

## 35: Council for TRIPS

### Article 68 Council for Trade-Related Aspects of Intellectual Property Rights

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

### 1. Introduction: terminology, definition and scope

The Council for TRIPS is charged with the monitoring of WTO Members' compliance with their obligations under TRIPS.<sup>94</sup> The legal base for its establishment is Article IV:5 of the WTO Agreement, which stipulates that the Council "shall oversee the functioning" of TRIPS. With a view of understanding the role of the Council within the general institutional structure of the WTO, a brief account is presented below.

- a) The Ministerial Conference is the main body of the WTO, being composed of the representatives of all WTO Members at a ministerial level meeting at least once every two years. According to Article IV:1 of the WTO Agreement, the Ministerial Conference "shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements" including TRIPS. It is the Ministerial Conference that has the exclusive authority to adopt generally binding interpretations of the Multilateral Trade Agreements (Article IX:2 of the WTO Agreement).
- b) The General Council is composed of representatives of all WTO Members who are generally Geneva-based ambassadors accredited to the WTO, meeting as appropriate (Article IV:2 of the WTO Agreement). According to the same provision,

<sup>94</sup> For more details on the functions of the Council, see below, under Section 3.

the General Council shall conduct the functions of the Conference in the intervals between the meetings of the ministers. In other words, the decision-making authority of the Conference is most of the time delegated to the General Council. In addition to this, the General Council has two other functions: it also meets, under different rules, as the Dispute Settlement Body (as such responsible for the adoption of reports by dispute settlement panels and the Appellate Body) and as the Trade Policy Review Body (see Article IV:3 and 4 of the WTO Agreement).

c) The Council for TRIPS, the Council for Trade in Goods and the Council for Trade in Services operate “under the general guidance of the General Council” (Article IV:5 of the WTO Agreement). According to the same provision, membership in these Councils shall be open to the representatives of all WTO Members.

## 2. History of the provision

### 2.1 Situation pre-TRIPS

As explained elsewhere in this book, the trade-related aspects of intellectual property rights are a new and complex subject in the new structure of GATT-WTO and it was thus considered necessary to establish a new organ responsible to deal with the operation and implementation of the new Agreement.

### 2.2 Negotiating history

The negotiating history of Article 68 was intertwined with the substantive aspects of the negotiations. Since the idea of substantive standards in TRIPS itself was not commonly accepted until the mid-term review of the Uruguay Round in April 1989, not much consideration was given to what kind of body would supervise the operation of an agreement in this area. Adding to this complication was the debate on what exactly the successor organization to the GATT would be.

Developing countries, in general, insisted for a long time after the Uruguay Round was launched that both TRIPS and the Services Agreement should be on separate tracks and not on a par with negotiations in the goods area. Their idea was to make these two subjects non-justiciable under any possible dispute settlement rules. While this did not happen, it constituted the main reason for the developing countries' entertaining the idea of a separate organ for supervision of TRIPS.

#### 2.2.1 The Anell Draft

This draft provided:<sup>95</sup>

“Committee on Trade-Related Intellectual Property Rights (68); The Committee on Trade-Related Aspects of Intellectual Property Law (73); The TRIPS Committee (74)

1A PARTIES shall establish a Committee on Trade Related Intellectual Property Rights composed of representatives from each PARTY. The Committee shall elect its own chairman, establish its own rules of procedures and shall meet not less

<sup>95</sup> See composite text of 23 July 1990, circulated by the Chairman (Lars E. R. Anell) of the TRIPS Negotiating Group, document MTN.GNG/NG11/W/76.

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than once a year and otherwise upon request of any PARTY. The Committee shall monitor the operation of this Annex and, in particular, PARTIES' compliance with their obligations hereunder, and shall afford PARTIES the opportunity of consulting on matters relating to trade related intellectual property rights. It shall carry out such other responsibilities as assigned to it by the CONTRACTING PARTIES, and it shall, in particular, provide any assistance requested by them in the context of procedures under Articles XXII and XXIII of the General Agreement. In carrying out its functions, the Committee may consult with and seek information from any source they deem appropriate. (68)

1B (i) All PARTIES shall be represented in the Committee on Trade-Related Aspects of Intellectual Property Rights (hereinafter the Committee). It shall elect its Chairman annually and meet as necessary, but not less than once a year. It shall carry out its responsibilities as assigned to it under this PART or by the PARTIES. It may establish working groups. (73)

(ii) The Committee shall monitor the implementation and operation of this PART, taking into account the objectives thereof. It shall examine periodical country reports prepared by the GATT Secretariat on laws, regulations, practices and international agreements related to, and affecting, the protection of intellectual property rights. It shall make recommendations, as appropriate, to the PARTIES concerned. (73)

(iii) The Committee shall periodically agree upon a schedule of country reports. It shall adopt a work programme and coordinate activities of PARTIES in the field of technical cooperation. (73)

(iv) The Committee shall annually report to the CONTRACTING PARTIES. It may submit recommendations. (73)

(v) The Committee is entitled to elaborate and adopt guidelines for the interpretation, in particular of Parts III and IV above. It shall take into account relevant findings of adopted panel reports. (73)

1C The TRIPS Committee composed of representatives of the PARTIES shall be established. The TRIPS Committee shall carry out functions under this Agreement or otherwise assigned to it by the PARTIES. (74)

Joint Expert Group (68), Joint Group of Experts (73)

2A In order to promote co-operation between the Committee on Trade Related Intellectual Property Rights and bodies under the World Intellectual Property Organization, the latter shall be invited by the Committee to serve together with the GATT Secretariat as Secretariat for a joint Expert Group which shall consist of representatives of the CONTRACTING PARTIES and of the Member States of the Paris and Berne Unions. The Expert Group shall, when requested to do so by the Committee, advise the Committee on technical matters under consideration. (68)

2B In order to promote co-operation between the Committee and bodies under the World Intellectual Property Organization, the Committee may establish, as appropriate, Joint Groups of Experts consisting of representatives of the PARTIES and of the Member States of the Unions created by the Paris Convention (1967) and the Berne Convention (1971), respectively. Upon request of the Committee, the Joint Groups of Experts shall give advice on technical matters under consideration. (73)"

Both proposals “A” and “B” had a broader coverage than the final version of Article 68. The latter is limited to the substantive functions of the Council for TRIPS, whereas the proposals under the Anell Draft additionally contained some provisions on the organizational structure of this body (in particular with respect to its composition, its chairperson and its rules of procedure). Such organizational rules were subsequently removed from the specific TRIPS context and incorporated into the WTO Agreement (see Article IV:5 and 6). Contrary to the Anell Draft, however, the WTO Agreement does not expressly refer to the election of the Chairperson. As to the actual functions of the “Committee” (i.e., the body that later became the Council for TRIPS), the final version is closer to proposal “A” than to proposal “B”. The latter contained more details than the former. In the context of the Committee’s monitoring function, it referred expressly to the objectives of the Agreement that should be taken into account. These objectives at the time of the Anell Draft were contained in a provision that later became Article 7. This draft provision provided:

“1B PARTIES recognize that intellectual property rights are granted not only in acknowledgement of the contributions of inventors and creators, but also to assist in the diffusion of technological knowledge and its dissemination to those who could benefit from it in a manner conducive to social and economic welfare and agree that this balance of rights and obligations inherent in all systems of intellectual property rights should be observed.

2B PARTIES agree that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and enhance the international transfer of technology to the mutual advantage of producers and users of technological knowledge.”<sup>96</sup>

The reference to these objectives in the context of the Committee’s monitoring task highlights the concerns of some developing countries relating to the loss of flexibility in handling IP issues. A comparable reference is missing under the current Article 68.

Finally, both draft proposals contained, in a separate provision, reference to cooperation with WIPO. The “A” and the “B” proposal did not differ much from each other, in particular with their reference to the advice that the Committee should receive from the joint GATT-WIPO group of experts. In this respect, both draft proposals were more detailed than the final version of Article 68, which only makes a general reference to establishing “appropriate arrangements for cooperation” with WIPO bodies (see below, Section 3).

### 2.2.2 The Brussels Draft

Once the agreement of all countries to negotiate on substantive IPRs standards was secured in April 1989, discussions began on the institutional arrangements

<sup>96</sup> Note that the final version of Article 7 is closer to the second of the quoted paragraphs.

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and by the time the meeting took place in 1990 in Brussels, the draft<sup>97</sup> contained the following provision:

“PARTIES shall establish a Committee on Trade Related Intellectual Property Rights composed of representatives from each PARTY. The Committee shall elect its own chairperson, establish its own rules of procedures and shall meet not less than once a year and otherwise upon request of any PARTY. The Committee shall monitor the operation of this Agreement and, in particular, PARTIES’ compliance with their obligations hereunder, and shall afford PARTIES the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such other responsibilities as assigned to it by the PARTIES, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Committee may consult with and seek information from any source they deem appropriate. In consultation with the World Intellectual Property Organization, the Committee shall seek to establish, within one year of its first meeting, appropriate arrangements for co-operation with bodies of that Organization.<sup>a</sup>”

*Note:* (a) This provision depends on the decision to be taken regarding the institutional arrangements for the international implementation of this Agreement.”

This draft Article was in essence quite similar to today’s Article 68. There are three minor differences. First, the draft Article in its two first sentences contained a reference to the organizational structure of the Committee (which is now to be found in Article IV:5 and 6 of the WTO Agreement). Second, the terminology used in the draft differed slightly in employing the terms “Committee” (instead of “Council for TRIPS”) and “Parties” instead of “Members”. The latter may be explained by the fact that the GATT 1947 lacked legal personality, as it was not an international organization but only an agreement. Consequently, it did not have “Members”, but only “Contracting Parties”. Likewise, “Committee” reflected the usage in the GATT and its various agreements. Third, the note at the end of the draft provision was not maintained in Article 68. The Cooperation Agreement with WIPO was subsequently established in 1995 (see Section 3 below).

### 2.2.3 The Dunkel Draft

When the Dunkel Draft<sup>98</sup> was submitted by December 1991, the term “Council” was used rather than “Committee”. This was because intensive negotiations had taken place prior to the issuance of the Dunkel Draft on institutional matters. Apart from this, Article 68 of the Dunkel Draft was essentially identical to the current TRIPS provision.

Briefly, it was during this period that the following issues were settled: first, that the results of the Uruguay Round were a single undertaking, i.e., either a country could accept all the agreements or none at all; second, that there was to be an international organization called MTO (Multilateral Trade Organization, later

<sup>97</sup> Document MTN.TNC/W/35/Rev. 1 of 3 December 1990.

<sup>98</sup> Document MTN.TNC/W/FA of 20 December 1991.

changed to World Trade Organization) which would be the successor to the GATT; and third, that there would be an integrated dispute settlement mechanism, i.e., binding dispute settlement rules would apply across the board.<sup>99</sup> Finally, there was to be a General Council at the apex and there would be three Councils directly under it (Goods Council, Services Council and TRIPS Council).

### 3. Possible interpretations

#### 3.1 The functions of the Council

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, [...]

The monitoring of Members' compliance with their obligations is the predominant task of the Council. In order to facilitate such action, Article 63.2 lays down Members' obligation to notify to the Council their TRIPS-related laws and regulations.<sup>100</sup> This is a way of reducing the necessity for Members to have recourse to the dispute settlement procedures for breaches of the Agreement.<sup>101</sup> The reference in the first sentence of Article 68 to the term "in particular" indicates that this monitoring does not exclusively consist of the review of Members' compliance with their TRIPS obligations. In more general terms, the Council is supposed to monitor the "operation" of the Agreement, a term that refers to the overall objective of ensuring a smooth functioning of the Agreement, including its objectives and principles. Besides the compliance monitoring, the Council also fulfils other functions, as indicated below.

[...] and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. [...]

The Council equally provides a forum for consultations on IPR-related matters. This is an important contribution to the building of mutual trust and cooperation, which ideally prevents Members from having recourse to dispute settlement proceedings.

[...] It shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. [...]

<sup>99</sup> This implies the possibility of cross-retaliation (for a definition of that notion, see Chapter 30).

<sup>100</sup> For more details, see Chapter 31.

<sup>101</sup> Note, however, that the obligation to notify TRIPS-related domestic rules applies only after their entry into force (see Chapter 31).

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In case there is no room for a settlement of a dispute between the parties, it is an important responsibility of the Council to provide assistance in dispute settlement procedures before a WTO panel or the Appellate Body.

[...] In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. [...]

The Council has considerable discretion as to the procurement of relevant information necessary to carry out its main functions properly.

In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for co-operation with bodies of that Organization.

The cooperation agreement between the WTO and WIPO was established in 1995 and entered into force on 1 January 1996.<sup>102</sup> In essence, it concerns three different areas of cooperation. First, WIPO agrees to make available to WTO Members, WTO Member nationals, the WTO Secretariat and the Council laws and regulations contained in the WIPO database and to provide to the same parties access to computerized databases of the International Bureau containing laws and regulations. Second, both organizations agree on the procedures regarding the implementation of Article 6*ter* of the Paris Convention for the purposes of TRIPS. This concerns the communication from WTO Members to the International Bureau of state emblems that shall not be used as trademarks.<sup>103</sup> Third, and most importantly for developing country and LDC Members that are Members of the WTO or of WIPO but not of both, the organizations agree to make available to these countries the legal-technical assistance/technical cooperation relating to TRIPS that Members are entitled to even if it is the other organization that they belong to. Likewise, the organizations agree to enhance cooperation in their technical assistance activities with a view to maximizing the usefulness of those activities.

Apart from the functions expressly provided for in Article 68, the Council is equally entrusted with other tasks that are referred to in other TRIPS provisions:<sup>104</sup>

- Various exceptions provided for in different parts of the TRIPS Agreement have to be notified to the Council, in particular the ones in Articles 1.3, 3.1, 4(d), and 63.2.<sup>105</sup>

<sup>102</sup> The text of this agreement is available at <[http://www.wto.org/english/tratop\\_e/trips\\_e/wtowip\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/wtowip_e.htm)>.

<sup>103</sup> Article 6*ter* of the Paris Convention prohibits, *inter alia*, the registration of trademarks consisting of, or incorporating, state emblems.

<sup>104</sup> For more detailed information on these provisions, see the respective chapters in this book.

<sup>105</sup> Detailed technical information on the notification procedures can be found in the Technical Cooperation Handbook on Notification Requirements, WTO document WT/TC/NOTIF/TRIPS/1, which is available in the documents online section of the WTO Website (<<http://www.wto.org>>).

- Under Article 23.4, the Council shall undertake negotiations concerning the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits.<sup>106</sup>
- Under Article 24.2, the Council is given the authority to review the application of the provisions on geographical indications.
- Under Article 63.2, the Council shall receive notifications from WTO Members concerning their TRIPS-related legislation.
- Article 66.1 authorizes the Council to accord, upon motivated request by an LDC Member, an extension of the transition period after the expiry of which the TRIPS disciplines become fully binding on LDC Members.
- Under Article 71, the Council is charged with the review of the implementation of the TRIPS Agreement at two-year-intervals.

### 3.2 The Council in actual practice

#### 3.2.1 The meetings

According to Article IV:5 of the WTO Agreement, the Council “shall meet as necessary” to carry out its functions. The Council has followed this suggestion in practice. The number of meetings is decided upon by the Chairman in consultation with Members and is based on the workload that is expected in the year which lies ahead. In other words, the TRIPS Council meets as appropriate. Four to five formal meetings have been the norm in the recent past. The main purpose of these meetings is to monitor the operation of TRIPS. In addition, the Council for TRIPS also meets in “special sessions” for the negotiations on a multilateral system for the registration and the notification of geographical indications for wines and spirits under Article 23.4 (see above).

#### 3.2.2 The decision-making process

In accordance with Article IV:5 of the WTO Agreement, the Council has established its own rules of procedures, which have been approved by the General Council. The rules of procedure for the Council are essentially the same as for the General Council, with adjustments.

As in other WTO bodies, the decisions in the Council are always taken by consensus. In case of no agreement, the Council will refer the matter to the General Council, which will then take the decision. This means that when decisions are adopted by the Council, no Member present at the meeting should formally object. In theory, this means that any country not agreeing to a proposed decision has the right to block it. In practice, of course, there would be a need to justify such a position and the country doing so can be expected to come under pressure from other Members wanting to move forward. Negotiations in the WTO

See also the WTO's IP gateway page at <<http://www.wto.org/english/tratop.e/trips.e/trips.e.htm>> (“Notifications under the TRIPS Agreement”).

<sup>106</sup> Note that according to para. 18 of the Doha Ministerial Declaration (WTO document WT/MIN(01)/DEC/1 of 20 November 2001), Members agreed to negotiate such multilateral system “by the Fifth Session of the Ministerial Conference”. However, by the time of the fifth Ministerial Conference, which took place from 10–14 September 2003 in Cancun, Mexico, no agreement was reached on the multilateral register (for details, see Chapter 15).



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follow the same pattern in the various bodies. When a delegation raises an issue it considers important, it usually convenes an informal meeting (which could be outside the ambit of the TRIPS Council) among what it believes are like-minded delegations who are likely to support the issue. Once a certain critical mass is reached, the delegation could approach the Chairperson and request the matter be included on the agenda of the next formal TRIPS Council meeting. If the issue is straightforward, the Chairperson might do so without further consultations. On the other hand, if the issue is likely to be a contentious one, then the Chairperson is likely to call what are known as small group informal meetings to seek an agreed compromise.

#### 3.2.3 The compliance review

The Council in actual practice has devoted a lot of time to this task. Those notifications that Members are obliged to make to the Council according to Article 63.2 constitute the basis for reviews of the implementing legislation.<sup>107</sup> Obviously, the precondition of this exercise is that a Member's obligation to implement the TRIPS Agreement has already commenced.<sup>108</sup> Thus, the Council one year after the entry into force of the Agreement started the review of the legislation of the developed countries whose transitional period ended on 1 January 1996. This exercise has now been completed. At present, the TRIPS Council is involved in reviewing the national legislation of the vast majority of developing countries.<sup>109</sup> Concerning LDC Members, the review has not yet begun, taking into account the fact that their obligations to implement the Agreement are yet to be activated (in general, as of 1 January 2006, see Article 66.1).

As far as the review exercise itself is concerned, it is carried out as follows. The Member notifies the laws and regulations, preferably in full but if not, even in part.<sup>110</sup> Then, an opportunity is given to other interested WTO Members to ask questions in writing; after that the concerned WTO Member whose legislation is being reviewed answers in writing, preferably ahead of the meeting of the Council. Often, there are further questions on the answers provided by the Member and these would have to be answered at a subsequent meeting of the Council. In order for the answers to be of satisfying substance, the Member whose legislation is being reviewed should bring in its experts and officials from its capital.

It may be observed that the time period and deadlines provided for the questions and answers are quite flexible. This is the reason why the reviews could spread over two or more meetings lasting from six to nine months. Another reason for the length of this procedure is the fact that some developing countries and LDC Members do not have the resources to bring all the experts they have for all the meetings.

<sup>107</sup> Article 63.2 states in relevant part: "Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. [...]" See in detail under Chapter 31.

<sup>108</sup> See the transition periods as laid down in Articles 65 and 66. For more details, see Chapter 33.

<sup>109</sup> For a list of those countries whose legislation is currently under review, see the WTO's IP gateway page at <<http://www.wto.org/english/tratop.e/trips.e/trips.e.htm>> ("Review of members' implementing legislation").

<sup>110</sup> This was designed to motivate Members to notify relevant legislation even if the latter has only been partly elaborated.

Finally, it should be stressed that the review exercise is without prejudice to the rights and obligations of the WTO Member whose legislation is being reviewed. Such Member remains free to maintain the relevant legislation, even if another Member expresses doubts about the WTO compatibility of these provisions. The only way of possibly forcing a Member to modify its domestic laws is through the remedies available under the DSU (in particular, the suspension of concessions). But this may only be authorized after the adoption of a panel or Appellate Body dispute settlement report. This procedure is entirely independent of the review exercise in the Council for TRIPS. The opinion expressed by a WTO Member in the context of this review about another Member's domestic law does not anticipate the conclusion of a relevant examination conducted by a panel or the Appellate Body.

#### **4. WTO jurisprudence**

Article 68 does not contain any substantive obligations and thus far has not been the specific object of a dispute before the WTO. However, panels or the Appellate Body, while reviewing the TRIPS-compliance of a Member's legislation, might draw on the comments provided by Members during the review procedure before the Council.

#### **5. Relationship with other international instruments**

##### **5.1 WTO Agreements**

The Council has specifically been set up for the purpose of monitoring the operation of TRIPS. There is no other WTO organ that could take over this function, except for the General Council in the specific case when a decision needs to be taken and the Members of the Council have not been in a position of reaching such decision.

When compared, for example, to the GATS Council, it can be noted that the powers conferred to the Council for TRIPS are considerably greater. Contrary to Article 68, Article XXIV GATS does not authorize the GATS Council to monitor Members' compliance with their GATS obligations. This difference in the attribution of powers is due to the fact that under TRIPS there are common (minimum) standards that have to be respected by every Member. The extent of GATS obligations, by contrast, depends on each Member's schedule of specific commitments and thus varies from Member to Member. From a practical point of view, a monitoring of such commitments appears much more complicated than the review of the common standards under TRIPS.

##### **5.2 Other international instruments**

#### **6. New Developments**

##### **6.1 National laws**

##### **6.2 International instruments**

The Chairperson's Statement accompanying the 2003 General Council Decision on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement

## 7. Comments, including economic and social implications

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and Public Health contained several references to the work and competencies of the Council for TRIPS:

“[...] Third, it is important that Members seek to resolve any issues arising from the use and implementation of the Decision expeditiously and amicably:

- To promote transparency and avoid controversy, notifications under paragraph 2(a)(ii) of the Decision would include information on how the Member in question had established, in accordance with the Annex, that it has insufficient or no manufacturing capacities in the pharmaceutical sector.
- In accordance with the normal practice of the TRIPS Council, notifications made under the system shall be brought to the attention of its next meeting.
- Any Member may bring any matter related to the interpretation or implementation of the Decision, including issues related to diversion, to the TRIPS Council for expeditious review, with a view to taking appropriate action.
- If any Member has concerns that the terms of the Decision have not been fully complied with, the Member may also utilise the good offices of the Director General or Chair of the TRIPS Council, with a view to finding a mutually acceptable solution.

Fourth, all information gathered on the implementation of the Decision shall be brought to the attention of the TRIPS Council in its annual review as set out in paragraph 8 of the Decision.

[...]”<sup>111</sup>

### 6.3 Regional and bilateral contexts

#### 6.4 Proposals for review

There are no proposals to modify the functions of the Council.

## 7. Comments, including economic and social implications

For delegates from developing and least-developed countries, formal and informal participation in Council meetings presents an opportunity to better familiarize themselves with the review exercise. Thus, when their turn comes, they will be able to cooperate more efficiently with the Council and its Members. In this context, it should be stressed again that the review of national IP laws does not constitute a pre-stage of dispute settlement proceedings (see above, under Section 3). To the contrary, this exercise should be understood as a means of avoiding recourse to the DSU through cooperation and dialogue between Members. With respect to the review exercise the written records of those reviews provide for a source of highly valuable information.<sup>112</sup>

The issue of the proper participation of developing countries in a highly technical body such as the Council for TRIPS deserves further consideration. It is

<sup>111</sup> Reproduced in the minutes of the General Council, WT/GC/M/82.

<sup>112</sup> The records of the introductory statements made by delegations, the questions put to them and the responses given are made public, six months after their circulation, in the WTO on-line database (at <<http://www.wto.org>>). In this context, see also the WTO's IP gateway page at <[http://www.wto.org/english/tratop\\_e/trips\\_e/trips\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/trips_e.htm)> (“Review of members’ implementing legislation”).

not always the case that the Council is attended by experts on TRIPS matters but by trade diplomats that normally cover a wide variety of subjects. This is not the case of developed countries that participate, in general, with technical support from capitals. This issue deserves the attention of not just policy-decision makers in developing and least-developed countries, but also of international organizations and NGOs. In order to improve the situation, the first step to be taken is to create awareness among the aforementioned institutions of the importance of informed and efficient participation of developing and least-developed countries in the Council deliberations. It should be noted, however, that in recent years a number of activities are being organized back to back to the Council's meetings to precisely support developing countries' proper participation in those discussions.