

WORLD TRADE ORGANIZATION

IP/C/W/543
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**Council for Trade-Related Aspects
of Intellectual Property Rights**

TIMELINESS AND COMPL

F. CERTAIN OTHER INFORMATION FLOWS

I.

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 TRIPS Agreement in accordance with their accession protocol.

6. The general transition period for least-developed country Members has been extended until 1 July 2013.³ As regards pharmaceutical products, the transition period has been extended until 1 January 2016.⁴ Least-developed country Members are not yet obliged to notify their TRIPS legislation implementing those provisions of the Agreement in respect of which they are availing themselves of the extended general transition period. However, as regards *advance notifications*, the procedures provide that a Member who has amended a law or regulation to bring it into conformity with the provisions of the Agreement in advance of its obligation under the Agreement to start applying those provisions will use its best endeavours to notify such law or regulation as soon as possible after its entry into force.

7. The procedures also provide that *any subsequent amendments* of a Member's laws and regulations shall be notified without delay after their entry into force (normally within 30 days where no translation is required and within 60 days where translation is necessary).

8. The procedures provide that, wherever possible, notifications shall be made in machine-readable as well as hard copy form.

9. According to the procedures, notifications of laws and regulations need to comprise the following elements:

- (a) the texts of all relevant laws and regulations in their *original language*;
- (b) *translations* into one WTO language of "main dedicated intellectual property laws and regulations", if the original language is not a WTO language;
- (c) a *listing* of "other laws and regulations" in accordance with a specific format contained in document IP/C/4;
- (d) responses to a *checklist* of questions on law and practice in the area of enforcement, in addition to the notification of the texts of enforcement laws and regulations; this "Checklist of Issues on Enforcement" is contained in document IP/C/5.

10. These procedures for the notification of laws and regulations under Article 63.2 reflect a number of departures from traditional GATT/WTO practice regarding submission, translation and distribution of notifications. It was recognized that the volume of these notifications would be very

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

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:

- 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/ Other⁶

12. Responses to the Checklist of Issues on Enforcement are circulated in the IP/N/6/- series of documents.

13. The notifications and the

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

authority in question; its address; its telephone and telefax numbers and e-mail address, and, where appropriate, to identify at each contact point a contact official.¹⁶

26. These notifications are distributed in the IP/N/3/- 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 69.

27. To date, 123 Members have notified their contact points under Article 69. The Council receives, on average, some 20 updates each year. The extent and ways in which these contact points are used in practice has not been discussed by the Council.

C. NOTIFICATION REQUIREMENTS FOR MEMBERS AVAILING T

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

- (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 English, French or Spanish; the recipients are individuals who are nationals of the Member whose competent authority has granted the licence, or organizations grouping such individuals; the copies must be sent for teaching, scholarship or research purposes; there must be no commercial purpose; and there must be an agreement between the Member granting the licence and that to which the copies are sent. The provision requires that such an agreement shall be notified by the Member in which the licence has been granted.
- (e) Article V of the Appendix: This Article provides that a developing country Member may choose, by way of a declaration made at the time of ratification or accession, the "ten-year regime" which appeared in the 1896 Act of the Berne Convention for translations instead of the compulsory licensing system provided for in Article II of the Appendix.

45. Article 17 of the Rome Convention: Article 14.6 of the TRIPS Agreement allows a WTO Member to avail itself of exceptions permitted under the Rome Convention. Article 17 of the Rome Convention allows a state which, on 26 October 1961, granted protection to producers of phonograms

²¹ At its meeting in July 1998, the TRIPS Council took note of a statement that its Chair made in the light of informal consultations with Members on the calculation of renewable periods of ten years under the provisions of the Appendix to the Berne Convention as incorporated by reference into the TRIPS Agreement, according to which the provisions of Article I(2) of the Appendix as incorporated into the TRIPS Agreement can be understood so that, for the purposes of the TRIPS Agreement, the relevant periods are calculated by reference to the same date, i.e. 10 October 1974, as for the purposes of the Berne Convention (see paragraphs 7-9 of the record of the meeting in IP/C/M/19).

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 information on the quantities being supplied to each destination and the distinguishing features of the products in question.

49. To date, one notification has been received under each of paragraphs 2(a) and 2(c).

50. These three types of notifications are circulated in the IP/N/8-10 series of documents, respectively. The Decision of 30 August 2003 calls for the establishment of a dedicated page on the WTO website, in particular to make publicly available certain notifications made by Members in using the "Paragraph 6" system established under the Decision.²² The notifications discussed above can be accessed through the "TRIPS and public health: dedicated webpage for notifications".²³

51. On 6 December 2005, the General Council adopted a Protocol Amending the TRIPS

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, the Council for TRIPS agreed that each developed country Member should notify a contact point for technical cooperation on TRIPS, in particular for the exchange of information between donors and recipients of technical assistance. Information on the format for these notifications can be found in WTO/AIR/388.²⁶

57. The information on such contact points is circulated in document IP/N/7, and addenda, corrigenda and periodic revisions 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 notifications under Article 67.²⁷

58. To date, 29 developed country Members have notified their contact points for technical cooperation on TRIPS. The Council

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 implementing legislation carried out by the Council. Initially, the review exercise focused on those developed country Members whose transition period expired on 1 January 1996. Their legislation was reviewed in 1996 and 1997 in four week-long meetings according to the following subject areas: copyright and related rights; trademarks, geographical indications and industrial designs; patents, layout-designs of integrated circuits, undisclosed information and the control of anti-competitive practices in contractual licences; and enforcement. The legislation of developing country Members whose transition period expired on 1 January 2000 was reviewed in 2000 and 2001. The totality of the legislation of each Member was reviewed at a single review meeting. The legislation of newly acceded Members is reviewed as of the time that they start to apply the provisions of the TRIPS Agreement in accordance with their accession protocol. To date, the Council has completed 114 reviews, and five reviews already initiated remain on its agenda.

63. The procedures for these reviews provide for written questions and replies prior to the review meeting, with follow-up questions and replies during the course of the meeting. At subse/Type/r

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

WTO Member	Description	Dates of communications of initial notification and updates¹	Dates of responses to checklist (IP/C/5)²
Bahrain, Kingdom of	Initial notification	3 and 29 December 1999,	
	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	22 November 2001	6 November 2001
	Updates	-	
Bulgaria	Initial notification	20 March and 22 May 1997 a	

Updates

WTO Member

WTO Member	Description	Dates of communications of initial notification and updates¹	Dates of responses to checklist (IP/C/5)²
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WTO Member	Description	Dates of communications of initial notification and updates¹	Dates of responses to checklist (IP/C/5)²
Haiti		8 October 1998	
Honduras	Initial notification	2 March and 8 June 2001	2 March 2001
	Updates	-	
Hong Kong, China	Initial notification	28 July 1997	27 January 2000
	Updates	27 January 2000 29 February 2000 9 July 2001 13 July 2001 28 June 2002 7 August 2002 17 December 2002 1 May 2003 24 December 2003 26 May 2004 16 September 2004 19 July 2005 1 March 2006 28 June 2006 3 August 2006 27 July 2007 22 February 2008 14 May 2008 1 August 2008	
Hungary	Initial notification	16 September, 5, 12 and 15 November 1996	15 July 1997
	Updates	20 November 1997 5 March 1998	
Iceland	Initial notification	4 October 1996	10 October 1997 18 November 1997 (<i>corrigendum</i>)
	Update	8 April 1997	

WTO Member	Description	Dates of communications of initial notification and updates¹	Dates of responses to
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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/F1 9.96 JP MCID 54B	

WTO Member	Description	Dates of communications of initial notification and updates¹	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 Update	15 April and 7 May 1997, 31 January, 8 and 21 June 2000 23 January 2002	20 April 2000
Malaysia	Initial notification Updates	31 October 2001 -	22 November 2001
Malta	Initial notification		

WTO Member	Description	Dates of communications of initial notification and updates¹	Dates of responses to checklist (IP/C/5)²
Morocco	Initial notification Updates	10 October 2000 and 14 and 15 June 2001 27 June 2002 8 April 2003 11 June 2007	5 April 2001
Namibia	Initial notification Updates	2 April 2001 -	30 March 2001
Netherlands	Initial notification Update	9 May and 22 July 1996 15 October 1996	6 December 1996
New Zealand	Initial notification Updates	7 November 1995 18 February 1997 18 January 1999 24 February 2003	18 February 1997
Nicaragua	Initial notification Updates	19 March and 28 April 2001 5 June 2008 17 July 2009	3 May 2001
Nigeria	Initial notification Updates	17 September 2001 -	16 November 2001

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

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	15 October 1997
	Updates	-	
Saint Lucia	Initial notification	12 March 2001	12 March 2001
	Update	20 April 2004	
Saint Vincent & the Grenadines	Initial notification	6 January and 14 October 2009	
	Updates	-	

WTO Member	Description	Dates of communications of initial notification and updates¹	Dates of responses to checklist (IP/C/5)²
Thailand	Initial notification	31 January 2000, 9 January 2001 and 10 September 2002	
	Updates	-	

WTO Member	Description	Dates of communications of initial notification and updates¹	Dates of responses to checklist (IP/C/5)²
United States of America	Initial notification Updates	14 March, 24 May, 11 June and 10 September 1996 23 January 2004 12 February 2004 15 June 1998 5 June 2009	26 May 1997
Uruguay	Initial notification Updates	30 December 1999, 21 February 2000, 14 August, 12, 15, 22 and 23 November 2001 and 13 June 2002 -	
Venezuela (Bolivarian Republic of)	Initial notification Updates	9 March and 15 January 2001 -	2 April 2001
Viet Nam	Initial notification Updates	21 January 2008 7 May 2008 7 October 2008	21 January 2008

5. Wherever possible, notifications shall be made in machine-readable as well as hard copy form.

Section 2: Main dedicated intellectual property laws and regulations

6. Each Member shall notify in a WTO language the texts of its main laws and regulations dedicated to intellectual property. These laws and regulations would include the main laws and regulations on the availability, scope and acquisition of each of the categories of intellectual property covered by the TRIPS Agreement, together with such other main laws and regulations as are dedicated to intellectual property, such as those on border enforcement.

7. These laws and regulations will be immediately circulated in the relevant WTO language by the WTO Secretariat to Members of the TRIPS Council as Council documents. Translation into other WTO languages will only be undertaken by the WTO Secretariat on the request of a Member made in the TRIPS Council and within the limits of the WTO Secretariat's resources.

8. Where an authentic national text of a law or regulation is not available in a WTO language, copies of the authentic text of that law or regulation in a national language shall be notified, in addition to the translation into a WTO language. Such copies shall be available in the WTO Secretariat for consultation by interested delegations.

Section 3: Other laws and regulations

9. This heading relates to all national laws and regulations which are not dedicated to intellectual property rights as such but which nonetheless pertain to the availability, scope, acquisition, enforcement and prevention of abuse of intellectual property rights (notably laws and regulations in the areas of enforcement and the prevention of abusive practices) as well as those laws and regulations dedicated to intellectual property which are not considered "main laws and regulations" falling under Section 2 above.

10. Each Member shall notify these laws and regulations in a national language to the WTO Secretariat. They shall also provide in a WTO language a listing of these laws and regulations, together with a brief description of the relevance of each law and regulation to the provisions of the TRIPS Agreement.

11. This listing will be distributed as a TRIPS Council document to the Members of the TRIPS Council. The copies of the laws and regulations in question will be available for consultation in the WTO Secretariat by interested delegations. Copies will only be distributed as Council documents if a request is made in the TRIPS Council. If such a request is made and where the law and regulation in question has not been notified in a WTO language, the notifying Member shall make av(e)9(1)6206(1)6(a)9(b)22()6(n)9(