General Council, the IMF, the UNCTAD, the United Nations and the World Bank were invited to all three meetings, the FAO, the OECD, and the WCO to the second and third meetings, and UPOV to the third meeting. WIPO was invited to all three meetings, in accordance with the recommendation of the Contact Group under the Preparatory Committee, as confirmed by the General Council.
4. At its meeting in May, the Council adopted its Rules of Procedure with the exception of Rule 33, which it adopted at its meeting in September (documents IP/C/W/2, IP/C/M/2, paragraphs 5 and 6 and IP/C/M/3, paragraphs 2 and 3). These decisions were submitted to the General Council for approval (document IP/C/1).

II Notification procedures

(a) Article 63.2

5. Article 63.2 of the TRIPS Agreement requires Members to notify the laws and regulations made effective by that Member pertaining to the subject matter of the Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) to the Council for TRIPS in order to assist that Council in its review of the operation of the Agreement. The Contact Group under the Preparatory Committee had agreed that under Article 63.2 national laws and regulations should be notified as of the time that the corresponding substantive obligation applies (document PC/IPL/7, paragraph 3). The Council has discussed procedures for giving effect to the obligation to notify implementing legislation under Article 63.2 with a view of putting in place the necessary procedures by the beginning of 1996 when a bulk of obligations enter into force for some Members. [To be completed.]

6. The Council has also discussed the schedule for the consideration of national implementing legislation. By the end of October, the Council had received 12 notifications under Article 63.2, of which nine related to Article 70.8 of the TRIPS Agreement discussed below. These notifications are circulated in the IP/N/1 series of documents.

(b) 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, provided that notifications are made to the Council for TRIPS. At its meeting in May, the Council drew the attention of Members to the desirability of considering whether they wished to make notifications under the provisions of Articles 1.3 and 3.1 by 1 July 1995, while recognizing that it would remain open for Members to make notifications at a later stage if they so wished (document IP/C/M/2, paragraphs 11 and 12). By the end of October, the Council had received 20 notifications relating to these Articles. These notifications are circulated in the IP/N/2 series of documents.

(c) Article 69

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. At its meeting in September, the Council decided on the procedures for the notification of contact points under this Article, and that notifications should be made by 1 January 1996 and any subsequent changes to the information should be notified promptly (document IP/C/M/3, paragraphs 27 and 28).

(d) Article 4(d)

9. Article 4(d) of the TRIPS Agreement requires a Member seeking to justify an exception to the m.f.n. 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 such an agreement to the Council for TRIPS. The Council has discussed whether any action, and if so, what kind of action is required by the Council to give effect to this provision. [To be completed.]

III Implementation of certain provisions of the TRIPS Agreement

(a) Article 70.8

10. Article 70.8 of the TRIPS Agreement provides that, where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27 of the TRIPS Agreement, that Member shall provide, as from the date of entry into force of the WTO Agreement, a means by which applications for patents for such inventions can be filed. As mentioned above in paragraph 5, it has been agreed that national laws and regulations should be notified promptly as of the time that the corresponding substantive obligation applies and that national laws and regulations implementing the provisions of Article 70.8 should consequently be notified as of the date of entry into force of the WTO Agreement. At its meeting in March, the Council urged those Members to whom Article 70.8 applies to notify the relevant legislation prior to the next meeting of the TRIPS Council. The Council continued to monitor the implementation of Article 70.8 at its later meetings. By the end of October, the Council had received 9 notifications relating to Article 70.8 (document series IP/N/1).

(b) Article 65.5

11. Article 65.5 of the TRIPS Agreement provides that a Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 of Article 65 shall ensure that any changes in its laws, regulations and practice made during that period do not result in a lesser degree of consistency with the provisions of the Agreement. The Council has discussed the question of how it should carry out its monitoring function, in the sense of Article 68, in respect of the standstill obligation of Article 65.5, and in particular what information might be sought from Members to facilitate such monitoring. [To be completed.]

IV Technical cooperation

12. At its meeting in May, the Council invited each developed country Member to provide a description of its technical and financial cooperation programmes in the area of intellectual property relevant to the implementation of the TRIPS Agreement. Second, it invited each of the intergovernmental organizations and which were observers to the Council for TRIPS and UPOV to do the same. And third, it requested the WTO Secretariat to provide information on its technical cooperation activities and also make suggestions about what might be the future policy in this area. In response to these requests, information was provided by 12 developed country Members (documents IP/C/W/12 and Addenda 1 to 6), seven intergovernmental organizations (documents IP/C/W/10 and Addenda 1 to 6) and the WTO Secretariat (document IP/C/W/11). At its meeting in September, the Council had an in-depth consideration of the issue of technical cooperation, in particular in the context of Article 67 of the TRIPS Agreement, which provides that developed country Members shall provide, in order to facilitate the implementation of the Agreement, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. [To be completed.]

V Arrangements for cooperation with WIPO

13. 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, which took place on 9 March 1995, appropriate arrangements for cooperation with bodies of that Organization. At its meeting in May, the Council authorized its Chairman, with the assistance of the Secretariat, to enter into informal contacts with WIPO and to inform them of the state of thinking in the Council, in particular with regard to the types of cooperation it might suggest. The Chairman of the Council, accompanied by an official of the Secretariat, met the Director General of WIPO on 22 June.

14. As agreed by the Council at its meeting in September, the Chairman of the Council sent a letter dated 22 September to the Director General of WIPO. The letter emphasized once more the importance attached by the Council to the development of cooperative and mutually supportive relations with WIPO. Second, the communication informed WIPO that the elements in document IP/C/W/6 relating to cooperation with WIPO (relating to the notification of laws and regulations) constituted a proposal from the Council to WIPO for cooperation in this area, without prejudice to the possible need for the further refining of language or details. Third, the ideas put forward in paragraphs 18-21 of document PC/IPL/7/Add.2 (relating to procedures for the notification of national emblems) constituted a proposal from the Council, subject once more to this being without prejudice to the possible need for the further refining of language or details. Fourth, the communication stressed the value attached by the Council to the development cooperation activities of WIPO in assisting developing countries to meet their obligations under the TRIPS Agreement, and expressed the hope of the Council that WIPO would be able to enhance these activities in the future. It also expressed the desire of the Council that the International Bureau of WIPO and the WTO Secretariat would further develop cooperation in their technical cooperation activities relating to the TRIPS Agreement so as to maximize the usefulness of these activities and to ensure their complementary nature. Furthermore, the letter stated that the

Chairman of the Council, with the assistance of the Secretariat, stood ready to meet the representatives chosen by WIPO with a view to drawing up the text of an agreement between the two Organizations, with the hope that it could be submitted to the Council and the appropriate body of WIPO so that it could come into force preferably before the end of this year.

15. The representatives of the WTO and WIPO met for the first time on 30 October with a view to drawing up the text of an agreement between the two Organizations. [To be completed.]

VI Other matters

(a) Assistance of the Council in the context of dispute settlement

16. At its meeting in May, the Council decided to draw the attention of Members to the desirability of ensuring that the nominations they made of potential panellists to be placed on the central roster include persons with experience of intellectual property matters viewed from a trade or commercial perspective (document IP/M/2, paragraphs 55 and 56).

(b) Draft model legislation of the World Customs Organization

17. At its meeting in May, the Council discussed the question of the draft model legislation being drawn up by the WCO with a view to assisting countries in giving effect to their TRIPS border enforcement obligations (document IP/C/W/1). The Council, first, welcomed the interest and the activity of the WCO in regard to the customs enforcement of intellectual property rights and also its concern to take into account the provisions of the TRIPS Agreement; second, expressed the importance that it attached to a mutually supportive relationship between the WTO and the WCO in this regard; and, third, took note of the draft model legislation being developed by the WCO. The Chairman of the Council noted that it was not the job of the Council for TRIPS of the WTO to approve or disapprove such a text, which did not constitute an official interpretation of the TRIPS Agreement, this being a task that only the WTO could undertake (document IP/C/M/2, paragraphs 66 and 67).