

ANNUAL REPORT (2006) OF THE COUNCIL FOR TRIPS

I. GENERAL

1. Since the period covered by its 2005 report¹, the Council for TRIPS reconvened on 6 December 2005 its end-of-year meeting, which had earlier met on 25, 26 and 28 October and on 29 November to continue the consideration of agenda item "Decision on the Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health". The discussions at the reconvened meeting are reflected in the minutes of the end-of-year meeting in document IP/C/M49. In the year 2006, the Council has held three formal meetings, on 14-15 March; 14-15 June; and 25-26 October. The minutes of these meetings are to be found in documents IP/C/M/50-52.²

2. The reconvened meeting in December 2005 and the meeting in March 2006 were chaired by Ambassador Hyuck Choi (Korea), and the subsequent meetings by Ambassador C. Trevor Clarke (Barbados).

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. At its meeting in June 2006, the Council took note of a letter received from the Secretariat of the Convention on Biological Diversity (CBD) drawing attention to a decision of the CBD Conference of Parties to renew the CBD Secretariat's request for observer status. Decisions on requests for observer status from the CBD Secretariat and 16 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, 126 Members have notified, pursuant to Article 63.2, all or part of their implementing legislation relating to all provisions of the Agreement. Ninety-six Members have provided responses to the Checklist of Issues on Enforcement. During the reporting period, a number of Members notified amendments to laws and regulations they had notified earlier, including measures to give effect to the General Council Decisions of 30 August 2003 (WT/L/540 and Corr.1)

¹ Document IP/C/38 and Add.1.

² Document IP/C/M/52 to be circulated.

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

and 6 December 2005 (WT/L/641) on TRIPS and public health. Some Members have updated their initial notifications, or updated or supplemented their responses to the Checklist of Issues on Enforcement.⁴ 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.⁵

III. REVIEWS OF NATIONAL LAWS AND REGULATIONS

5. During the reporting period, the Council completed its reviews of the legislation of Congo and Qatar, and took note of the outstanding material required to complete the pending reviews of eight other Members. It also made arrangements for the review of the implementing legislation of Saudi Arabia, to be held at the Council's first meeting in 2007.

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 fifth annual transitional review of the implementation by China of its WTO commitments pursuant to Section 18 of the Protocol on the Accession of 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.⁶

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 Council received a number of new submissions relating to them: for its March meeting, communications from the United States relating to the three agenda items (IP/C/W/469), and from Cuba, Ecuador, India, Sri Lanka and Thailand responding to an earlier communication from Switzerland circulated in document IP/C/W/466 (IP/C/W/470); for its June meeting, communications from Japan on "The Patent System and Genetic Resources" (IP/C/W/472), from Norway on "Amending the TRIPS Agreement to Introduce an Obligation to Disclose the Origin of Genetic Resources and Traditional Knowledge in Patent Applications" (IP/C/W/473, WT/GC/W/566 and TN/C/W/42) and from Brazil, China, Colombia, Cuba, Ecuador, India, Pakistan, Peru, South Africa, Thailand and Tanzania on a disclosure proposal (IP/C/W/474 and Add.1-2, WT/GC/W/564/Rev.2 and Add.1-2 and TN/C/W/41/Rev.2 and Add.1-2); and for its October meeting a communication from Peru that provides comments in relation an earlier communication from the United States in document IP/C/W/469 (being circulated as IP/C/W/484). The Secretariat updated for the March meeting, as requested by the Council, its summary notes of issues raised and points made in the work on the three items at hand (IP/C/W/368/Rev.1 and Corr.1, 369/Rev.1 and 370/Rev.1). At its meeting in March, the Council agreed to maintain its present method of work on these matters at that stage, and to keep this

⁴ At its meeting in November 1995, the Council adopted procedures for notification of laws and regulations under Article 63.2. 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; any subsequent amendments of a Member's laws and regulations shall be notified without delay after their entry into force (IP/C/2). At that meeting, the Council also agreed that Members would provide responses to a Checklist of Issues on Enforcement (IP/C/5). Notifications of laws and regulations are being circulated in the IP/N/1/COUNTRY/- series of documents, and responses to the Checklist of Issues on Enforcement in the IP/N/6/COUNTRY/- series of documents.

⁵ These contact points are contained in document IP/N/3/Rev.9 and addenda.

⁶ The report has been circulated as document IP/C/43.

method under review to assess whether any change might prove appropriate in the light of developments.

VI. NON-VIOLATION AND SITUATION COMPLAINTS

8. At its March meeting, the Council 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.

VII. SPECIAL AND DIFFERENTIAL TREATMENT PROPOSALS REFERRED TO THE COUNCIL

9. As regards the special and differential treatment proposals referred to it, the Council authorized, at its meeting in March, the Chair to report to the General Council that the situation remained as reported in July 2005 in document IP/C/36, that the TRIPS Council reiterated its earlier recommendation (reproduced in that document), and that no further action was otherwise needed.

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

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

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

11. The Council continued its discussion under this agenda item. As agreed by the Council, the Chair held consultations on how the Council should organize its future work on this agenda item. No documents were submitted by delegations.

X. PARAGRAPH 6 OF THE DOHA DECLARATION ON THE TRIPS AGREEMENT AND PUBLIC HEALTH

12. At its reconvened meeting in December 2005, the Council decided to approve a proposal for a decision on an amendment to the TRIPS Agreement (JOB(05)/318 and Corr.1) for forwarding to the General Council.⁷ It also approved the forwarding, along with the draft decision, of the text of two statements (JOB(05)/319 and Corr.1, and JOB(05)/320) to be made by the Chairman of the General Council prior to the adoption of the proposal by the General Council.⁸

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

13. At its meeting in October 2006, 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 has been circulated as document IP/C/42. The Council agreed to request the Secretariat to prepare a note on the status of acceptances of the Protocol Amending the TRIPS Agreement, which would be updated for each meeting of the Council.

⁷ Subsequently circulated in document IP/C/41.

⁸ The subsequent General Council Decision of 6 December 2005 on "Amendment of the TRIPS Agreement" can be found in document WT/L/641.

XII. IMPLEMENTATION OF ARTICLE 66.2

14. At its meeting in March, the Council followed up its third annual review pursuant to paragraph 2 of the "Decision on the Implementation of Article 66.2 of the TRIPS Agreement" that it had taken up at its meeting in October 2005, and took note of a further report from Australia (IP/C/W/452/Add.7).

15. At its meeting in October, the Council took up its fourth annual review of developed country Members' reports on their implementation of Article 66.2. For this review, the Council received new detailed 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; Australia; Switzerland; Norway; and the European Communities and individual member States (Austria, Belgium, the Czech Republic, Denmark, Finland, France, Germany, the Slovak Republic, Spain, Sweden and the United Kingdom); the United States; and Canada. This documentation is being circulated in document IP/C/W/480 and addenda.

XIII. 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. Other Members who also make available technical cooperation were encouraged to share information on these activities if they so wished. Intergovernmental organizations that have observer status in the TRIPS Council were also 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: Switzerland; Japan; New Zealand; Norway; Australia; the European Communities and individual member States and agencies (namely Austria, the Czech Republic, Denmark, Finland, France, Germany, Lithuania, Poland, Portugal, Spain, Sweden, the United Kingdom and the Office for Harmonization in the Internal Market); the United States; and Canada (being circulated in IP/C/W/476 and addenda). Updated information was received also from the OECD, UPOV, UNCTAD, WIPO and WHO (being circulated in IP/C/W/478 and addenda), as well as the WTO Secretariat (IP/C/W/477).

XIV. ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS – COMMUNICATION FROM THE EUROPEAN COMMUNITIES

17. At the request of the European Communities, at each of its meetings the Council had on its agenda an item on "Enforcement of Intellectual Property Rights – Communication from the European Communities". For its meeting in March, the Council received two communications from the European Communities (IP/C/W/468 and 471), and for its October meeting, a communication from the European Communities, Japan, Switzerland and the United States (IP/C/W/485). Different views were expressed on the appropriateness of dealing with the issues raised in those communications in the Council, as well as on whether the item should be on the Council's agenda.
