



EXCO Lisbon 2002

REPORT

Special Committee Q94 – GATT/WTO

Summary Report on Developments in the field of TRIPS/WTO

This report summarizes the main developments emerging in the field of TRIPS/WTO since March 2001.

There are roughly four main topics which were raised in the above mentioned time frame and which were discussed on several different occasions. These topics are:

- TRIPS and Public Health;
- Geographical Indications;
- Review of Article 27.3(b) TRIPS Agreement;
- Implementation Issues including technology transfer under the TRIPS Agreement.

TRIPS and Public Health

On July 6-7, 2001 WTO held a meeting in Geneva where among other topics the impact of the TRIPS Agreement on access to medicines was discussed. Starting point was the balance between patents as a mean of incentive for the development of new drugs and the need to ensure (affordable) access to existing drugs, which is especially important for poor countries. Different points of view were expressed on the factors and the extent to which they influence access to drugs. The topic in what way and extent countries with no patent protection for drugs experience the same problems of access to medicines as other countries was also discussed. Concerning the flexibility in the TRIPS Agreement the main points of discussion were the scope of this flexibility and how confident and secure countries feel in using it. In connection with the scope, the points of compulsory licensing, parallel imports, the regulatory exception and further possible exceptions covered by Article 30 of the TRIPS Agreement were raised.

At the Fourth Ministerial Conference held in Doha, Qatar from November 9-14, 2001 the discussion was taken up again and eventually resulted in a Declaration on TRIPS and Public Health. The declaration recognises the grave problems many developing countries encounter in their fight against wide-spread diseases such as HIV/AIDS, tuberculosis, malaria and further epidemics. These problems require a fast, easy and cheap access to effective medicines. In contrast, the importance of intellectual property rights and the implementation of the

TRIPS Agreement was also stressed, particularly with a view to the development of new medicines. The declaration reaffirmed the flexibility provided by the TRIPS Agreement. Members may grant compulsory licenses and they also define the also define under what conditions they are issued. Members determine themselves what they consider as a national emergency or other circumstances of extreme urgency. In addition, members are not bound to handle the issue of the exhaustion of intellectual property rights (IPR) in a specific manner. The TRIPS Agreement does not prescribe the manner in which this problem ought to be handled on a national level.

In the course of its work programme based on the issues assigned to it by the Doha Ministerial Conference possible solutions to the above mentioned problems were discussed at the Regular Meeting of the TRIPS Council on March 5-7, 2002. There are several possible ways to relieve the restrictions countries may face in making use of the compulsory licensing, particularly if their own pharmaceutical production capacities are low or inexistent:

- Amendment or deletion of the requirement that the production under compulsory licences be predominantly for the domestic market (Art. 31 (f) TRIPS Agreement);
- Interpretation of Art. 30 TRIPS Agreement (exceptions to patent rights) to allow exports of pharmaceutical products manufactured under compulsory licences under certain conditions;
- A moratorium on dispute cases arising from such exports - subject to clear conditions;
- Incentives for technology transfer to build up domestic production capacities.

Geographical Indications

A further controversial area is the protection of geographical indications. At present the protection level granted to geographical extensions for wines and spirits is higher compared to all other products. In the opinion of some countries, among them Switzerland, this situation results in an insufficient protection of geographical indications for products other than wines and spirits (e.g. food products, handicraft). These countries consider a uniform protection level for all geographical indications as preferable and necessary to conform to the goals of TRIPS and to general WTO principles. Other countries, including Australia, Canada and the United States wish to maintain the status quo. According to their point of view, disadvantages of an altered system would outweigh potential benefits. Member States submitted various communications outlining their point of view.

The discussion on the relevant provisions, TRIPS Art. 22 and 23, continued at the Ministerial Conference in Doha, Qatar. Article 22 TRIPS covers all products and says that WTO members must provide legal means to protect geographical indications in order to prevent misleading the public and unfair competition. For wines and spirits article 23 states a higher level of protection. The TRIPS Agreement also states that its members are obliged to negotiate about an increase of the protection of geographical indications under article 23 (art. 24 sec. 1 TRIPS). Further, WTO members have to establish a multilateral system enabling better protection of geographical indications of wines and spirits (art. 23 sec. 4 TRIPS). The TRIPS Agreement does neither state when these negotiations shall take place nor does it set a

Agreement does neither state when these negotiations shall take place nor does it set a deadline for the conclusion of such negotiations.

In this respect the Main Ministerial Declaration issued at Doha in November 9-14, 2001 determines that members agree to negotiate the establishment of the above mentioned system for the protection of geographical indications by the fifth session of the Ministerial Conference (2003). The TRIPS Council shall address the issues in connection with the possible extension of the protection according to article 23 TRIPS to additional products. Thus, proposals for such a protection system can be expected within the next two years.

A Special Session of the TRIPS Council held on March 8, 2002 was dedicated to the negotiations on the above mentioned multilateral system for geographical indications for wines and spirits. The future programme can be divided into two phases. The first phase includes further discussion on the different proposals which have been submitted by Member States so far. In the second and final negotiation phase, Members should work on a single version based on the different proposals.

Review of Article 27.3(b) TRIPS

The third issue that was subject to ongoing discussions throughout the last year is the review of Art. 27.3(b) TRIPS Agreement.

The review of Art. 27.3(b) started in 1999 and the discussion in the TRIPS Council included more and more topics raised by its Members. The following points were discussed at the WTO Meeting 6-7 July 2001, (i) the extent and manner to which genetic material should be protected, (ii) where the threshold of patentability should be set in the field of biotechnological inventions, (iii) the scope of the obligation under Art. 27.3(b) dealing with the patentability of micro-organisms, (iv) means available to protect traditional knowledge, (v) ways of sharing the benefit arising from commercial use of genetic material between the supplying parties and their commercial "partners". The last issue to be mentioned covers the relationship between the Convention on Biological Diversity (CBD) and the TRIPS Agreement. Views were quite different. Some participants did not see any problems, because the two conventions deal (according to them) with different matters, while others spotted potential conflicts between the TRIPS Agreement and CBD.

In the Main Ministerial Declaration issued in Doha, Qatar (November 9-14, 2001) the TRIPS Council was instructed to examine the relationship between the TRIPS Agreement and CBD, the protection of traditional knowledge and further issues raised by the Members pursuant to Art. 71 sec. 1 TRIPS. The work programme includes the review of Art. 27.3(b) which covers biotechnological inventions.

The Regular Meeting of the TRIPS Council on March 5-7, 2002, did not bring material progress in the discussion. The main decisions under the following agenda items were related to organising work:

- Review of the TRIPS provisions on protecting plant and animal varieties (Art. 27.3(b)) and the whole TRIPS Agreement under Art. 71.1 (taking into account bio-diversity, traditional knowledge and development);
- Incentives for technology transfer to least-developed countries (Art. 66.2).

Members agreed to aim to submit proposals to these issues by the next meeting in June 2002.

Implementation Issues including technology transfer under the TRIPS Agreement

The Decision taken at the Fourth Ministerial Conference in Doha, Qatar (November 9-14, 2001) states among other issues that, in view of the obligations of article 66 sec. 2 TRIPS, the TRIPS council shall set up a mechanism to enable monitoring and implementation of the obligations in question. Developed countries are required to submit reports on the practical implementation of such incentives provided to their enterprises for the transfer of technology by the end of 2002.

Outlook

The results of the Fourth Ministerial Conference held in Doha, Qatar, November 10 - 14, 2001, did not bring material decisions, rather the Main Ministerial Declaration, the Declaration on the TRIPS Agreement and Public Health and the Decision on Implementation-related Issues are to be seen as a work programme. Agenda items are discussed, as outlined above, in the course of the regular and special sessions of the TRIPS Council. The most important deadlines are the following:

- Report to the General Council - solution on compulsory licensing and lack of pharmaceutical production capacity: by end of 2002;
- Reports on the practical implementation of measures promoting technology transfer: by end of 2002;
- Negotiations on geographical indications registration system: by Fifth Ministerial Conference 2003 (in Mexico, the exact date is not yet set), with a view to the extension of the "higher level of protection" to products other than wines and spirits member states expressed different views, thus, the deadline for the conclusion of the negotiations is not clear;
- Other issues (e.g. the review of Art. 27.3(b) TRIPS Agreement and related topics): by January 1, 2005.

The next meeting of the TRIPS Council is scheduled for June 2002.

Of course, this summary includes only the main topics of the ongoing discussion on the development of the TRIPS Agreement. For further details, please refer to the "WTO Monthly Bulletin For NGOs" which can be found at the WTO website (WTO > Community/Forums > NGO Room > NGO Bulletin).