

ANNUAL REPORT (2008) OF THE COUNCIL FOR TRIPS

I. GENERAL

1. Since the period covered by its 2007 report¹, the Council for TRIPS has held three formal meetings, on 14 March, 17 June, and 28 October. The minutes of these meetings are to be found in documents IP/C/M/56-58.²

2. The meeting in March was chaired by Ambassador Yonov Agah (Nigeria). The meeting in June was chaired by Ambassador Gail Mathurin (Jamaica), who returned to Jamaica at the end of July to take up new responsibilities. The meeting in October was chaired by Ambassador Dennis Francis (Trinidad and Tobago).

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. 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. The World Health Organization (WHO) has ad hoc observer status in the Council. At its meeting in March 2002, the Council agreed to a request from the Joint United Nations Programme on HIV/AIDS (UNAIDS) for observer status during the Council's discussions on the TRIPS Agreement and public health at that and future meetings. Decisions on requests for observer status from 17 other organizations are pending.³

II. NOTIFICATIONS UNDER THE PROVISIONS OF THE AGREEMENT

4. The Council took note of new notifications under various provisions of the TRIPS Agreement. To date, 124 Members have notified, pursuant to Article 63.2, all or part of their implementing legislation relating to all provisions of the Agreement. Ninety-nine Members have provided responses to the Checklist of Issues on Enforcement. During the reporting period, some Members have updated their initial notifications, or updated or supplemented their responses to the Checklist of Issues on Enforcement. To date, 122 Members have notified pursuant to Article 69 contact points for the purposes of cooperating with each other with a view to eliminating international trade in goods infringing intellectual property rights. A number of Members have updated the information they had earlier provided.⁴

¹ Document IP/C/48.

² Document IP/C/M/58 to be circulated.

³ The Organizations in question are listed in document IP/C/W/52/Rev.11.

⁴ This information on contact points is contained in document IP/N/3/Rev.10 and addenda.

III. REVIEWS OF NATIONAL LAWS AND REGULATIONS

5. During the reporting period, the Council reviewed the legislation of Viet Nam and took note of the outstanding material required to complete the pending reviews of six other Members. It also made arrangements for the review of the implementing legislation of Ukraine and Tonga, to be held at the Council's first and second meetings in 2009, respectively.

IV. TRANSITIONAL REVIEW UNDER SECTION 18 OF THE PROTOCOL ON THE ACCESSION OF PEOPLE'S REPUBLIC OF CHINA

6. At its October meeting, the Council undertook the seventh annual transitional review of the implementation by China of its WTO commitments pursuant to Section 18 of the Protocol on the Accession of the People's Republic of China (WT/L/432), and agreed that the Chair, acting on his own responsibility, would prepare a factual report on the review to the General Council.⁵

V. REVIEW OF THE PROVISIONS OF ARTICLE 27.3(b); RELATIONSHIP BETWEEN THE TRIPS AGREEMENT AND THE CONVENTION ON BIOLOGICAL DIVERSITY; AND PROTECTION OF TRADITIONAL KNOWLEDGE AND FOLKLORE

7. The Council continued its discussion of these three agenda items. The Dominican Republic, the African, Caribbean and Pacific Group of States (the ACP Group) and Sri Lanka were added to the list of co-sponsors of a disclosure proposal circulated as document IP/C/W/474 (issued with the joint symbols WT/GC/W/564/Rev.2 and TN/C/W/41/Rev.2); addenda 7-9 were issued to that effect.

VI. NON-VIOLATION AND SITUATION COMPLAINTS

8. At its March 2006 meeting, the Council had agreed to keep the item on non-violation and situation complaints on the agenda as a regular item so as to allow Members who would have new thinking to share it, and also enable the Council to consider improved ways of organizing its work on this matter. During the reporting period, no statements were made or documents submitted by delegations under this agenda item.

VII. REVIEW OF IMPLEMENTATION OF THE TRIPS AGREEMENT UNDER ARTICLE 71

9. No statements were made or documents submitted by delegations under this agenda item.

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

10. At its meeting in February 2007, the Council agreed that the Chair hold further consultations in due course on how the Council should organize its future work on the review of the application of the provisions of the Section on geographical indications under Article 24.2. At its meetings in March and June, the Chair informed the Council that, given that no representations from delegations on the issue had been received, further consultations had not yet been held, but that the Chair remained ready to hold such consultations once the Chair sensed an active interest in pursuing the matter. The Chair urged those delegations that had not yet provided responses to the Checklist of Questions (IP/C/13 and Add.1) to do so, and said also that those Members that had already provided responses could provide updates to the extent there had been any significant changes to the way they provided

⁵ Document IP/C/50.

protection to geographical indications. At its meeting in October, the Council had before it responses from Colombia to the Checklist of Questions.⁶

IX. REVIEW UNDER PARAGRAPH 8 OF THE DECISION ON THE IMPLEMENTATION OF PARAGRAPH 6 OF THE DOHA DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH

11. At its meeting in October, the Council took up the annual review, pursuant to paragraph 8 of the "Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health", of the functioning of the system set out in the Decision. The Council's report to the General Council on the operation of the system set out in the Decision is being circulated as document IP/C/49.

12. As requested by the Council, the Secretariat periodically updated the note on the status of acceptances of the Protocol Amending the TRIPS Agreement.⁷

X. IMPLEMENTATION OF ARTICLE 66.2

13. At its meetings in March and June, the Council followed up its fifth annual review pursuant to paragraph 2 of the "Decision on the Implementation of Article 66.2 of the TRIPS Agreement"⁸ that it had taken up at its meeting in October 2007.

14. At its meeting in October 2008, the Council took up its sixth annual review of developed country Members' reports on their implementation of Article 66.2. For this review, the Council received updated reports on actions they had taken or planned in pursuance of their commitments under Article 66.2 from the following developed country Members: Japan, New Zealand, Norway, the United States, Switzerland, Canada, the European Communities and individual member States (namely Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, Spain, Sweden, and the United Kingdom); as well as from Australia. This documentation is being circulated in document IP/C/W/519 and addenda.

15. As requested by the Council at its meeting in June, the Secretariat prepared a brief background note for the Council's October meeting setting out the reports that had so far been submitted under paragraph 2 of the Decision (IP/C/W/522).

XI. TECHNICAL COOPERATION AND CAPACITY-BUILDING

16. At its meeting in June, the Council invited developed country Members to supply information on their activities pursuant to Article 67 of the TRIPS Agreement prior to the annual special review of this matter that was held at its October meeting. Intergovernmental organizations that have observer status in the TRIPS Council were invited to provide information on their activities of relevance and, further, the WTO Secretariat was instructed to report on its activities. The Council received updated information from the following developed country Members: Norway, Japan, New Zealand, the United States, Switzerland, Canada, the European Communities and individual member States (namely Austria, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Lithuania, Portugal, Slovenia, Spain, Sweden, the United Kingdom, and the European Patent Office); as well as from Australia (being circulated in IP/C/W/517 and addenda). Updated information was received also from OECD, WHO, FAO, UPOV, UNCTAD and WIPO (being circulated in IP/C/W/516 and addenda), as well as from the WTO Secretariat (IP/C/W/515).

⁶ Being circulated as document IP/C/W/117/Add.32.

⁷ The latest version has been circulated as document IP/C/W/490/Rev.3.

⁸ Document IP/C/28.

17. The Council continued its discussion on LDC priority needs for technical and financial cooperation. Pursuant to paragraph 2 of the decision on the "Extension of the Transition Period under Article 66.1 for Least-Developed Country Members"⁹, it received for its June meeting additional information on such needs from Uganda (IP/C/W/510) and for its October meeting from Sierra Leone (IP/C/W/523).

18. For its meeting in June, the Council received a communication from Brazil entitled "Technical Cooperation and Capacity Building: 'Cluster' A of the Development Agenda" (IP/C/W/513). At its meeting in October, the Council continued its discussion of this communication.

XII. OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

19. At its meeting in March, the Chair informed the Council on his consultations on the issue of observer status for intergovernmental organizations, in particular on the request from the CBD Secretariat. At its meeting in June, the Council agreed that the Chair hold further consultations on the request for observer status received from the CBD Secretariat. At its meeting in October, the Chair informed the Council on these further consultations. The Council agreed that the Chair continue his consultations on the request for observer status received from the CBD Secretariat.

⁹ Document IP/C/40.