



A I P P I

ASSOCIATION INTERNATIONALE  
POUR LA PROTECTION DE LA PROPRIETE INTELLECTUELLE

INTERNATIONAL ASSOCIATION  
FOR THE PROTECTION OF INTELLECTUAL PROPERTY

INTERNATIONALE VEREINIGUNG  
FÜR DEN SCHUTZ DES GEISTIGEN EIGENTUMS

**ExCo**

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Report  
Special Committee Q94

GATT/WTO

# Report Q94

## WTO/ TRIPS

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 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 Terms of Reference of Special Committee Q94 have been updated. The revised version, approved by the Bureau by decision June 2, 2009, is available on the AIPPI website.

The main tasks of the Committee 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 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
  - intermediate meetings of Co-Chairs and other Committee members as available with the TRIPS Council Secretariat
  - exchange of information with the TRIPS Secretariat, e.g. survey reports, AIPPI resolutions.

#### **3.2) Activities**

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

Since the Annual Report of the Q94 Special Committee for the Boston Congress, dated August 8, 2008, one meeting has been held:

- September 7, 2008, in the context of the Boston Congress

and two meetings are planned to be held:

- September 24, 2009, in Geneva
- in Buenos Aires, in the context of the AIPPI Executive Committee meeting.

In May, 2009, Antony Taubman took up the duty as Director of the WTO TRIPS Council Secretariat after Adrian Otten, who retired from the WTO in 2008. Antony Taubman is expected to attend the September 24 meeting.

Matters covered at the meeting September 7, 2008, 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:
- 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 WTO mini-ministerial meeting held in July 2008, specifically the proposal regarding linkage of aspects of geographical indications and the CBD/source disclosure complex. For details, see the Q94 Committee Report for the Boston Congress.
  - 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

b) 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" must be said to be a frequent topic in the international discussions regarding TRIPS. Not only the WTO, but also a steadily increasing number of UN organizations take up TRIPS issues from different perspectives: of course WIPO, but also WHO, UNESCO, UNCTAD, CBD, the UN Commission for Human Rights, and ECOSOC, not to mention the United Nations Framework Convention on Climate Change, UNFCCC, and the negotiations and far-reaching proposals regarding IP/patents which are tabled in those negotiations with the UN Copenhagen meeting December 2009 getting imminent.

Among specific developments can be mentioned

i) The TRIPS Council:

On July 27, 2009, WTO DG Pascal Lamy reported at a meeting for WTO members on his informal consultations regarding the outstanding CBD/TRIPS issues. 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.

ii) WIPO: the Conference held July 13-14, 2009, on IP and public policy issues:

This conference covered four topics regarding IP and public policy: Intellectual property and climate change, Intellectual property and Benefit-sharing relating to genetic resources, Intellectual property and public health, and Intellectual property and food security. On the topic of public health as an issue for public policy, presentations were held i.a. by Pascal Lamy, DG WTO, and by Margaret Chan, DG WHO. Pascal Lamy noted that the Paragraph 6 system should not be evaluated only from the number of requests for actual use, which until that date was one, but rather from the objective to provide cheaper medicines for the poor.

- iii) CBD and the ongoing negotiations on an International Regime for Access and Benefit Sharing:

The issue of source disclosure in patent applications is tabled as one possible compliance measure to be included in an International Regime for Access and Benefit Sharing. It is planned that an International Regime for Access and Benefit Sharing will be decided at the CBD COP-10 meeting in Japan in 2010

- iv) The UN ECOSOC meeting July 2009

A report dated July 10, 2009, from the UN ECOSOC meeting in July, 2009, takes among other things up TRIPS, its flexibilities, and the need for their implementation.

- v) WHO

The long-standing work in the WHO and its Intergovernmental Working Group on Public Health, Innovation and Intellectual Property, IGWG, resulted at the WHO World Health Assembly in May 2009 in agreement on a final Global strategy and plan of action on public health, innovation and intellectual property.

- vi) The UN Human Rights Council

A document prepared in the context of the UN Human Rights Council meeting in 2009, dated March 31, 2009, specifically takes up and discusses TRIPS in the context of "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (right to health)".

- vii) 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.

As of September 3, 2009, a total of 53 WTO Members, including 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 23, 2009, WTO has 153 Members. The time limit for Members to accept the amendment has been extended to December 31, 2009 but can be further extended.

- viii) The upcoming 7th WTO Ministerial meeting to be held November 30 to December 2, 2009:

The Committee has taken up with the Bureau the issue of AIPPI attendance at this Ministerial Meeting. The theme of this meeting is "The WTO, the Multilateral Trading System and the Current Global Economic Environment".

- c) Internal business for Special Committee Q94

- i) Updating the Terms of Reference

Updated Terms of Reference for Special Committee Q94 were, as noted above, approved by the Bureau on June 2, 2009. They are available on the AIPPI website.

- ii) Work programme for Special Committee Q94

At the meeting of Q94 on September 7, 2008 during the Boston Congress, a number of ongoing and possible future items for the Q94 work programme were listed. After the Boston Congress, the Committee has continued its discussion on a work program in regard to specific topics, while at the same time developments in regard to TRIPS have been followed as reported above.

Specific topics for potential study tend to be broad and complex issues which require a substantial amount of work if they will be effected. The Committee will be taking up this with the Bureau and intends to come back in regard to a concrete work programme.

#### **4) Description of information gathered by the Committee**

See above under section 3.

Documents mentioned in section 3 are available and can be obtained on request.

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

In the Q94 Committee Report for the Boston Congress, the Committee makes a number of 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. However, as the 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. It will continue its work to arrive at a focused work program.

#### **7) Deadline for any action**

Possible registration for attendance at the WTO Ministerial meeting November 30 to December 2, 2009, must be submitted to the WTO not later than October 31, 2009.