



A I P P I

ASSOCIATION INTERNATIONALE
POUR LA PROTECTION DE LA PROPRIÉTÉ INTELLECTUELLE

INTERNATIONAL ASSOCIATION
FOR THE PROTECTION OF INTELLECTUAL PROPERTY

INTERNATIONALE VEREINIGUNG
FÜR DEN SCHUTZ DES GEISTIGEN EIGENTUMS

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September 6 – 11, 2008

Report
Special Committee Q94

GATT/WTO

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by Ivan HJERTMAN, Esmé DU PLESSIS and Sarah MATHESON

1) Composition of Special Committee Q94

Chairman	Ivan HJERTMAN	Sweden
Co-Chairwoman	Esmé DU PLESSIS	South Africa
Secretary	Sarah MATHESON	Australia
Members	Konrad BECKER	Switzerland
	Jiang DANMING	China
	Sun-Ryung KIM	South Korea
	Gustavo LEONARDOS	Brazil
	Sumihiro MAEDA	Japan
	Manoj G. MENDA	India
	Luis SCHMIDT	Mexico
	Tom SMEGAL	USA
	Responsible Reporter	Thierry CALAME

In constituting Special Committee Q94 (Q94), particular care has been taken to constitute a Committee with a balanced and representative membership, with members from developing and developed countries and from different continents. Q94 regards the representative nature of its membership as an important factor in identifying issues in the area of TRIPS which need to be addressed and reported on by Q94.

2) Mandate of the Committee

- To monitor and advise on the development of the GATT/WTO TRIPS Agreement and its implementation.
- To study and advise on proposed amendments of the TRIPS Agreement.
- To formulate and, with the approval of the Bureau, to submit and represent AIPPI's standpoint vis-à-vis GATT/WTO.
- In addition, to monitor developments of general interest in the field.

3) Report of the Committee

3.1) Working methods

- Within Q94:
 - regular meetings to coincide with AIPPI Executive Committee meetings and Congresses.
 - exchange of information by email correspondence.
 - monitoring activities, debates and work of WTO, TRIPS Council and TRIPS Directorate to identify new issues and developments and to inform AIPPI.
 - collection of WTO/TRIPS documents for assessment of relevance to AIPPI.

- With the TRIPS Directorate:
 - regular meetings arranged to coincide with AIPPI conferences and Congresses.
 - intermediate meetings of Co-Chairs (and other Committee members as available) with WTO-TRIPS Directorate as required.
 - exchange of information with TRIPS Directorate, eg survey reports, AIPPI resolutions.

3.2) Activities

a) Meetings held with the TRIPS Council Secretariat

Since the last Annual Report of the Q94 Special Committee, three meetings have been held with the TRIPS Council Secretariat:

- September 25, 2007, in Geneva
- October 6, 2007, in Singapore, in the context of the AIPPI Executive Committee meeting
- May 22, 2008, in Geneva

TRIPS Council Secretariat representatives at these meetings have varied. Adrian Otten, Director, Intellectual Property Division, WTO, took part at the meetings in Geneva September 25, 2007, and May 22, 2008, along with four and two of his colleagues, respectively. Thu-Lang Tran Wasescha took part at the October 6, 2007, meeting in Singapore.

At the May 22, 2008, meeting Adrian Otten informed that he would be retiring from the WTO at a later date in 2008. A successor had at the time of the meeting with AIPPI/Q94 not been appointed.

AIPPI representatives at the two meetings in Geneva have been as follows: Ivan Hjertman, Chair of the Q94 Special Committee, Konrad Becker, Member, Q94 Special Committee and Chair, Special Committee Q166 Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and Thierry Calame, responsible Reporter, have taken part at both meetings. At the May 22, 2008, meeting also Gustavo Leonardos, Member, Special Committee Q94, took part.

At the meeting October 6, 2007, in Singapore 8 of the 11 members of the Q94 Special Committee took part: Ivan Hjertman, Esmé du Plessis, Sarah Matheson, Konrad Becker, Gustavo Leonardos, Manoj Menda, Kim Sun Ryung, and Tom Smegal, along with Thierry Sueur, Chair, AIPPI Programme Committee, Thierry Calame, responsible Reporter, Maria Thereza Wolff, Brazil, Member of Special Committee Q166, and Philippe Baechtold, WIPO

Matters covered at these meetings have included:

On an overriding level,

- general developments in the TRIPS Council
- general outlook in regard to the Doha Round negotiations

and on specific matters, a number of items:

- IP and Public Health: the implementation of the Paragraph 6 decision on compulsory licensing of pharmaceutical products for export
- IP and Public Health: the procedure and status of acceptance of the TRIPS amendment under the Doha Paragraph 6 decision

- the TRIPS/CBD/source disclosure complex
- geographical indications
- Dispute Settlement Board, DSB, cases with IP relevance
- cross-retaliation in the area of TRIPS under DSB decisions on conflicts in areas different from IP
- the reports on implementation of TRIPS Article 66.2, Technology Transfer to Least Developed Countries
- TRIPS implementation: Enforcement
- Trade Policy Reviews with IP relevance.

On the topic IP and Public Health, the AIPPI participants informed about the ongoing work within AIPPI on Question 202, “The impact of public health issues on exclusive patent rights” and where the materials on this Question: Working Guidelines, Country/Regional Reports, Summary Report, etc., is to be located.

The ongoing work of the World Health Organisation, WHO, in its Intergovernmental Working Group on Public Health and Intellectual Property, as well as some of the ongoing work in WIPO, was also discussed.

It is anticipated that the next meeting with the TRIPS Council Secretariat will take place in the context of the AIPPI Boston Congress.

- b) In parallel with the contact meetings with the TRIPS Council Secretariat, the Committee has been following *the developments in the Doha Round negotiations with special focus on TRIPS issues.*

By the time of the May 22, 2008, meeting, it was known that a WTO meeting with some 30 ministers would take place in Geneva from July 21, 2008. While the two main topics in the since long ongoing negotiations in the Doha Round remain agriculture and non-agriculture market access, NAMA, there are also three TRIPS issues under discussion with different status under the WTO system:

- i) a multilateral register of geographical indications for wines and spirits;
- ii) to extend the system with geographical indications to products other than wines and spirits; and
- iii) the “source disclosure” proposal: to add to TRIPS a special disclosure requirement for biodiversity related patent applications.

Of these three items, the multilateral register has formal negotiation status, while the issues of extension of GIs to areas other than wines and spirits and also the TRIPS/CBD issue, including the source disclosure proposal, have status as “outstanding implementation issues” which is not a formal negotiation status.

In July 2008, before the start of the WTO meeting July 21, these three TRIPS issues were made the subject of a joint request from Brazil, India, the European Union and Switzerland to take them into the negotiations as a package, and to make them part of a possible final Doha Round agreement.

On July 29, 2008, the talks at this WTO “mini-ministerial” meeting collapsed and were terminated without any agreement being reached. What the outcome of this will be in regard to the TRIPS related issues remains to be seen and will need to be followed.

- c) The Committee has continued to follow *the development and implementation of the WTO Paragraph 6 decision and the subsequent amendment of TRIPS in regard to compulsory licensing for export of pharmaceutical products.*

By March 4, 2008, a total of 14 WTO Members, including the EU, had notified acceptance of the TRIPS Amendment. With the EU accounting for the 27 Member States in the European Union, this means that by that date some 40 WTO Members had accepted the TRIPS Amendment. It is noteworthy that no African WTO member by that date had formally accepted the amendment. For the amendment to enter into force it is required that 2/3 of the WTO Membership have accepted the amendment. As of July 2008, WTO has 153 Members. The time limit for Members to accept the amendment has been extended to December 31, 2009.

Rwanda was the first importing country to make a request for importation under the Paragraph 6 system. This was for an AIDS/HIV medicine to be obtained from the Apotex company in Canada. The formalities in that case were completed in the fall of 2007.

d) Internal business for Special Committee Q94

- Revision of the Terms of Reference

Q94 has been debating updating changes to its terms of reference. These will hopefully be concluded by the Boston meeting.

- Continued work programme for Special Committee Q94

At the meeting of Q94 October 6, 2007 during the Singapore ExCo, the following ongoing and possible future items for the Q94 work programme were listed.

The current status for each item is indicated in the list. A number of the items for possible future action are here noted as being "on hold". It must be borne in mind here that those items are generally very complex issues which require a substantial amount of work if they will be effected. Therefore, the timeline for Q94 future work programme on new items will need to be taken up for a time period extending over more than the some 11-12 months between AIPPI Congresses and ExCo meetings. Special Committee Q94 intends to come back on this perspective.

- i) Monitor TRIPS developments up to the Boston Congress in September 2008, particularly as regards the possible revival of the Doha Round of talks.

Note: this includes follow-up on a number of issues already being watched by Q94, including the WTO "mini-ministerial" negotiations July 21-29, 2008, and the fate of the TRIPS issues in this procedure, as well as follow-up of the IP/TRIPS and health related debate.

Status: ongoing. See especially item 3.2(b) and 3.2(c) above.

- ii) Draft a questionnaire on the compliance of national laws with TRIPS Art 39.3 (data exclusivity).

Status: presently on hold.

- iii) Consider the implications of TRIPS Art 4 (Most Favoured Nation treatment) on the extension of Paris and Berne Convention privileges to WTO member countries.

Status: presently on hold.

- iv) Monitor developments and issues around trade talks, e.g. in the context of Free Trade Agreements and so called "TRIPS Plus" obligations.

Status: presently on hold.

- v) liaison and/or cooperation with Special Committee Q166 Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.

Status: ongoing, via Konrad Becker, Chair of the Q166 Special Committee, as member of Q94.

vi) liaison and/or co operation with Special Committee Q185 Enforcement of IP Rights.

Status: presently not active.

vii) Identify and assess TRIPS aspects of the WIPO Development Agenda.

Status: on hold.

viii) follow-up of the Q94 2004 Questionnaire on implementation of the Doha Paragraph 6 decision on cross-border compulsory licensing in the pharmaceutical area.

Status: a follow-up questionnaire for this issue is on hold, awaiting the outcome of the Q202 national/regional reports. Special Committee Q94 has particular interest in the ongoing work of AIPPI on Q202. Thierry Calame, the responsible Reporter for Special Committee Q94, is also the responsible Reporter for Q202. And the Working Committee for Q202 includes Q94 members: Sarah Matheson, Australia, as Working Committee Chair, and Esmé du Plessis, South ASfrica, and Ivan Hjertman, Sweden, as Working Committee members.

ix) To take in recommendations and guidance from the Bureau, particularly before commencing work on WTO developments and FTAs.

4) Description of information gathered by the Committee

See above 3.2 (b) and 3.2(c).

Lists of documents are available related to the subjects taken up at the meetings with the TRIPS Council Secretariat. These documents are generally, but not exclusively, WTO documents.

5) The Q94 general recommendations in regard to future issues of particular relevance for AIPPI

Q94 submitted to the Bureau on 3 July 2006 recommendations for possible future action by AIPPI. These recommendations remain valid and are repeated below.

- Recommendation 1 – In light of the global aspect/wider significance IP issues have assumed in the last decade, AIPPI should resolve to confirm that its activity extends beyond strictly defined 'scientific work'.
- Recommendation 2 – AIPPI should play a more dynamic role as an NGO in international debates and developments affecting IP, including closer co operation with other NGOs in the area of IP.
- Recommendation 3 – AIPPI should expand and intensify its collaboration and interaction with WTO and WIPO.
- Recommendation 4 – The Bureau should consider the possibility of preparing information documents addressing IP (particularly WTO related IP), focussing on the role and value of IP and technology transfer in different economies for general dissemination and particularly at the next WTO event.
- Recommendation 5 – AIPPI should expand its activities and exposure in developing countries and collaborate with bodies in those countries which are active in the area of IP.

Q94 has been pleased to see part of these recommendations materialise in AIPPI work. This is for example seen in Question 202 for the Boston Congress and in topics for Workshop Sessions at the Boston Congress. However, as this Committee sees it, more needs to be done. Special Committee Q94 stands ready to assist in this work.

6) Recommendation of any action

The Q94 Committee will continue to work on its presently ongoing activities, see item 3 above. It will continue to discuss its work program.

7) Deadline for any action

No absolute deadlines. Once it becomes clear whether and when the next WTO Ministerial meeting will take place, the issue of AIPPI representation will be taken up.

Ivan Hjertman, Chairman
Esmé Du Plessis, Co Chairwoman
Sarah Matheson, Secretary
August 5, 2008