

DRAFT ANNUAL REPORT (2000) OF THE COUNCIL FOR TRIPS

Revision

I. GENERAL

1. Since the period covered by its last report¹, the Council for TRIPS has held four formal meetings, on 21 March, 26-29 June, 21-22 September and 27-~~30~~ November 2000. The minutes of these meetings are to be found in documents IP/C/M/26-29.²

2. The first meeting referred to above was chaired by Ambassador Carlos Perez del Castillo (Uruguay) and the other meetings by Ambassador Chak Mun See (Singapore).

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. At its meeting in June, the Council granted ad hoc observer status to the World Health Organization, subject to certain conditions. Decisions on requests for observer status from 15 Organizations are pending.³

II. NOTIFICATIONS AND NOTIFICATION PROCEDURES

(i) Article 63.2⁴

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, **70** 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. **Twelve** other Members have made notifications relating specifically to the implementation of Articles 3, 4 and 5 of the Agreement.⁵ 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. 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, **60** Members have notified responses.

¹ Document IP/C/19.

² Document IP/C/M/29 to be circulated.

³ The Organizations in question are listed in document IP/C/W/52/Rev.9.

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

⁵ A practical aid to assist delegations making the required notification is available in document IP/C/9.

(ii) Articles 1.3 and 3.1⁶

6. 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, 29 Members have submitted such notifications.

(iii) Article 4(d)⁷

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

(iv) Article 69⁹

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. Procedures for such notifications were agreed by the Council in September 1995. To date, 99 Members have notified contact points.

(v) Notifications under other provisions of the Agreement

9. 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.¹⁰ To date, three Members have made notifications under the provisions of Article 14*bis*(2)(c) as applicable under the TRIPS Agreement and two Members have made notifications under provisions of the Appendix to the Berne Convention so applicable.¹¹

III. REVIEW OF NATIONAL LAWS AND REGULATIONS

10. The Council completed work on outstanding questions arising from the review of the legislation of the two Members taken up in the autumn of 1999.¹²

11. On 1 January 2000, the transitional periods of Article 65.2 and 65.3 expired and obligations entered into effect for a large number of Members who had been availing themselves of these general transitional periods. Following informal consultations that the Chairperson held prior to this date with the Members concerned, it was agreed that the reviews of these Members' national implementing legislation would take place in 2000 and 2001 and would concern all areas of intellectual property at

⁶ Circulation of these notifications takes place in the IP/N/2/COUNTRY/- series of documents.

⁷ Circulation of these notifications takes place in the IP/N/4/COUNTRY/- series of documents.

⁸ 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.

⁹ These contact points are contained in document IP/N/3/Rev.3 and addenda.

¹⁰ Circulation of these notifications takes place in the IP/N/5/COUNTRY/- series of documents.

¹¹ For the calculation of the renewable ten-year period for which notifications under the Appendix remain valid, reference is made to document IP/C/14.

¹² 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 same time, but that otherwise the procedures as employed in such reviews by the Council so far would be used. In the light of further informal consultations held by the Chairperson on the practical arrangements to be put in place for these reviews, including which Member's legislation would be reviewed at which of these meetings, the Council agreed to set aside time for such reviews at its meetings in June and November 2000 as well as at three of its meetings to be scheduled for 2001. At its meeting in June, the Council took up the reviews of the legislation of 13 Members. It completed ten of these reviews at its meeting in September; the other three reviews were **completed** at the meeting in November. At its meeting in November, the Council took up the reviews of the legislation of a further eight Members.

IV. IMPLEMENTATION OF ARTICLE 70.8 AND 70.9

12. During the reporting period, the Council received one new notification concerning this matter and continued its consideration of the implementation of Article 70.8 and the related provisions of Article 70.9.¹³

V. IMPLEMENTATION OF ARTICLE 66.2

13. This Article requires developed country Members to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base. At its meeting in December 1998, the Council agreed that developed country Members be invited to supply information on how Article 66.2 was being implemented. To date, information has been submitted by 20 Members. The matter was addressed at each meeting of the Council during the period covered by this report. In the discussions on this matter, to date, additional information was provided by some Members and comments made on the adequacy of the submissions received. At its meeting in June, the Council had before it a short note it had requested the Secretariat to prepare setting out the types of incentive measures that had been notified, with cross-references to where further details could be found.¹⁴ A proposal received from Zambia relating to special and differential treatment in respect of technology transfer¹⁵ has been under discussion in the Council since June.

14. The Council received a request from the Special Session of the General Council on Implementation of 18 October 2000, to give consideration, with a view to facilitating full implementation of Article 66.2, to drawing up an illustrative list of incentives of the sort envisaged by Article 66.2 as well as to put on a regular and systematic basis its procedure for the notification and monitoring of measures in accordance with the provisions of Article 66.2 and, in doing so, to give consideration to avoiding unnecessary burdens in notification procedures. The Council held informal consultations on this matter on 31 October and in the week of 27 November 2000. At the informal consultations on 31 October, some representatives of least developed countries indicated their intention to come forward with proposals for an illustrative list and a systematic notification and monitoring procedure. The Council has not yet received these proposals.

15. The Council was also requested by the Special Session of the General Council on Implementation of 18 October 2000 to invite other intergovernmental organizations to provide information on their activities aimed at technology capacity-building. In this connection, the Council for TRIPS agreed at its meeting of 27-30 November to invite the secretariats of UNCTAD, WIPO, UNIDO, the World Bank and the CBD to provide written information on their activities on technology capacity building prior to the Council's meeting in April 2001. It

¹³ As regards notifications relating to Article 70.8 and 70.9, reference is made to paragraph 4 above.

¹⁴ Document IP/C/W/169.

¹⁵ Documents IP/C/W/199 and 200.

was agreed that the Chairperson would report on these matters to the Special Session of the General Council on Implementation, on his own responsibility.¹⁶

VI. OTHER IMPLEMENTATION ISSUES RAISED IN THE COUNCIL

16. The Council continued its discussion on the issue of whether United States law on the protection of trademarks and trade names was in conformity with the Agreement, in the light of Section 211 of the United States Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998. At its meeting in September, the Council agreed that, if a panel were to be established to examine this matter, the item be deleted from the Council's agenda, it being understood that any Member could revert to it at any time should it so wish.

VII. RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

17. 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/21-23 and document WT/DS170/4. In two disputes, panel reports were adopted and in one other dispute a panel and Appellate Body report. The first two of these disputes mentioned concern a case relating to provisions affecting patent protection of pharmaceutical products (IP/D/11) and one on Section 110(5) of the United States Copyright Act (IP/D/16). The third dispute concerns a case relating to the term of patent protection (IP/D/17). In one other case a panel was established and panel procedures are ongoing. This dispute concerns Section 211 of the United States Omnibus Appropriations Act of 1998 (IP/D/20). Consultations are still pending on disputes concerning certain measures affecting the grant of copyright and related rights (IP/D/8 and 12); measures affecting the enforcement of intellectual property rights (IP/D/9); measures affecting the enforcement of intellectual property rights for motion pictures and television broadcasts (IP/D/13 and 14); patent protection for pharmaceutical and agricultural chemical products (IP/D/15); patent protection for pharmaceuticals and test data protection for agricultural chemicals (IP/D/18); the protection of trademarks and geographical indications for agricultural products and foodstuffs (IP/D/19); Section 337 of the United States Tariff Act of 1930 and Amendments thereto (IP/D/21); certain measures on the protection of patents and test data (IP/D/22); and measures affecting patent protection (IP/D/23).

VIII. TECHNICAL COOPERATION

18. 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 2000, which had a special focus on technical cooperation. As in previous years, intergovernmental organizations observers to the TRIPS Council also presented, on the invitation of the Council, information on their activities, as well as the WTO Secretariat on its technical cooperation in the TRIPS area. This information can be found in documents IP/C/W/201-203 and Addenda.¹⁷

19. At its meeting in November, the Council received a non-paper concerning technical assistance on TRIPS notification between WTO Members, jointly submitted by the delegations of Bangladesh; the European Communities and their member States; Hong Kong, China; and Norway. These delegations propose that a list be made available of Members who are willing to

¹⁶ Document IP/C/21.

¹⁷ Contact points in developed country Members' administrations which can be addressed by developing countries seeking technical cooperation on TRIPS are contained in document IP/N/7/Rev.2 and addenda.

assist other Members in notifying their intellectual property laws to the Council for TRIPS in a transparent fashion and suggest some modalities in this regard. While the sponsors indicated that they still wished to fine tune their proposal, the Chairperson noted that there was no objection in the Council to this welcome proposal for assistance on a voluntary basis and that the sponsors should feel free to proceed.

20. The Secretariat cooperates with a number of intergovernmental organizations, notably with WIPO pursuant to the Agreement Between WIPO and the WTO which entered into force on 1 January 1996 and the joint initiative on technical cooperation of the Directors-General of the two Organizations of July 1998.

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

21. The Council continued its consideration of this matter in 2000. In the reporting period, the Council received responses to the Checklist of Questions adopted in 1998¹⁸ from four Members and has now received responses from the European Communities and their member States as well as from 20 other Members.¹⁹ At the meeting in March, the Council was informed of follow-up questions from a Member to another Member with regard to that Member's responses to the Checklist. At the meeting in September, the Council was informed that the Secretariat had circulated a preliminary version²⁰ of the paper that the Council had requested it to prepare summarizing, on the basis of an agreed outline²¹, the responses to the Checklist, in order to facilitate an understanding of the more detailed information that had been provided in these responses. At that meeting, communications were also presented by two delegations on the subject of geographical indications and the Article 24.2 review.²² **At its meeting in November, the Council had a further exchange of views as to how the work under this built-in agenda item should be pursued and initiated a detailed review of experience and practice with the application of the provisions in the TRIPS Agreement on geographical indications, with the aid of the paper from the Secretariat (JOB(00)/5619) summarizing the replies from Members to the Checklist of Questions.**

X. IMPLEMENTATION OF ARTICLE 24.1

22. This matter was placed on the agenda of the Council's meeting in September, following a request **by Switzerland** and the submission of a paper **by Bulgaria, the Czech Republic, Egypt, Iceland, India, Kenya, Liechtenstein, Pakistan, Slovenia, Sri Lanka, Switzerland and Turkey**²³, outlining the views of these delegations on the implementation of Article 24.1, in particular in regard to the extension of additional protection for geographical indications to products other than wines and spirits, **and making reference to paragraphs 26 and 34 of the Council's report (1996).**²⁴ Two papers circulated prior to that meeting by a delegation also address this matter.²⁵ **At its meeting in November, the Council had a detailed discussion of these matters.**

XI. IMPLEMENTATION OF ARTICLE 23.4

23. The Council continued, throughout the period under review, its discussions 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

¹⁸ Document IP/C/13 and addendum.

¹⁹ Document IP/C/W/117 and addenda.

²⁰ JOB(00)/5619 of 19 September 2000.

²¹ **Informal document No. 2104 of 13 April 1999.**

²² Documents IP/C/W/205 and 211.

²³ Document IP/C/W/204/Rev.1.

²⁴ **The changes indicated in this sentence have been requested by the delegation of Switzerland.**

²⁵ Documents IP/C/W/195 and 196.

issues relevant to a notification and registration system for spirits, in accordance with paragraph 34 of the Council's report (1996)²⁶, and the agreement reached in the General Council at its meeting of 7 and 8 February 2000. These discussions took place on the basis of a proposal from the European Communities, of which the Council received a revision at its June meeting²⁷, and a joint proposal from Canada, Chile, Japan and the United States.²⁸ **The Council also received papers from other delegations addressing specific aspects of these proposals.**²⁹ Information gathered by the Council in the context of its work on this matter includes 12 submissions from Members on systems for the registration of geographical indications which they operate³⁰; a background note prepared by the Secretariat on existing notification and registration systems for geographical indications relating to wines and spirits³¹; a background note prepared by the Secretariat on international notification and registration systems for geographical indications relating to products other than wines and spirits³²; and information provided orally by WIPO, at the meeting in September, on the work that had commenced in July 2000 in that Organization in relation to the Lisbon Agreement.

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

24. At its meeting in March, the Council reaffirmed the need to continue with a review of the provisions of Article 27.3(b). When initiating the review in December 1998, the Council had invited Members that were already under an obligation to apply Article 27.3(b) to provide information on how the matters addressed in this provision were presently treated in their national law. Other Members had been invited to provide such information on a best endeavours basis. The Secretariat had been asked to contact the FAO, the Secretariat of the Convention on Biological Diversity and UPOV, to request factual information on their activities of relevance. By the time of the meeting in **November**, information had been received from 35 Members on how this provision was being implemented by way of responses to the illustrative lists of questions³³ as well as from the three intergovernmental organizations referred to.³⁴ Throughout the period under review, Members discussed extensively both a number of substantive issues and a number of procedural questions relating to how the Council should handle its further work on this matter. The latter issues included those of seeking additional information on how this provision was being implemented by Members, in particular since little information was as yet available from developing country Members in this regard; requesting various intergovernmental organizations, including WIPO, the FAO, the Secretariat of the Convention on Biological Diversity and UPOV to provide updated information³⁵; and considering ways of organizing the topics that had been raised in the discussions so far. At its meetings in September **and November**, the Council received **nine** communications addressing matters under discussion from a number of Members.³⁶

²⁶ Document IP/C/8.

²⁷ Document IP/C/W/107/Rev.1.

²⁸ Document IP/C/W/133/Rev.1.

²⁹ Documents IP/C/W/189 **and 234**.

³⁰ Document IP/C/W/76 and addenda.

³¹ Document IP/C/W/85.

³² Document IP/C/W/85/Add.1.

³³ Following a request from the Council, the Secretariat prepared a note (Job No. 2689 of 7 May 1999) containing a structured summary overview of the information presented by the 33 Members from whom the Council had received information by that time.

³⁴ Documents IP/C/W/130 and addenda.

³⁵ Information from these Organizations already circulated in the Council is contained in documents IP/C/W/130 and addenda; IP/C/W/213; IP/C/W/217; and IP/C/W/218. Background notes prepared by the Secretariat for the Committee on Trade and Environment and also circulated in the TRIPS Council are contained in documents IP/C/W/175 and IP/C/W/216.

³⁶ Documents IP/C/W/195, IP/C/W/196, IP/C/W/198 and Corr.1, IP/C/W/206, IP/C/W/209, **IP/C/W/228, IP/C/W/236, JOB (00)/6091 and JOB(00)/7853.**

25. The Council was requested by the Special Session of the General Council on Implementation of 18 October 2000 to continue its on-going work concerning the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), with a view to clarifying this relationship. At informal consultations on 28 November, building on the work that the Council had previously done on the relationship between the TRIPS Agreement and the CBD, Members had a detailed exchange of views on this matter, which touched also on some other matters in connection with the Council's work on the review of Article 27.3(b) of the TRIPS Agreement. The Council will continue its consideration of the relationship between the two instruments at its next meeting.

26. The Council was urged at the 18 October 2000 Special Session of the General Council to give positive consideration to granting observer status to the CBD Secretariat on an ad hoc basis pending the conclusion of the wider discussions on observer status for intergovernmental organizations in the General Council. The Council took up this matter in both formal and informal session at its meetings in the week of 27 November but was unable to reach a consensus. It was agreed that the Chairperson would report on these matters to the Special Session of the General Council on Implementation, on his own responsibility.³⁷

XIII. REVIEW OF THE IMPLEMENTATION OF THE AGREEMENT UNDER ARTICLE 71.1

27. This Article requires the Council for TRIPS to review the implementation of the Agreement after the end of the five-year transition period provided for in Article 65.2. Throughout the period under review, the Council discussed how it should approach this general review of the implementation of the Agreement. It received papers on the matter from three delegations.³⁸ **At its meeting in November, the Council agreed on a target date prior to the Council's meeting in April 2001 for the submission of suggestions both on the approach that it should take to the review and the specific issues that delegations would wish to see taken up in the review, so as to allow the Council to work out, at its meeting in April 2001, a way of initiating the actual review. It was understood that the target date would not prevent subsequent submissions.**

XIV. NON-VIOLATION COMPLAINTS

28. Following a request of a delegation, the issue of the examination of the scope and modalities for non-violation complaints was placed on the agenda of the Council's meeting in March. As a result of the discussions at that meeting, the Council also addressed the issue of non-violation complaints at the other meetings in the period under review. It received papers on the matter from a number of delegations.³⁹

XV. ELECTRONIC COMMERCE

29. In July 2000, the General Council agreed to invite the TRIPS Council and three other subsidiary bodies, namely the Council for Trade in Goods, the Council for Trade in Services and the Committee on Trade and Development, to pick up where they had left off in their work on e-commerce within their respective spheres of competence, to identify cross-sectoral issues, and to report back to the General Council at its regular meeting in December 2000.⁴⁰ The Council heard an update from WIPO at its meeting in September on the work of that Organization in this area. **At its meeting in November, it received papers on the matter from two delegations⁴¹ and, after a**

³⁷ Document IP/C/21.

³⁸ Documents IP/C/W/166, 210 and 214.

³⁹ Documents IP/C/W/191, 194 and 212 as well as JOB (00)/6166.

⁴⁰ Paragraphs 94 and 131 of document WT/GC/M/57.

⁴¹ Documents IP/C/W/224 and 233.

further exchange of views, agreed that the Chairperson would submit a second Progress Report to the General Council on his own responsibility.⁴²

⁴² Document IP/C/20.