



Developments in the field of TRIPS/WTO at the Fourth Ministerial Conference

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The topics raised in connection with the TRIPS Agreement in Doha, Qatar, were the following:

- Geographical indications,
- TRIPS and public health,
- Clarification of the relationship between the TRIPS Agreement and the UN Convention on Biological Diversity and other issues and
- Implementation issues including technology transfer under the TRIPS Agreement.

The Conference agreed on a new work programme based on two declarations (main declaration and declaration on TRIPS and Health) and one decision (related to implementation). In general, negotiations as defined in the declarations and the decision should be concluded not later than January 1, 2005, unless stated otherwise.

A

Ministerial Declaration

1.

Geographical Indications

Two provisions of the TRIPS Agreement deal with the protection of geographical indications. 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. A number of countries, among them Switzerland, propose that this higher protection level should be applied to a wider range of goods such as food and handicraft. 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). A number of

suggestions have already been submitted to the TRIPS Council in the course of ongoing discussions. The TRIPS 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 Ministerial Declaration 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. 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.

2.

TRIPS and the UN Convention on Biological Diversity (CDB)

The TRIPS council is further instructed to examine the relationship between the TRIPS Agreement and the CDB, the protection of traditional knowledge and other relevant developments raised by members pursuant to article 71 sec. 1 TRIPS. The work programme of the TRIPS council includes the review of article 27 sec. 3 (b) which covers biotechnological inventions. This provision allows member to state some exceptions from patentability (plants, animals and essentially biological processes). The review started in 1999 and discussions led by the TRIPS council broadened as members raised more topics relevant to this discussion (relationship between TRIPS and CDB, ethical and moral concerns, an effective protection system for plant varieties).

B.

Declaration on TRIPS and Public Health

A separate declaration was issued on the topic of the TRIPS Agreement and public health. The declaration recognises the serious problems many developing countries encounter in connection with diseases such as HIV/AIDS, tuberculosis, malaria and other epidemics. In parallel, the importance of intellectual property rights and the implementation of the TRIPS Agreement is also stressed, particularly with a view to the development of new medicines.

The declaration repeats and reaffirms the flexibility provided by the TRIPS Agreement. Members have the right to grant compulsory licences and may also define the grounds on which 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.

A special problem arises for WTO members with insufficient manufacturing capacities in the pharmaceutical sector, since this may render compulsory licensing provisions ineffective. The TRIPS council is instructed to develop a solution to this problem and report to the General Council until the end of 2002.

Finally, the declaration reaffirms the provisions of article 66 TRIPS which allows transition periods for the least developed countries and encourages technology transfer to these countries. The TRIPS council is instructed to take all necessary actions in this respect.

C.

Implementations Related Issues and Concerns (Decision)

1.

Non-violation Complaints

In this respect the Ministerial Decision mentions the non-violation complaints provided for in the article XXIII of GATT 1994 (subparagraph 1(a) and (b)). Such complaints were temporarily (1995-1999) banned by article 64 sec. 2 TRIPS. The views about the continuation of this ban differ among the members. The TRIPS council is required to make recommendations to the Fifth Ministerial Conference. In the meantime, members shall not initiate such complaints.

2.

Transfer of Technology

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.

This brief summary reflects only the main issues discussed at the Conference in Doha, Qatar. For further details please refer to the following documents: