

**AIPPI Special Committee Q94 WTO/TRIPS**  
**Annual report of Special Committee Q94 prepared for the**  
**AIPPI Paris Congress October 3-6, 2010**

**1. Composition of Special Committee Q94**

Chair:	Ivan Hjertman	Sweden
Co-Chair:	Esmé Du Plessis	South Africa
Secretary:	Melanie Jose	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, Switzerland

In constituting Special Committee 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 and Tasks of the Committee**

The main tasks of the Committee, as listed in its Terms of Reference, are

- to monitor and advise the Bureau and AIPPI members on developments relating to the WTO/TRIPS Agreement and its implementation
- to study and advise the Bureau and AIPPI members on proposed amendments of or additions to the TRIPS Agreement
- to formulate and, with the approval of the Bureau, to submit and represent the standpoint of AIPPI vis-à-vis WTO/TRIPS

- to monitor international developments which impact on the WTO position/negotiations on TRIPS
- to monitor activities of other international and regional bodies (GOs and NGOs) in relation to WTO/TRIPS

The Committee also has the task to advise the Bureau on

- developments in the IP field rendering intervention of AIPPI desirable
- specific TRIPS-related issues meriting further study
- information and instruction to AIPPI representatives at GO meetings on TRIPS-related issues
- possibilities of cooperation with other NGOs and GOs in the IP field

The Committee has, in addition, the special instructions

- to coordinate its activities in regard to WTO/TRIPS-related aspects of Traditional Knowledge, Genetic Resources and Folklore with Special Committee Q166, and
- to inform, in addition to the Bureau, the Chair and the members of the Programme Committee and the Committee Officers and members of other AIPPI Committees of relevant Q94 activities and seek, if necessary, their advice and cooperation in formulating the views and reports of the Committee Q94.

### **3. Report of the Committee**

#### **3.1 Working methods**

- Within Q94:
  - regular internal meetings to coincide with AIPPI Executive Committee meetings and Congresses
  - exchange of information by email correspondence
  - monitoring activities, debates and work of WTO, the TRIPS Council and the WTO Intellectual Property Division, below named the TRIPS Council Secretariat, to identify new issues and developments and to inform AIPPI
  - to collect WTO/TRIPS documents for assessment of relevance to AIPPI
- With the TRIPS Council Secretariat:
  - regular meetings, arranged to coincide with AIPPI Congresses and Executive Committee meetings, with the WTO/TRIPS Council representative attending such those meetings on invitation from the Bureau
  - regular meetings, on an annual basis, of the Chair and other Committee members as available, at the WTO premises in Geneva with the TRIPS Council Secretariat
  - exchange of information with the TRIPS Secretariat, e.g. survey reports, AIPPI resolutions.

### **3.2 Review of selected activities of Q94 since the Report dated September 11, 2009, for the Buenos Aires Executive Committee meeting**

#### **(a) Meetings with the TRIPS Council Secretariat**

Two meetings have been held:

- September 24, 2009: meeting at the WTO, Geneva, between AIPPI/Q94 and the TRIPS Council Secretariat
- October 14, 2009: meeting jointly with Special Committee Q166 in the context of the Buenos Aires ExCo meeting with the TRIPS Council Secretariat representative attending this ExCo meeting

and two meetings are planned to be held:

- September 20, 2010, at the WTO in Geneva with the TRIPS Council Secretariat
- October 3-6, 2010, in the context of the AIPPI Paris Congress, meeting with the TRIPS Council Secretariat representative invited to attend the Congress.

#### **Matters taken up at the meeting September 24, 2009, included**

- outlook in regard to the Doha Round negotiations and the related TRIPS/CBD/GI issues
- possible AIPPI action on the TRIPS/CBD issues
- requests from WTO members for technical assistance and capacity building, and possible AIPPI assistance
- making better use of the information and updates that continuously is provided to the WTO by notifications of national/regional IP law amendments
- "needs assessments" for LDCs to help with their TRIPS implementation, and possible AIPPI assistance
- climate change and IP
- IP and public health, access to medicines, and the TRIPS amendment on the Paragraph 6 system
- border measures and other means of customs intervention against infringers, and AIPPI Q208

#### **Matters taken up at the meeting October 14, 2009, included**

on an overriding level

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

and on specific matters, a number of items on the agenda of the TRIPS Council, especially

- the negotiations and discussions concerning geographical indications, GIs

- special disclosure obligations in patent applications involving genetic resources
- the status of the ongoing discussions on the CBD/TRIPS issue, including the issue of special disclosure obligations for patent applications involving genetic resources
- non-violation complaints

Also discussed was possible areas where AIPPI might assist, including by undertaking studies:

- + the AIPPI study on Q208, Cross-border measures for the Buenos Aires ExCo meeting,
- + updating the information obtained by the Q166 Questionnaire 2006 on special disclosure obligations for patent applications involving genetic resources
- + implementation issues on a higher level of protection for GIs, including their relation to trademarks
- + how certification and collective marks are used in different countries
- + protection of undisclosed test data under TRIPS Article 39.3
- + requests from developing countries for TRIPS related technical assistance

### **(c) Internal meeting October 13, 2009**

An internal Committee meeting was held October 13, 2009, in the context of the Buenos Aires Executive Committee meeting.

In regard to **the Q94 work program up to the Paris Congress**, it was decided to update, in a joint project with Special Committee Q166, the Q166 study from 2006 concerning special disclosure requirements for patent applications involving genetic resources. Approval from the Bureau for this project was sought and obtained.

Developments in a number of other TRIPS related topics would continue to be monitored. These were

- TRIPS and public health:
  - + the Paragraph 6 system: the discussion how it is working
  - + the acceptance by WTO Members of the amendment to the TRIPS Agreement
- customs seizures in the EU of goods in transit, in relation to TRIPS
- protection of test data under TRIPS Article 39.3
- exceptions and limitations to patent rights, including the ambit and effect of the so-called Bolar provision
- the implications of TRIPS Article 4, Most Favoured Nation's treatment.

**(d) The WTO 7<sup>th</sup> Ministerial Conference**, Geneva November 30 to December 2, 2009

IH attended the 7<sup>th</sup> WTO Ministerial Conference, November 30 to December 2, 2009, in Geneva. A report is available on the AIPPI website.

**(e) A report on the activities and work of Q94** was published in AIPPI eNews No. 11, January 2010.

**(f) Together with Special Committee Q166, a joint Q94/Q166 Questionnaire on the Requirement of indicating the source and/or country of origin of genetic resources and traditional knowledge in patent applications** was prepared. It was distributed February 1, 2010, and the outcome assembled, summarised and published on [www.aippi.org](http://www.aippi.org) under Q94 and Q166.

#### **4. Follow-up of developments on TRIPS related matters, including the Doha Round discussions**

The debate on the IP/patent system and the potential use of what is known as “TRIPS flexibilities” continues to be a frequent topic in the international discussions regarding the IP system, and in particular regarding the patent system. As noted in the Q94 Report for the Buenos Aires Executive Committee meeting 2009, TRIPS issues are taken up not only at the WTO, but also in the context of many UN organizations and also in the debate on different Free Trade Agreements. UN organizations taking up different IP and TRIPS issues from different perspectives include of course WIPO, and also WHO, UNESCO, UNCTAD, CBD, the UN Commission for Human Rights, ECOSOC, and UNFCCC, the United Nations Framework Convention on Climate Change.

Among specific developments can be mentioned

*(i) WTO/The TRIPS Council:*

On March 12, 2010, WTO DG Pascal Lamy reported at a meeting for WTO members on his informal consultations regarding the outstanding issues on CBD/TRIPS and GIs. These informal consultations are ongoing since the mini-ministerial meeting held in July 2008, and in parallel with the regular discussions in the TRIPS Council and in its Special Sessions on geographical indications. Movements in the positions of WTO members have not been reported.

The functioning of the so-called Paragraph 6 system continues to be debated in the TRIPS Council. At the TRIPS Council meeting in October, 2010, time has been reserved for this topic to be discussed in depth.

As of July 13, 2010, a total of 29 WTO country Members plus the EU and its 27 Member States had notified acceptance of the TRIPS 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 13, 2010, WTO has 153 Members. The time limit for Members to accept the amendment has been extended to December 31, 2011, and can be further extended.

(ii) the *WTO/WHO/WIPO Technical Symposium on Access to Medicines held July 16, 2010*

This joint WTO/WHO/WIPO symposium covered technical aspects and practical experiences of a number of organizations and NGOs on the access to medicines issue.

(iii) *CBD and the ongoing negotiations on a Protocol under the CBD on Access and Benefit Sharing:*

The use of intellectual property examination offices for monitoring use of genetic resources, and special disclosure requirements for patent applications involving genetic resources, are among proposed elements in a Protocol under the CBD on Access and Benefit Sharing. It is planned that a Protocol will be decided at the CBD COP-10 meeting in Japan October 18-29, 2010.

(iv) *WHO*

Work on implementation of the WHO Global strategy and plan of action on public health, innovation and intellectual property decided in May, 2009 continues.

(v) *The 7<sup>th</sup> WTO Ministerial meeting held November 30 to December 2, 2009:*

AIPPI/Q94 was represented, by attendance of IH, at the WTO 7th Ministerial Meeting held in Geneva November 30 to December 2, 2009. A report is available on the AIPPI website. At the conference, TRIPS issues were not prominent. Extension to December 31, 2011, of the time limit for acceptance of the TRIPS amendment was one of few decisions.

## **5. Description of information gathered by the Committee**

See above under section 4.

Documents relevant to section 4 are available and can be obtained on request.

## **6. Committee Q94 general recommendations in regard to future issues of particular relevance for AIPPI**

In the Q94 Committee Report for the Buenos Aires Executive Committee meeting, the Committee reiterated a number of recommendations for possible future action by AIPPI. In the view of the Committee, 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. However, as the Committee sees it, more needs to be done. Special Committee Q94 stands ready to assist in this work.

**7. Recommendation of any action**

The Q94 Committee will continue to work on its presently ongoing activities as noted above. It will continue to concretize its work program.

**8. Deadline for any action**

No deadlines presently applicable.

September 6, 2010

Ivan Hjertman, Chair  
Esmé Du Plessis, Co-Chair  
Melanie Jose, Secretary