

WORLD TRADE ORGANIZATION

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(09-5241)

**Council for Trade-Related Aspects
of Intellectual Property Rights**

TIMELINESS AND COMPLETENESS OF NOTIFICATIONS AND OTHER INFORMATION FLOWS

Note by the Secretariat

*This document has been prepared under the Secretariat's own
responsibility and without prejudice to the positions of Members*

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I. INTRODUCTION

1. In order to facilitate its consideration of the issue of improving the timeliness and completeness of notifications and other information flows in the area of its responsibility, at its meeting in June 2009 the Council for TRIPS requested the Secretariat to prepare a factual background note summarizing the relevant procedures and providing references to the relevant decisions, as well as information on the use of these procedures by Members, and also to prepare suggestions for the Council's consideration at its next meeting on how to improve the transparency and user-friendliness

rights) to the Council in order to assist it in its review of the operation of the Agreement. The basic procedures for the notification of national laws and regulations under Article 63.2 are contained in document IP/C/2 ([Annex 3](#))². The Agreement Between WIPO and the WTO is also relevant with regard to these procedures.

5. As regards the *initial notification*, the procedures provide 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 (normally within 30 days, except where otherwise provided by the TRIPS Council). Accordingly, developed country Members were to make their initial notification of their TRIPS legislation at the end of their transition period in 1996, and developing country Members in 2000. Newly acceded Members are to notify their TRIPS implementing legislation as of the time they are to start to apply the provisions of the

large and procedures were adopted to attempt to reduce the burdens for Members in preparing them as well as for the Secretariat in processing them. At the same time, they nevertheless attempted to ensure that the purpose of the notification system as an instrument to monitor implementation would not be unduly impaired and could remain effective.

- (a) Not all laws and regulations need to be notified in a WTO language. A distinction has been made between so-called "*main dedicated intellectual property laws and regulations*" and "*other laws and regulations*". Document IP/C/2, paragraphs 6 and 9 and document IP/C/W/8 contain some guidelines for Members in order to help them make their assessment when dividing their laws and regulations into these two categories. Main laws and regulations have to be notified in English, French or Spanish; other laws and regulations can be notified in a Member's national language. Translations of laws and regulations must be accompanied by the authentic texts of the laws and regulations in question in a national language.
- (b) Under Article 2(5) of the Agreement Between WIPO and the WTO, the assistance of WIPO will be available to developing country Members for translation of laws and regulations for the purposes of Article 63.2 of the TRIPS Agreement, whether or not they are Members of WIPO.
- (c) Only the texts of main laws and regulations will be distributed in WTO documents and only in the WTO language in which they have been submitted.
- (d) Other laws and regulations will not be distributed but only be available for consultation in the WTO Secretariat. However, in order to maximize transparency as to the contents of other laws and regulations, the notification of the texts of all "other laws and regulations" must be accompanied by a listing of them according to the format contained in document IP/C/4. This listing must be submitted at the same time as the laws and regulations themselves. A model of such a listing can be found in document IP/C/W/8. According to the two-column format, the titles of the laws and regulations will be presented on the left side and a brief description of them in English, French or Spanish on the right side.⁵ In order to improve the user-friendliness of their notifications, recently some Members when updating their earlier notifications have provided such listings for both their "main dedicated intellectual property laws and regulations" and "other laws and regulations".
- (e) It has been recognized that adequate transparency of the contents of enforcement laws, in particular as to how TRIPS obligations have been implemented, may not necessarily be achieved by the notification of laws and regulations according to the above-mentioned procedures. For example, in countries with a common law tradition, this area of law is often not codified but governed by case law. Therefore, the Council has adopted a "Checklist of Issues on Enforcement" (document IP/C/5), responses to which Members have to submit in addition to any texts of laws and regulations including any brief description in the format referred to in the previous indent. The responses to this checklist have to be submitted by each Member as soon as possible after the date on which it starts applying the implementing legislation in question.

⁵ It should be noted that, unless an enforcement law is notified as a main law, enforcement laws must be taken up in this listing, including their brief description. In addition, a Member must provide responses to the Checklist of Issues on Enforcement.

2. Availability of the information received

11. Notifications of laws and regulations under Article 63.2, including listings of "other laws and regulations", are distributed in the IP/N/1/- series of documents. The actual texts of "main dedicated intellectual property laws and regulations" are distributed in the following sub-series of documents:

number of provisions on notification procedures, translation of laws and regulations, and making them available. As provided in Article 2(4) of the cooperation agreement, the WTO Secretariat transmits to WIPO a copy of the laws and regulations notified to the WTO Secretariat by WTO Members under Article 63.2 of the TRIPS Agreement in the language or languages and in the form or forms in which they were received, and WIPO places such copies in its collection.¹⁰ The main way of making this information available to the public is through the Collection of Laws for Electronic Access (CLEA) database providing access to these laws and regulations and other legislation as well as to treaties on intellectual property.¹¹ WIPO is in the process of upgrading this service.

17. With a view to making the information more easily available to Members and other users, the Secretariat is considering ways to reorganize the relevant pages on the WTO website. For example, a single transparency toolkit page could provide a single access point to various notifications and other reports from Members, as well to related formats, guidelines and background materials.¹²

18. As noted above, some Members provide listings not only for "other laws and regulations" but also for the updates of their notifications of "main dedicated intellectual property laws and regulations". These listings related to updates normally give a brief description of any new legislation or amendments to the pre-existing legislation. Given that such descriptions improve the user-friendliness of the system, their wider use also in respect of updates to main laws could be encouraged.

19. As noted above, the WTO Secretariat currently receives notifications in various electronic formats, all of which cannot be converted into WTO documents. It forwards these notifications to the WIPO Secretariat, which includes them in its database. Any current delays in circulation and lack of accessibility of notified materials are almost entirely attributable to technical problems of this nature, which can take much time and effort to resolve. For this reason, it would be desirable that notifications be received in such formats that can easily be included in both WTO and WIPO databases and made searchable. The WTO Secretariat is currently exploring this issue in cooperation with WIPO. Clarification of the formats that would be most practical to use would help overcome technical obstacles, would enable better use of resources to facilitate transparency in practice, and would reduce the administrative burden for notifying Members.¹³

20. Currently the texts of "main dedicated intellectual property laws and regulations" are circulated in hardcopy format to all Members. However, it appears that most users find it more

¹⁰ As foreseen in Article 3(3) of the WIPO-WTO cooperation agreement, a WTO Member may choose to make its initial notification to the TRIPS Council by reference to WIPO's collection. It provides that where, on the date of its initial notification of a law or regulation under Article 63.2, a WTO Member has already communicated that law or regulation, or a translation thereof, to the WIPO Secretariat and that WTO Member has sent to the WTO Secretariat a statement to that effect, and that law, regulation or translation actually exists in WIPO's collection, the WIPO Secretariat will transmit a copy of it to the WTO Secretariat.

At their meetings in December 1995, the Assemblies of the Berne and Paris Unions resolved that the receipt, by the International Bureau of WIPO from the WTO Secretariat, of a copy of any law or regulation that the WTO Secretariat received under Article 63.2 of the TRIPS Agreement shall have, for the purposes of, respectively, Article 24(2) of the Berne Convention and Article 15(2) of the Paris Convention, the same effect as if that law or regulation had been communicated to the International Bureau under the said Articles of the Berne or Paris Convention. See, respectively, paragraph 5 of WIPO document B/A/XVIII/2 and paragraph 5 of WIPO document P/A/XXIV/2.

¹¹ CLEA can be accessed at <http://www.wipo.int/clea/en/>.

¹² Any improvements in the way that notifications can be accessed electronically would, of course, not entail any change to the legal status of notified materials nor to the obligations or entitlements of Members; such improvements would purely concern the accessibility of information provided under existing notification requirements.

¹³ Such clarification of the formats would, of course, not affect in any way the rights and obligations of Members.

convenient to access these laws and regulations on WTO and WIPO databases, which are being made increasingly user-friendly. Informal feedback from users suggests that the routine production of hard copies does not, on the whole, facilitate access to the notified materials, and it consumes considerable resources. An option for consideration would be to move towards a system where only the cover note of a notification would be circulated in a WTO document, while the respective texts of laws and regulations could be made available only in an electronic form on the WTO database (and also forwarded to the WIPO Secretariat for inclusion in its collection), while retaining the right of Members to obtain hard copies upon request when required.

21. Article 63.2 of the TRIPS Agreement refers to the possibility of minimizing the burden on Members relating to notification obligations through the establishment of a common register in cooperation with WIPO. The provisions on close cooperation between the two Organizations in the current notification procedures and in the WIPO-WTO cooperation agreement already reflect this intention to streamline the administration of notifications. It is not proposed to redefine or restructure existing cooperation with WIPO, but in view of the potential reduction of the burden on Members and the reduction of inefficient double-handling and duplicative processing and in order to make better use of modern communication technology, avenues for cooperation of a strictly practical nature will continue to be actively explored with WIPO, without prejudice to the rights and obligations of Members.

3. Status of notifications of laws and regulations

22. The overall status of initial notifications by developed and developing country Members can be considered as fairly good.

territory to certain foreign right holders is accorded to persons eligible under Article 1.3 for protection under the Agreement. Article 4 specifies the exemptions to such MFN treatment allowed by the Agreement. One of these exceptions, that in sub-paragraph (d), requires a notification, namely where the advantage in question derives from an international agreement related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement. The conditions for such exemptions are that the agreement in question is notified to the TRIPS Council and does not constitute an arbitrary or unjustifiable discrimination against persons eligible under Article 1.3 from other WTO Members.

34. Notification under Article 4(d) is only required if a Member wishes to avail itself of the exception concerned. No special procedures have been adopted by the Council in respect of these notifications.

35. These notifications are distributed in the IP/N/4/- series of documents and made available on the WTO Online Database. The webpage on notifications under the TRIPS Agreement contains a quick search documents online feature for notifications under Article 4(d). To date, 28 Members or groups of Members have submitted such notifications.

3. Article 6^{ter} of the Paris Convention

36. Article 6^{ter} of the Paris Convention (1967) concerns the protection of state emblems, official hallmarks and the abbreviations and emblems of intergovernmental organizations against the

"6ter Express" database.¹⁸ The first such electronic publication of signs went live on 31 March 2009 on this database. The second periodical electronic publication was made on 30 September 2009.¹⁹

40. All state emblems of WTO Members and of parties to the Paris Convention, as well as emblems of international intergovernmental organizations, which benefit from the application of Article 6ter are available in the 6ter Express database. It contains some 2,500 individual records and is fully accessible and searchable online. Updated versions of the database are also being made available on CD-ROM, and can be ordered from WIPO.

4. Other notification requirements under the Berne Convention and the Rome Convention incorporated by reference into the TRIPS Agreement

41. 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. Such notifications are only required if a Member wishes to avail itself of one of the possibilities concerned. No special procedures have been adopted by the Council in respect of these notifications. These notifications are distributed in the IP/N/5/- series of documents and made available on the WTO Online Database. The webpage on notifications under the TRIPS Agreement contains a quick search documents online feature for notifications under these provisions. To date, 3 Members have submitted such notifications. The following summarizes the notification possibilities in question.²⁰

42. Articles 14bis(2)(c) and 14bis(3) of the Berne Convention: Article 14bis(2)(b) of the Berne Convention as incorporated into the TRIPS Agreement applies to a WTO Member which in its legislation includes among the owners of copyright in a cinematographic work authors who have brought contributions 89(f t75ho have)9(ba)3(kng s322 -1.sprk T]TJ0.0009 Tc 0.0878hocuiwo)4(rk authors wh 1.15

- (a) Article I of the Appendix: Paragraph 1 requires a developing country Member wishing to avail itself of the possibilities provided in the Appendix to declare that it will avail itself of the faculty provided in Article II and/or Article III of the Appendix (compulsory licences for, respectively, translations and reproductions) by means of a notification. According to paragraph 2 such declarations can be made for renewable periods of ten years. Such declarations may be renewed by means of a notification.²¹ Paragraph 5 deals with the possibility for a country to make notifications in respect of territories for which it has international responsibility.
- (b) Article II(3)(b) of the Appendix: This provision deals with the situation where a developing country Member secures the agreement of all developed country Members, in which the same language is in general use as in that developing country Member, to provide for a shorter period than the usual three years after publication for the application of compulsory licences to substitute for the exclusive right of translation. The provision requires that any such agreement shall be notified.
- (c) Article IV(2) of the Appendix: This provision deals with the situation where an applicant for a compulsory licence of the types provided for in Articles II and III cannot find the owner of the right in question. In such a situation, he or she must send a copy of the application to any national or international information centre which may have been designated by the Member in which the publisher of the work concerned is believed to have his principal place of business. The paragraph provides that such information centres must have been designated in a notification by the Member concerned.
- (d) Article IV(4)(c)(iv) of the Appendix: This provision allows developing country Members to export copies of translations made under compulsory licence, provided that a number of conditions are met: the language of the translation must not be
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address of the licensee, the product(s) for which the licence has been granted, the quantity(ies) for which it has been granted, the country(ies) to which the product(s) is (are) to be supplied and the duration of the licence. The notification shall also indicate the address of the website of the licensee that shall post on its website

paragraph 2 of the Decision provides that the submissions shall be reviewed by the Council at its end of year meeting each year.

54. The tri-annual new reports and the intervening updates are circulated in the IP/C/W- series of documents and made available on the WTO Online Database. The webpage on "Technology transfer"²⁵ contains a quick search documents online feature for reports under Article 66.2.

55. Further information on the reports that have so far been submitted under the Decision can be found in a Secretariat background note circulated in October 2008 in document IP/C/W/522.

2. Contact points for technical cooperation and reports under Article 67

(a) Contact points for technical cooperation on TRIPS

56. At its meeting in July 1996, j0.0008 TcitsoT ackfdb98 108 1 2.027Iuhave soy

61. The information from developed country Members, intergovernmental organizations and the WTO Secretariat on their technical cooperation activities in the area of TRIPS is circulated in the IP/C/W/- series of documents and made available on the WTO Online Database. The webpage on technical cooperation in the TRIPS area contains a quick search documents online feature for reports on technical cooperation activities in the area of TRIPS.²⁸

F. CERTAIN OTHER INFORMATION FLOWS

1. Records of reviews of national implementing legislation

62. The initial notifications of laws and regulations made pursuant to Article 63.2 of the TRIPS Agreement form the basis for reviews of national im

The responses from Members have been circulated in document IP/C/W/117, addenda, supplements and revisions. At the Council's request, the Secretariat has prepared a note summarizing these responses. An updated version of the summary, circulated in November 2003, can be found in document IP/C/W/253/Rev.1. This documentation is available on the WTO Documents Online database.

3. Responses provided in the context of the review of the provisions of Article 27.3(b)

66. At its meeting in December 1998, the Council agreed to initiate the review of the provisions of Article 27.3(b) through an information-gathering exercise. The Council invited Members that were already under an obligation to apply Article 27.3(b) to rti Counalrdocumenta

ANNEX 1

WTO Document Series for the Circulation of Intellectual Property Notifications

- IP/N/1/ Notification of laws and regulations under Article 63.2 of the Agreement
- The actual texts of "main dedicated intellectual property laws and regulations" are distributed in the following sub-series of documents
- | | |
|-------------|--|
| IP/N/1/-/C/ | Copyright and related rights |
| IP/N/1/-/T/ | Trademarks |
| IP/N/1/-/G/ | Geographical indications |
| IP/N/1/-/D/ | Industrial designs |
| IP/N/1/-/P/ | Patents (including plant variety protection) |
| IP/N/1/-/L/ | Layout-designs (topographies) of integrated circuits |
| IP/N/1/-/U/ | Undisclosed information |
| IP/N/1/-/I/ | Industrial property (general) |
| IP/N/1/-/E/ | Enforcement |
| IP/N/1/-/O/ | Other |
- IP/N/2/ Notification under Articles 1.3 and 3.1 of the Agreement
- IP/N/3/ Notification of contact points under Article 69 of the Agreement
- IP/N/4/ Notification under Article 4(d) of the Agreement
- IP/N/5/ Notification under provisions of the Berne Convention and the Rome Convention incorporated into the TRIPS Agreement but without being explicitly referred to therein
- IP/N/6/ Responses to the Checklist of Issues on Enforcement
- IP/N/7/ Notification of contact points for technical cooperation on TRIPS
- IP/N/8/ Notification under paragraph 1(b) of the Decision of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health
- IP/N/9/ Notification under paragraph 2(a) of the Decision of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health
- IP/N/10/ Notification under paragraph 2(c) of the Decision of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health

ANNEX 2

Notifications of laws and regulations received under Article 63.2

WTO Member 2 Description 2 notifi(ati)6(i)4(anu)6(pd)6(aEX2(teo2)TJEMC/Spain4MCI95BDC0Tc0T6.4.9806.4.

WTO Member	Description	Dates of communications of initial notification and updates ¹	Dates of responses to checklist (IP/C/5) ²
Bahrain, Kingdom of	Initial notification Updates	3 and 29 December 1999, 15 June 2001 and 4 September 2004 -	12 June 2001
Bangladesh		19 June 2002 17 July 2007	
Barbados	Initial notification Updates	3 October 1995, 11 March 1996, 15 June and 20 September 2001 and 4 April 2002 -	15 June 2001
Belgium	Initial notification Updates	31 January, 1 February, 26 March, 17 May and 18 July 1996 -	18 July 1996 17 March 1997 <i>(addendum)</i>

Belize Initial notification

Updates

WTO Member	Description	Dates of communications of initial notification and updates ¹	Dates of responses to checklist (IP/C/5) ²
Brunei Darussalam	Initial notification Updates	22 November 2001 -	6 November 2001
Bulgaria	Initial notification Updates	20 March and 22 May 1997 and 24 February 1998 6 December 1999 17 January 2000 5 May 2000 29 May 2000 24 July 2000 20 February 2001	1 May 1998 20 February 2001 <i>(addendum)</i>
Burkina Faso		18 December 2001	

Burundi

3 April 2001

WTO Member	Description	Dates of communications of initial notification and updates¹	Dates of responses to checklist (IP/C/5)²
Chile	Initial notification Updates	31 January 2000 5 September 2000 15 November 2000 26 June 2009	31 January 2000
China	Initial notification Updates	11 June and 15 July 2002 23 August 2002 30 August 2002 22 September 2003 20 June 2004	15 July 2002
Colombia	Initial notification Updates	31 January 2000 -	20 September 2000 20 November 2000 <i>(addendum)</i>
Congo	Initial notification Updates	18-22 June -	
Costa Rica	Initial notification Updates	23 November and 12 December 2000 14 February 2001 21 May 2001 17 September 2001 10 June 2002	14 February 2001
Côte d'Ivoire	Initial notification Updates	18-22 June 2001 (TRIPS Council) -	29 June 2001
Croatia	Initial notification Updates	14 February and 19, 20 and 26 April 2001 -	27 February 2001 19 April 2001 <i>(addendum)</i>

WTO Member	Description
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WTO Member	Description	Dates of communications of initial notification and updates¹	Dates of responses to checklist (IP/C/5)²
India	Initial notification Update	22 December 2000 and 16 July 2001	

WTO Member	Description	Dates of communications of initial notification and updates¹	Dates of responses to checklist (IP/C/5)²
Jordan	Initial notification Updates	9 October and 29 November 2000 -	9 October 2000
Kenya	Initial notification Updates	10 April 2001 -	
Korea, Republic of	Initial notification Updates	27 January 2000 -	27 January 2000 26 June 2000 <i>(addendum)</i>
Kuwait	Initial notification Update	21 August 2000 13 June 2001	
Kyrgyz Republic	Initial notification Updates	25, 28 and 29 June 1999 23 December 2000 8 June 2001 19 March 2002 22 October and 3 November 2003 31 January 2005 18 April and 8 November 2006	25 June 1999

WTO Member	Description	Dates of communications of initial notification and updates ¹	Dates of responses to checklist (IP/C/5) ²
Luxembourg	Initial notification Updates	11 July and 8 November 1996, and 10 January 1997 -	9 September 1997

Macao, China Initial notification /MCID 9 BDCptember 129978

Update - -

WTO Member	Description	Dates of communications of initial notification and updates¹	Dates of responses to checklist (IP/C/5)²
Morocco			

WTO Member	Description	Dates of communications of initial notification and updates¹	Dates of responses to checklist (IP/C/5)²
Pakistan	Initial notification Updates	17 July and 8 October 2001 -	4 November 2001
Panama	Initial notification Updates	4 March 1998 and 5 April 2001 -	3 June 1998 21 July 1998 <i>(corrigendum)</i>
Papua New Guinea	Initial notification Updates	2 July 1998 11 April 2005	
Paraguay	Initial notification Updates	10 May and 15 September 2000 -	18 September 2000
Peru	Initial notification Updates	31 January 2000 -	7 August 2000

Philippines

WTO Member	Description	Dates of communications of initial notification and updates¹	Dates of responses to checklist (IP/C/5)²
Romania	Initial notification	4 November 1996 and 4 July 1997	
	Updates	-	

WTO Member	Description	Dates of communications of initial notification and updates¹
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WTO Member	Description	Dates of communications of initial notification and updates
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ANNEX 3

WORLD TRADE
ORGANIZATION

RESTRICTED

IP/C/2

30 November 1995

(95-3867)

Council for Trade-Related Aspects of

Intellectual Property Rights

PROCEDURES FOR NOTIFICATION OF, AND POSSIBLE ESTABLISHMENT OF A COMMON
REGISTER OF, NATIONAL LAWS AND REGULATIONS
UNDER ARTICLE 63.2

Decision of the Council for TRIPS of 21 November 1995

These procedures will be reviewed by the Council, in the light of experience, at the end of 1997, *inter alia* to identify any elements which have proved unduly burdensome in relation to the usefulness of the information provided.

Section 1: General Each Memb/TshTw -a0.0n095 TTj/TT7(rov)-6(eBDCw -11DC / 638.w 717em)-6(b18 Td(int0088)-5

