

**Council for Trade-Related Aspects
of Intellectual Property Rights**

**TIMELINESS AND COMPLETENESS OF NOTIFICATIONS
AND OTHER INFORMATION FLOWS**

Note by the Secretariat

This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

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I. INTRODUCTION

1. In order to facilitate its consideration of the issue of improving the timeliness and completeness of notifications and other information flows in the area of its responsibility, at its meeting in June 2009 the Council for TRIPS requested the Secretariat to prepare a factual background note summarizing the relevant procedures and providing references to the relevant decisions, as well as information on the use of these procedures by Members, and also to prepare suggestions for the Council's consideration at its next meeting on how to improve the transparency and user-friendliness of the notification system, for example by making notifications more easily accessible on the WTO webpage. The purpose of this note is to respond to this request.

2. The TRIPS Agreement obliges WTO Members to notify to the Council for TRIPS their intellectual property laws and regulations. These notifications facilitate the Council's work of monitoring the operation of the Agreement and promote the transparency of Members' policies on intellectual property protection. Members are also obliged to establish and notify contact points in their administrations for the purposes of cooperation with each other aimed at the elimination of trade in infringing goods. In addition, Members wishing to avail themselves of certain possibilities provided for in the Agreement that relate to the substantive obligations have to notify the Council thereof. These concern, for example, modifications of the criteria of eligibility for protection, exceptions to the most-favoured-nation treatment, and protection of state emblems. In order to implement these notification obligations, the Council has adopted procedures and guidelines relating thereto. Annex 1 to this note contains a list of the IP/N/- series of documents in which such notifications are circulated. Developed country Members have also agreed to provide certain information and make notifications which are not regulated in the Agreement. These procedures relate to technical cooperation and transfer of technology.¹ In addition, Members often share information on their legislation and practices as part of the Council's work. This has been done in a structured way in the context of reviews of national implementing legislation, the review of the application of the provisions of the Section on geographical indications under Article 24.2, and the review of the provisions of Article 27.3(b).

3. This note summarizes these notification procedures and provides references to the relevant decisions as well as to background documents. It also describes the way that the relevant information is currently being made available. The note also contains some initial considerations on ways in which the transparency and user-friendliness of the system could be improved, including within the context of the existing cooperation between the Secretariats of the World Intellectual Property Organization (WIPO) and the WTO. Annex 2 to this note contains a table indicating the dates of receipt of Members' initial notifications of laws and regulations, updates thereto, and responses to the Checklist of Issues on Enforcement.

II. RELEVANT NOTIFICATION PROCEDURES

A. NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 63.2

1. Procedures for the notification of laws and regulations

4. Article 63.2 of the TRIPS Agreement, in conjunction with Article 63.1, requires Members to notify the laws and regulations made effective pertaining to the subject-matter of the Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property

¹ Detailed information on the notification procedures can be found in the "Technical Cooperation Handbook on Notification Requirements: Agreement on Trade-Related Aspects of Intellectual Property Rights" circulated in document WT/TC/NOTIF/TRIPS/1.

rights) to the Council in order to assist it in its review of the operation of the Agreement. The basic procedures for the notification of national laws and regulations under Article 63.2 are contained in document IP/C/2 (Annex 3)² The Agreement Between WIPO and the WTO is also relevant with regard to these procedures.

5. As regards the *initial notification*, the procedures provide that, as of the time that a Member is obliged to start applying a provision of the TRIPS Agreement, the corresponding laws and regulations shall be notified without delay (normally within 30 days, except where otherwise provided by the TRIPS Council). Accordingly, developed country Members were to make their initial notification of their TRIPS legislation at the end of their transition period in 1996, and developing country Members in 2000. Newly acceded Members are to notify their TRIPS implementing legislation as of the time they are to start to apply the provisions of the TRIPS Agreement in accordance with their accession protocol.

6. The general transition period for least-developed country Members has been extended until 1 July 2013.³ As regards pharmaceutical products, the transition period has been extended until 1 January 2016.⁴ Least-developed country Members are not yet obliged to notify their TRIPS legislation implementing those provisions of the Agreement in respect of which they are availing themselves of the extended general transition period. However, as regards *advance notifications*, the procedures provide that a Member who has amended a law or regulation to bring it into conformity with the provisions of the Agreement in advance of its obligation under the Agreement to start applying those provisions will use its best endeavours to notify such law or regulation as soon as possible after its entry into force.

7. The procedures also provide that *any subsequent amendments* of a Member's laws and regulations shall be notified without delay after their entry into force (normally within 30 days where no translation is required and within 60 days where translation is necessary).

8. The procedures provide that, wherever possible, notifications shall be made in machine-readable as well as hard copy form.

9. According to the procedures, notifications of laws and regulations need to comprise the following elements:

- (a) the texts of all relevant laws and regulations in their *original language*;
- (b) *translations* into one WTO language of "main dedicated intellectual property laws and regulations", if the original language is not a WTO language;
- (c) a *listing* of "other laws and regulations" in accordance with a specific format contained in document IP/C/4;
- (d) responses to a *checklist* of questions on law and practice in the area of enforcement, in addition to the notification of the texts of enforcement laws and regulations; this "Checklist of Issues on Enforcement" is contained in document IP/C/5.

10. These procedures for the notification of laws and regulations under Article 63.2 reflect a number of departures from traditional GATT/WTO practice regarding submission, translation and distribution of notifications. It was recognized that the volume of these notifications would be very

² Further procedures can be found in documents IP/C/4 and 5.

³ Document IP/C/40.

⁴ Document IP/C/25.

large and procedures were adopted to attempt to reduce the burdens for Members in preparing them as well as for the Secretariat in processing them. At the same time, they nevertheless attempted to ensure that the purpose of the notification system as an instrument to monitor implementation would not be unduly impaired and could remain effective.

- (a) Not all laws and regulations need to be notified in a WTO language. A distinction has been made between so-called "*main dedicated intellectual property laws and regulations*" and "*other laws and regulations*". Document IP/C/2, paragraphs 6 and 9 and document IP/C/W/8 contain some guidelines for Members in order to help them make their assessment when dividing their laws and regulations into these two categories. Main laws and regulations have to be notified in English, French or Spanish; other laws and regulations can be notified in a Member's national language. Translations of laws and regulations must be accompanied by the authentic texts of the laws and regulations in question in a national language.
- (b) Under Article 2(5) of the Agreement Between WIPO and the WTO, the assistance of WIPO will be available to developing country Members for translation of laws and regulations for the purposes of Article 63.2 of the TRIPS Agreement, whether or not they are Members of WIPO.
- (c) Only the texts of main laws and regulations will be distributed in WTO documents and only in the WTO language in which they have been submitted.
- (d) Other laws and regulations will not be distributed but only be available for consultation in the WTO Secretariat. However, in order to maximize transparency as to the contents of other laws and regulations, the notification of the texts of all "other laws and regulations" must be accompanied by a listing of them according to the format contained in document IP/C/4. This listing must be submitted at the same time as the laws and regulations themselves. A model of such a listing can be found in document IP/C/W/8. According to the two-column format, the titles of the laws and regulations will be presented on the left side and a brief description of them in English, French or Spanish on the right side.⁵ In order to improve the user-friendliness of their notifications, recently some Members when updating their earlier notifications have provided such listings for both their "main dedicated intellectual property laws and regulations" and "other laws and regulations".
- (e) It has been recognized that adequate transparency of the contents of enforcement laws, in particular as to how TRIPS obligations have been implemented, may not necessarily be achieved by the notification of laws and regulations according to the above-mentioned procedures. For example, in countries with a common law tradition, this area of law is often not codified but governed by case law. Therefore, the Council has adopted a "Checklist of Issues on Enforcement" (document IP/C/5), responses to which Members have to submit in addition to any texts of laws and regulations including any brief description in the format referred to in the previous indent. The responses to this checklist have to be submitted by each Member as soon as possible after the date on which it starts applying the implementing legislation in question.

⁵ It should be noted that, unless an enforcement law is notified as a main law, enforcement laws must be taken up in this listing, including their brief description. In addition, a Member must provide responses to the Checklist of Issues on Enforcement.

2. Availability of the information received

11. Notifications of laws and regulations under Article 63.2, including listings of "other laws and regulations", are distributed in the IP/N/1/- series of documents. The actual texts of "main dedicated intellectual property laws and regulations" are distributed in the following sub-series of documents:

- IP/N/1/-/C/ Copyright and related rights
- IP/N/1/-/T/ Trademarks
- IP/N/1/-/G/ Geographical indications
- IP/N/1/-/D/ Industrial designs
- IP/N/1/-/P/ Patents (including plant variety protection)
- IP/N/1/-/L/ Layout-designs (topographies) of integrated circuits
- IP/N/1/-/U/ Undisclosed information
- IP/N/1/-/I/ Industrial property (general)
- IP/N/1/-/E/ Enforcement
- IP/N/1/-/O/ Other⁶

12. Responses to the Checklist of Issues on Enforcement are circulated in the IP/N/6/- series of documents.

13. The notifications and the texts of the laws and regulations referred to in these documents are available on the WTO Documents Online database.⁷ The TRIPS pages on the website contain a "quick search document online feature", that provides an easy way to search for documents under each of these series of documents.⁸

14. The procedures in document IP/C/2 provide that "[w]herever possible, notifications shall be made in machine-readable as well as hard copy form". Earlier, the texts of most notified laws and regulations were received only in hard copy form. In these cases, the texts were attached to the WTO document containing the cover note as offset copies. Therefore, one could find only the cover note on the database, since these texts were not put into electronic form by the WTO Secretariat. However, all of the old offset documents are being scanned and prepared in .pdf format to be available in the database.⁹ Some notifications continue to be received only in hard copy form or in such electronic formats that cannot be converted into a WTO document. In such cases, the texts are circulated and made available in the database as described above.

15. Presently most texts are received in electronic form, and in some cases no hard copies are provided. These texts are generally included in an annex to the relevant document. However, if a text is received in such electronic format that does not allow the Secretariat to incorporate them into electronic documents, the Secretariat contacts the Member in question to obtain, if possible, a format that it can process. If that is not possible, the text is circulated and made available on the database as described above.

16. Cooperation between WIPO and the WTO plays an important part in the management of notifications of laws and regulations. Article 2 of the WIPO-WTO cooperation agreement contains a

⁶ These sub-series of documents were established in document IP/C/W/20.

⁷ From the WTO homepage at <http://www.wto.org/>, follow the links "documents" and "documents online".

⁸ From the WTO homepage, follow the links "trade topics" and "intellectual property". From this TRIPS gateway page, follow the link "notifications under Article 63.2".

⁹ All offset documents from May 2004 to date are already available in .pdf format, and the scanning of the remaining documents starting from 1995 is being completed. Search results on the database indicate where such second format for a document is available. The second format can be accessed by clicking on "display second format".

number of provisions on notification procedures, translation of laws and regulations, and making them available. As provided in Article 2(4) of the cooperation agreement, the WTO Secretariat transmits to WIPO a copy of the laws and regulations notified to the WTO Secretariat by WTO Members under Article 63.2 of the TRIPS Agreement in the language or languages and in the form or forms in which they were received, and WIPO places such copies in its collection.¹⁰ The main way of making this information available to the public is through the Collection of Laws for Electronic Access (CLEA) database providing access to these laws and regulations and other legislation as well as to treaties on intellectual property.¹¹ WIPO is in the process of upgrading this service.

17. With a view to making the information more easily available to Members and other users, the Secretariat is considering ways to reorganize the relevant pages on the WTO website. For example, a single transparency toolkit page could provide a single access point to various notifications and other reports from Members, as well to related formats, guidelines and background materials.¹²

18. As noted above, some Members provide listings not only for "other laws and regulations" but also for the updates of their notifications of "main dedicated intellectual property laws and regulations". These listings related to updates normally give a brief description of any new legislation or amendments to the pre-existing legislation. Given that such descriptions improve the user-friendliness of the system, their wider use also in respect of updates to main laws could be encouraged.

19. As noted above, the WTO Secretariat currently receives notifications in various electronic formats, all of which cannot be converted into WTO documents. It forwards these notifications to the WIPO Secretariat, which includes them in its database. Any current delays in circulation and lack of accessibility of notified materials are almost entirely attributable to technical problems of this nature, which can take much time and effort to resolve. For this reason, it would be desirable that notifications be received in such formats that can easily be included in both WTO and WIPO databases and made searchable. The WTO Secretariat is currently exploring this issue in cooperation with WIPO. Clarification of the formats that would be most practical to use would help overcome technical obstacles, would enable better use of resources to facilitate transparency in practice, and would reduce the administrative burden for notifying Members.¹³

20. Currently the texts of "main dedicated intellectual property laws and regulations" are circulated in hardcopy format to all Members. However, it appears that most users find it more

¹⁰ As foreseen in Article 3(3) of the WIPO-WTO cooperation agreement, a WTO Member may choose to make its initial notification to the TRIPS Council by reference to WIPO's collection. It provides that where, on the date of its initial notification of a law or regulation under Article 63.2, a WTO Member has already communicated that law or regulation, or a translation thereof, to the WIPO Secretariat and that WTO Member has sent to the WTO Secretariat a statement to that effect, and that law, regulation or translation actually exists in WIPO's collection, the WIPO Secretariat will transmit a copy of it to the WTO Secretariat.

At their meetings in December 1995, the Assemblies of the Berne and Paris Unions resolved that the receipt, by the International Bureau of WIPO from the WTO Secretariat, of a copy of any law or regulation that the WTO Secretariat received under Article 63.2 of the TRIPS Agreement shall have, for the purposes of, respectively, Article 24(2) of the Berne Convention and Article 15(2) of the Paris Convention, the same effect as if that law or regulation had been communicated to the International Bureau under the said Articles of the Berne or Paris Convention. See, respectively, paragraph 5 of WIPO document B/A/XVIII/2 and paragraph 5 of WIPO document P/A/XXIV/2.

¹¹ CLEA can be accessed at <http://www.wipo.int/clea/en/>.

¹² Any improvements in the way that notifications can be accessed electronically would, of course, not entail any change to the legal status of notified materials nor to the obligations or entitlements of Members; such improvements would purely concern the accessibility of information provided under existing notification requirements.

¹³ Such clarification of the formats would, of course, not affect in any way the rights and obligations of Members.

convenient to access these laws and regulations on WTO and WIPO databases, which are being made increasingly user-friendly. Informal feedback from users suggests that the routine production of hard copies does not, on the whole, facilitate access to the notified materials, and it consumes considerable resources. An option for consideration would be to move towards a system where only the cover note of a notification would be circulated in a WTO document, while the respective texts of laws and regulations could be made available only in an electronic form on the WTO database (and also forwarded to the WIPO Secretariat for inclusion in its collection), while retaining the right of Members to obtain hard copies upon request when required.

21. Article 63.2 of the TRIPS Agreement refers to the possibility of minimizing the burden on Members relating to notification obligations through the establishment of a common register in cooperation with WIPO. The provisions on close cooperation between the two Organizations in the current notification procedures and in the WIPO-WTO cooperation agreement already reflect this intention to streamline the administration of notifications. It is not proposed to redefine or restructure existing cooperation with WIPO, but in view of the potential reduction of the burden on Members and the reduction of inefficient double-handling and duplicative processing and in order to make better use of modern communication technology, avenues for cooperation of a strictly practical nature will continue to be actively explored with WIPO, without prejudice to the rights and obligations of Members.

3. Status of notifications of laws and regulations

22. The overall status of initial notifications by developed and developing country Members can be considered as fairly good.¹⁴ Only one Member has not yet provided such a notification.¹⁵ However, some of the initial notifications appear to be incomplete or to contain only draft legislation. Overall, 126 Members have notified all or part of their implementing legislation and 99 Members have provided responses to the Checklist of Issues on Enforcement.

23. As regards subsequent amendments, the situation is much more uneven. It appears that relatively few Members fairly systematically notify their new legislation and amendments, while others make occasional notifications, but many Members have not notified any amendments since their initial notification. Annex 2 to this note contains a table indicating the dates of receipt of Members' initial notifications of laws and regulations, updates thereto, and responses to the Checklist of Issues on Enforcement.

B. NOTIFICATIONS OF CONTACT POINTS UNDER ARTICLE 69

24. Article 69 of the Agreement provides that Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights and that, for this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

25. At its meeting in September 1995, the Council agreed that notifications should be made by 1 January 1996 and that any subsequent changes to the information should be notified promptly. The Council has agreed to invite each Member to notify the following information relating to the contact point, or each of the contact points, that it establishes for the purposes of Article 69: the name of the

¹⁴ It is recalled that LDC Members are obliged to make their initial notifications only at the end of the transition period, although according to the notification procedures they will use their best endeavours to notify laws and regulations bringing themselves into conformity with the Agreement in advance of this.

¹⁵ St. Kitts and Nevis.

authority in question; its address; its telephone and telefax numbers and e-mail address, and, where appropriate, to identify at each contact point a contact official.¹⁶

26. These notifications are distributed in the IP/N/3/- series of documents and made available on the WTO Online Database. The webpage on notifications under the TRIPS Agreement contains a quick search documents online feature for notifications under Article 69.

27. To date, 123 Members have notified their contact points under Article 69. The Council receives, on average, some 20 updates each year. The extent and ways in which these contact points are used in practice has not been discussed by the Council.

C. NOTIFICATION REQUIREMENTS FOR MEMBERS AVAILING THEMSELVES OF CERTAIN POSSIBILITIES UNDER THE TRIPS AGREEMENT

28. Members wishing to avail themselves of certain possibilities in the Agreement that relate to the substantive rights and obligations or contain various flexibilities have to notify the Council. The following reviews these possibilities and summarizes the procedures and guidelines on such notifications that the Council has adopted.

1. Articles 1.3 and 3.1

29. Article 1.3 of the Agreement defines the persons that must be eligible for the protection to be made available by Members under the Agreement. The Article does so by referring to the criteria for eligibility as laid down in the Paris Convention, the Berne Convention, the Rome Convention and the Washington Treaty for the relevant areas of intellectual property. Thus, the same criteria have to be applied among WTO Members as well, whether or not they are member States to any of the Conventions or Treaty themselves. Certain of the exceptions allowed under these criteria, notably those of the Berne Convention or the Rome Convention, are allowed *on condition that they are notified to the TRIPS Council*, whether or not they have been notified to the Secretary General of the United Nations under the Berne Convention and the Rome Convention themselves.

30. Article 3.1 of the Agreement requires national treatment to be given to persons eligible for protection under Article 1.3, subject to the exceptions allowed under the Conventions and Treaty mentioned above. Equally as under Article 1.3, certain of these exceptions under Article 3.1 are allowed on condition that they are notified to the TRIPS Council.

31. Notification under Articles 1.3 and 3.1 is only required if a Member wishes to avail itself of one of the exceptions concerned. No special procedures have been adopted by the Council in respect of these notifications.¹⁷

32. These notifications are distributed in the IP/N/2/- series of documents and made available on the WTO Online Database. The webpage on notifications under the TRIPS Agreement contains a quick search documents online feature for notifications under Articles 1.3 and 3.1. To date, 31 Members have submitted such notifications.

2. Article 4(d)

33. Under the most-favoured-nation (MFN) treatment provisions of Article 4 of the Agreement, each Member has to ensure that any advantage, favour, privilege or immunity that is available in its

¹⁶ See WTO/AIR/168.

¹⁷ Further details concerning these notification requirements can be found in a background note prepared by the Secretariat and circulated in document IP/C/W/5.

territory to certain foreign right holders is accorded to persons eligible under Article 1.3 for protection under the Agreement. Article 4 specifies the exemptions to such MFN treatment allowed by the Agreement. One of these exceptions, that in sub-paragraph (d), requires a notification, namely where the advantage in question derives from an international agreement related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement. The conditions for such exemptions are that the agreement in question is notified to the TRIPS Council and does not constitute an arbitrary or unjustifiable discrimination against persons eligible under Article 1.3 from other WTO Members.

34. Notification under Article 4(d) is only required if a Member wishes to avail itself of the exception concerned. No special procedures have been adopted by the Council in respect of these notifications.

35. These notifications are distributed in the IP/N/4/- series of documents and made available on the WTO Online Database. The webpage on notifications under the TRIPS Agreement contains a quick search documents online feature for notifications under Article 4(d). To date, 28 Members or groups of Members have submitted such notifications.

3. Article 6^{ter} of the Paris Convention

36. Article 6^{ter} of the Paris Convention (1967) concerns the protection of state emblems, official hallmarks and the abbreviations and emblems of intergovernmental organizations against the registration or use as trademarks. Article 6^{ter} applies in the TRIPS context by virtue of Article 2.1 of the TRIPS Agreement and lays down procedures for the communication by Members (and intergovernmental organizations) to other Members of such emblems that they wish to prevent from being registered or used as trademarks and for the transmittal of objections to emblems communicated.

37. The application of the provisions of Article 6^{ter} for the purposes of the TRIPS Agreement is addressed in Article 3 of the WIPO-WTO cooperation agreement and in the Decision of the TRIPS Council of 11 December 1995 (document IP/C/7). Accordingly, the International Bureau of WIPO administers the communication procedures under Article 6^{ter} for the purposes of the TRIPS Agreement in accordance with the procedures applicable under Article 6^{ter} of the Paris Convention (1967).

38. As regards the main features of these arrangements, following the entry into force of the TRIPS Agreement, notifications made under Article 6^{ter} of the Paris Convention became effective under the TRIPS Agreement for all WTO Members (subject to the transitional periods under the TRIPS Agreement) whether they were parties to the Paris Convention or not. This concerns all past as well as future notifications. The arrangements apply both to the communication of emblems and to objections to emblems communicated. The WIPO Secretariat communicated, in January 1996, all emblems communicated before that date under Article 6^{ter} of the Paris Convention to those WTO Members which were not parties to the Paris Convention. Since January 1996, the practice has been that a newly acceded WTO Member that is not party to the Paris Convention receives a set of emblems as communicated through the WIPO Secretariat under the provisions of Article 6^{ter} of the Paris Convention before the date on which the WTO Agreement entered into force for the new Member in question.

39. Until recently, signs for which protection was requested were communicated individually and on paper. In order to make better use of modern communication technology, such communications have recently been replaced by a periodic (half yearly) electronic communication that uses the WIPO

"6ter Express" database.¹⁸ The first such electronic publication of signs went live on 31 March 2009 on this database. The second periodical electronic publication was made on 30 September 2009.¹⁹

40. All state emblems of WTO Members and of parties to the Paris Convention, as well as emblems of international intergovernmental organizations, which benefit from the application of Article 6ter are available in the 6ter Express database. It contains some 2,500 individual records and is fully accessible and searchable online. Updated versions of the database are also being made available on CD-ROM, and can be ordered from WIPO.

4. Other notification requirements under the Berne Convention and the Rome Convention incorporated by reference into the TRIPS Agreement

41. A number of notification provisions of the Berne and the Rome Conventions are incorporated by reference into the TRIPS Agreement but without being explicitly referred to in it. Such notifications are only required if a Member wishes to avail itself of one of the possibilities concerned. No special procedures have been adopted by the Council in respect of these notifications. These notifications are distributed in the IP/N/5/- series of documents and made available on the WTO Online Database. The webpage on notifications under the TRIPS Agreement contains a quick search documents online feature for notifications under these provisions. To date, 3 Members have submitted such notifications. The following summarizes the notification possibilities in question.²⁰

42. Articles 14bis(2)(c) and 14bis(3) of the Berne Convention: Article 14bis(2)(b) of the Berne Convention as incorporated into the TRIPS Agreement applies to a WTO Member which in its legislation includes among the owners of copyright in a cinematographic work authors who have brought contributions to the making of the work. In such a Member it must be presumed that these authors have consented, in the absence of any contract to the contrary, to certain ways in which the film may be exploited. If such a Member's legislation requires that the consent of the authors must have been in writing, Article 14bis(2)(c) requires that Member to inform other Members of this requirement by means of a notification. Article 14bis(3) requires that a Member the law of which does not make the presumption binding on the principal director of the film must similarly make a notification. The purpose of these notification requirements is to allow those concerned to know the Members whose legislation applies the presumption in such a restricted way and to make their arrangements accordingly.

43. Article 15(4) of the Berne Convention: Article 15(4) of the Berne Convention as incorporated into the TRIPS Agreement is mainly directed at the protection of folklore. It deals with unpublished works where the identity of the author is unknown, but where there is every ground to presume that he or she is a national of a given WTO Member. In such a situation, the Member concerned may designate a competent authority to protect the interests of the author. Other Members should be informed about this authority by means of a notification giving full information.

44. Appendix to the Berne Convention: Article 9.1 of the TRIPS Agreement requires Members to comply with the Appendix to the Berne Convention (1971), which contains special provisions for developing countries. The Appendix contains a number of notification procedures which are discussed below.

¹⁸ The database can be accessed at <http://www.wipo.int/ipdl/en/search/6ter/search-struct.jsp>.

¹⁹ Information notices concerning this change in communication procedures were sent by the WIPO Secretariat to all WTO Members on 9 February 2009.

²⁰ Further details concerning these notification requirements can be found in a background note prepared by the Secretariat and circulated in document IP/C/W/15. At its meeting in February 1996, the Council invited each Member wishing to make such notifications to make them to the TRIPS Council, even if the Member in question had already made a notification under the Berne or the Rome Convention in regard to the same issue.

- (a) Article I of the Appendix: Paragraph 1 requires a developing country Member wishing to avail itself of the possibilities provided in the Appendix to declare that it will avail itself of the faculty provided in Article II and/or Article III of the Appendix (compulsory licences for, respectively, translations and reproductions) by means of a notification. According to paragraph 2 such declarations can be made for renewable periods of ten years. Such declarations may be renewed by means of a notification.²¹ Paragraph 5 deals with the possibility for a country to make notifications in respect of territories for which it has international responsibility.
- (b) Article II(3)(b) of the Appendix: This provision deals with the situation where a developing country Member secures the agreement of all developed country Members, in which the same language is in general use as in that developing country Member, to provide for a shorter period than the usual three years after publication for the application of compulsory licences to substitute for the exclusive right of translation. The provision requires that any such agreement shall be notified.
- (c) Article IV(2) of the Appendix: This provision deals with the situation where an applicant for a compulsory licence of the types provided for in Articles II and III cannot find the owner of the right in question. In such a situation, he or she must send a copy of the application to any national or international information centre which may have been designated by the Member in which the publisher of the work concerned is believed to have his principal place of business. The paragraph provides that such information centres must have been designated in a notification by the Member concerned.
- (d) Article IV(4)(c)(iv) of the Appendix: This provision allows developing country Members to export copies of translations made under compulsory licence, provided that a number of conditions are met: the language of the translation must not be English, French or Spanish; the recipients are individuals who are nationals of the Member whose competent authority has granted the licence, or organizations grouping such individuals; the copies must be sent for teaching, scholarship or research purposes; there must be no commercial purpose; and there must be an agreement between the Member granting the licence and that to which the copies are sent. The provision requires that such an agreement shall be notified by the Member in which the licence has been granted.
- (e) Article V of the Appendix: This Article provides that a developing country Member may choose, by way of a declaration made at the time of ratification or accession, the "ten-year regime" which appeared in the 1896 Act of the Berne Convention for translations instead of the compulsory licensing system provided for in Article II of the Appendix.

45. Article 17 of the Rome Convention: Article 14.6 of the TRIPS Agreement allows a WTO Member to avail itself of exceptions permitted under the Rome Convention. Article 17 of the Rome Convention allows a state which, on 26 October 1961, granted protection to producers of phonograms

²¹ At its meeting in July 1998, the TRIPS Council took note of a statement that its Chair made in the light of informal consultations with Members on the calculation of renewable periods of ten years under the provisions of the Appendix to the Berne Convention as incorporated by reference into the TRIPS Agreement, according to which the provisions of Article I(2) of the Appendix as incorporated into the TRIPS Agreement can be understood so that, for the purposes of the TRIPS Agreement, the relevant periods are calculated by reference to the same date, i.e. 10 October 1974, as for the purposes of the Berne Convention (see paragraphs 7-9 of the record of the meeting in IP/C/M/19).

solely on the basis of the criterion of fixation to continue to do so, provided it makes a notification to this effect at the time of ratification, acceptance or accession.

46. Article 18 of the Rome Convention: Articles 1.3, 3.1 and 14.6 of the TRIPS Agreement relate to certain exceptions under the Rome Convention, the invocation of which require notification. Article 18 of the Rome Convention provides that any state which has invoked such an exception by means of notifications under Articles 5(3), 6(2), 16(1) or 17 of the Rome Convention may, by a further notification, reduce the scope of or withdraw the notification in question.

D. NOTIFICATION REQUIREMENTS FOR MEMBERS MAKING USE OF THE ADDITIONAL FLEXIBILITIES RELATING TO TRIPS AND PUBLIC HEALTH

47. On 30 August 2003, the General Council adopted a decision on "Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health" (WT/L/540). The Decision grants three distinct waivers from the obligations set out in Article 31(f) and (h) of the Agreement with respect to pharmaceutical products, subject to certain conditions. These waivers are

- (a) a waiver of the obligation of an exporting Member under Article 31(f) of the TRIPS Agreement to the extent necessary for the purposes of production and export of the needed pharmaceutical products to those countries that do not have sufficient capacity to manufacture them;
- (b) a waiver of the obligation under Article 31(h) of the Agreement on the importing Member to provide adequate remuneration to the right holder in situations where remuneration in accordance with Article 31(h) is being paid in the exporting Member for the same products; and
- (c) a waiver of the obligation under Article 31(f) of the Agreement on any developing or least-developed country Member that is party to a regional trade arrangement at least half of the current membership of which is made up of countries presently on the United Nations list of least-developed countries.

48. WTO Members wishing to make use of this "Paragraph 6" system are required to make the following notifications:

- (a) Paragraph 1(b): intention to use the system established by the Decision of 30 August 2003 as an importer. This notification needs to be made only once. It can be made at any time, either independently of any actual use of the system or together with the first notification under paragraph 2(a). This notification requirement does not apply to importing Members which are least-developed countries.
- (b) Paragraph 2(a): specific imports under the system established by the Decision of 30 August 2003, for which an eligible importing Member is required to: (i) specify the names and expected quantities of the products needed; (ii) confirm that it has insufficient or no manufacturing capacities in the pharmaceutical sector for the products in question; and (iii) confirm that, where a pharmaceutical product is patented in its territory, it has granted or intends to grant a compulsory licence in accordance with Article 31 of the Agreement and the provisions of the Decision. No notification requirement applies to least-developed country Members as regards condition (ii), as they are deemed to have insufficient or no manufacturing capacities.
- (c) Paragraph 2(c): grant of a compulsory licence under the system established by the Decision of 30 August 2003. The information provided shall include the name and

address of the licensee, the product(s) for which the licence has been granted, the quantity(ies) for which it has been granted, the country(ies) to which the product(s) is (are) to be supplied and the duration of the licence. The notification shall also indicate the address of the website of the licensee that shall post on its website information on the quantities being supplied to each destination and the distinguishing features of the products in question.

49. To date, one notification has been received under each of paragraphs 2(a) and 2(c).

50. These three types of notifications are circulated in the IP/N/8-10 series of documents, respectively. The Decision of 30 August 2003 calls for the establishment of a dedicated page on the WTO website, in particular to make publicly available certain notifications made by Members in using the "Paragraph 6" system established under the Decision.²² The notifications discussed above can be accessed through the "TRIPS and public health: dedicated webpage for notifications".²³

51. On 6 December 2005, the General Council adopted a Protocol Amending the TRIPS Agreement and submitted it to Members for acceptance (WT/L/641).²⁴ The provisions of the waiver Decision will be replaced by identical provisions of Article 31*bis* of the TRIPS Agreement, once the amendment enters into force. The notification requirements will remain unchanged under the new Article 31*bis*.

E. NOTIFICATION REQUIREMENTS FOR DEVELOPED COUNTRY MEMBERS AGREED BY THE TRIPS COUNCIL IN THE CONTEXT OF ARTICLES 66.2 AND 67

1. Reports under Article 66.2

52. Article 66.2 of the TRIPS Agreement requires developed country Members to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base. In its Decision on Implementation-Related Issues and Concerns, adopted on 14 November 2001, the Ministerial Conference reaffirmed that the provisions of Article 66.2 of the TRIPS Agreement are mandatory, and instructed the TRIPS Council to put in place a mechanism for ensuring the monitoring and full implementation of the obligations in question.

53. Having regard to the instructions of the Ministerial Conference, the Council for TRIPS adopted a Decision on Implementation of Article 66.2 of the TRIPS Agreement on 20 February 2003 (IP/C/28). The Decision establishes a mechanism for ensuring the monitoring and full implementation of the obligations in Article 66.2. Paragraph 1 of the Decision provides that developed country Members shall submit annually reports on actions taken or planned in pursuance of their commitments under Article 66.2. To this end, they are to provide new detailed reports every third year and, in the intervening years, to provide updates to their most recent reports. These reports are to be submitted prior to the last Council meeting scheduled for the year in question. Moreover,

²² Footnote 5 of the Decision.

²³ From the WTO homepage, follow the links "trade topics", "intellectual property" and "Dedicated page: TRIPS and public health notifications". These notifications are also available on the WTO Online Database.

²⁴ Article X:7 of the Marrakesh Agreement Establishing the World Trade Organization provides that any Member accepting the amendment shall deposit an instrument of acceptance with the Director-General of the WTO within the period of acceptance specified by the Ministerial Conference. As requested by the Council, the Secretariat has prepared a note on the status of acceptances of the Protocol Amending the TRIPS Agreement, which it periodically updates. The latest version of the note has been circulated in document IP/C/W/490/Rev.5.

paragraph 2 of the Decision provides that the submissions shall be reviewed by the Council at its end of year meeting each year.

54. The tri-annual new reports and the intervening updates are circulated in the IP/C/W- series of documents and made available on the WTO Online Database. The webpage on "Technology transfer"²⁵ contains a quick search documents online feature for reports under Article 66.2.

55. Further information on the reports that have so far been submitted under the Decision can be found in a Secretariat background note circulated in October 2008 in document IP/C/W/522.

2. Contact points for technical cooperation and reports under Article 67

(a) Contact points for technical cooperation on TRIPS

56. At its meeting in July 1996, the Council for TRIPS agreed that each developed country Member should notify a contact point for technical cooperation on TRIPS, in particular for the exchange of information between donors and recipients of technical assistance. Information on the format for these notifications can be found in WTO/AIR/388.²⁶

57. The information on such contact points is circulated in document IP/N/7, and addenda, corrigenda and periodic revisions and made available on the WTO Online Database. The webpage on technical cooperation in the TRIPS area contains a quick search documents online feature for notifications under Article 67.²⁷

58. To date, 29 developed country Members have notified their contact points for technical cooperation on TRIPS. The Council has received a number of updates. The extent and ways in which these contact points are used in practice to facilitate technical cooperation between donors and recipients has not been discussed by the Council.

(b) Reports under Article 67

59. Article 67 of the TRIPS Agreement requires developed country Members to provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. According to this provision, the objective of such cooperation is to facilitate the implementation of the Agreement. The Article specifies that such assistance shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

60. In order to ensure that information on available assistance is readily accessible and to facilitate the monitoring of compliance with the obligation of Article 67, developed country Members have agreed to present descriptions of their relevant technical and financial cooperation programmes and to update this annually. For the sake of transparency, intergovernmental organizations have also presented, on the invitation of the Council, information on their activities. The Council normally holds its annual review of technical cooperation at its meeting in autumn.

²⁵ From the WTO homepage, follow the links "trade topics", "intellectual property" and "technology transfer".

²⁶ The document provides that developed country Members have been requested to notify, in particular, the following information concerning their contact point(s): (i) the name of the authority in question; (ii) its address; (iii) its telephone and telefax numbers and, where appropriate, e-mail reference; and (iv) where appropriate, to identify at each contact point a contact official.

²⁷ From the TRIPS gateway page, follow the link to "technical cooperation in the TRIPS area".

61. The information from developed country Members, intergovernmental organizations and the WTO Secretariat on their technical cooperation activities in the area of TRIPS is circulated in the IP/C/W/- series of documents and made available on the WTO Online Database. The webpage on technical cooperation in the TRIPS area contains a quick search documents online feature for reports on technical cooperation activities in the area of TRIPS.²⁸

F. CERTAIN OTHER INFORMATION FLOWS

1. Records of reviews of national implementing legislation

62. The initial notifications of laws and regulations made pursuant to Article 63.2 of the TRIPS Agreement form the basis for reviews of national implementing legislation carried out by the Council. Initially, the review exercise focused on those developed country Members whose transition period expired on 1 January 1996. Their legislation was reviewed in 1996 and 1997 in four week-long meetings according to the following subject areas: copyright and related rights; trademarks, geographical indications and industrial designs; patents, layout-designs of integrated circuits, undisclosed information and the control of anti-competitive practices in contractual licences; and enforcement. The legislation of developing country Members whose transition period expired on 1 January 2000 was reviewed in 2000 and 2001. The totality of the legislation of each Member was reviewed at a single review meeting. The legislation of newly acceded Members is reviewed as of the time that they start to apply the provisions of the TRIPS Agreement in accordance with their accession protocol. To date, the Council has completed 114 reviews, and five reviews already initiated remain on its agenda.

63. The procedures for these reviews provide for written questions and replies prior to the review meeting, with follow-up questions and replies during the course of the meeting. At subsequent meetings of the Council, an opportunity is given to follow up points emerging from the review session which delegations consider have not been adequately addressed.

64. After the completion of a review, the record of the introductory statement made by the delegation subject to review, the questions put to it and the responses given in the review are circulated in the IP/Q/- series of documents. The records of the reviews of developed country Members' legislation in the four subject areas referred to above were circulated, respectively, in the IP/Q/-, IP/Q2/-, IP/Q3/- and IP/Q4/- series of documents. Given that the totality of the legislation of each developing country and newly acceded Member has been reviewed at a single review meeting, the records of these reviews have been circulated in single documents with four document symbols. These documents are available on the WTO Online Database. The webpage on "review of implementing legislation" contains a quick search document online feature for these documents.²⁹

2. Responses provided in the context of the review of the provisions of the Section on geographical indications under Article 24.2

65. In the context of the review of the application of the provisions of the Section on geographical indications under Article 24.2 of the TRIPS Agreement, the Council, at its meetings in May and July 1998, invited those Members already under an obligation to apply the provisions in question to provide their responses to a Checklist of Questions contained in document IP/C/13 and Add.1, it being understood that other Members could also furnish replies on a voluntary basis. To date, 48 Members have provided responses thereto.

²⁸ From the TRIPS gateway page, follow the link "technical cooperation in the TRIPS area".

²⁹ From the TRIPS gateway page, follow the link "review of Members' implementing legislation".

The responses from Members have been circulated in document IP/C/W/117, addenda, supplements and revisions. At the Council's request, the Secretariat has prepared a note summarizing these responses. An updated version of the summary, circulated in November 2003, can be found in document IP/C/W/253/Rev.1. This documentation is available on the WTO Documents Online database.

3. Responses provided in the context of the review of the provisions of Article 27.3(b)

66. At its meeting in December 1998, the Council agreed to initiate the review of the provisions of Article 27.3(b) through an information-gathering exercise. The Council invited Members that were already under an obligation to apply Article 27.3(b) to provide information on how the matters addressed in these provisions were presently treated in their national law. Other Members were invited to provide such information on a best-endeavours basis. While it was left to each Member to provide information as it saw fit, having regard to the specific provisions of Article 27.3(b), the Council requested the Secretariat to provide an illustrative list of questions relevant in this regard in order to assist Members to prepare their contributions. This list was circulated in document IP/C/W/122. A number of Members circulated an alternative format in document IP/C/W/126, and invited interested Members to be guided by it in completing their responses, if they so desired. To date, 25 Members have provided such information.³⁰

67. The responses from Members have been circulated in document IP/C/W/125, addenda, supplements and revisions.³¹ At the Council's request, the Secretariat prepared a note summarizing these responses. An updated version of the summary, circulated in February 2003, can be found in document IP/C/W/253/Rev.1. Annex II to the note contains two synoptic tables, one covering the information received regarding patent protection of plant and animal inventions and the other the information received regarding protection of plant varieties. This documentation is available on the WTO Documents Online database.

³⁰ Counting the European Communities and its member States as of February 1999, when the responses were provided, as one.

³¹ A number of Members provided information by answering the questions listed in document IP/C/W/122, some others used the method in document IP/C/W/126, and some of them answered the questions in both documents. Finally, there were Members who provided information without referring to either of these documents.

ANNEX 1

WTO Document Series for the Circulation of Intellectual Property Notifications

- IP/N/1/ Notification of laws and regulations under Article 63.2 of the Agreement
- The actual texts of "main dedicated intellectual property laws and regulations" are distributed in the following sub-series of documents
- | | |
|-------------|--|
| IP/N/1/-/C/ | Copyright and related rights |
| IP/N/1/-/T/ | Trademarks |
| IP/N/1/-/G/ | Geographical indications |
| IP/N/1/-/D/ | Industrial designs |
| IP/N/1/-/P/ | Patents (including plant variety protection) |
| IP/N/1/-/L/ | Layout-designs (topographies) of integrated circuits |
| IP/N/1/-/U/ | Undisclosed information |
| IP/N/1/-/I/ | Industrial property (general) |
| IP/N/1/-/E/ | Enforcement |
| IP/N/1/-/O/ | Other |
- IP/N/2/ Notification under Articles 1.3 and 3.1 of the Agreement
- IP/N/3/ Notification of contact points under Article 69 of the Agreement
- IP/N/4/ Notification under Article 4(d) of the Agreement
- IP/N/5/ Notification under provisions of the Berne Convention and the Rome Convention incorporated into the TRIPS Agreement but without being explicitly referred to therein
- IP/N/6/ Responses to the Checklist of Issues on Enforcement
- IP/N/7/ Notification of contact points for technical cooperation on TRIPS
- IP/N/8/ Notification under paragraph 1(b) of the Decision of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health
- IP/N/9/ Notification under paragraph 2(a) of the Decision of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health
- IP/N/10/ Notification under paragraph 2(c) of the Decision of 30 August 2003 on the implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health

ANNEX 2

Notifications of laws and regulations received under Article 63.2

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|----------------------------|-------------------------------------|---|---|
| Albania | Initial notification Updates | 26-27 March and 15 June 2001, 5 October 2002 23 February 2005 4 April 2008 | 5 April 2001 |
| Antigua and Barbuda | Initial notification Updates | 7 and 16 November 2001 - | 19 November 2001 |
| Argentina | Initial notification Updates | 27 March, 17 November and 1 December 2000, 28 May and 5 June 2001 - | 25 November 2002 |
| Armenia | Initial notification Update | 28 July 2003 8 April 2008 | 25 May 2004 |
| Australia | Initial notification Updates | 5 April 1995 19 April 1995 18 April 1996 16 October 2006 10 June 2008 | 1 September 1997 |
| Austria | Initial notification Updates | 29 January 1996 30 April 1996 21 June 1996 21 March 2007 | 13 September 1996 |

¹ These notifications are circulated in IP/N/1/- series of documents.

² These responses are circulated in IP/N/6/- series of documents.

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|--------------------------------|-------------------------------------|--|---|
| Bahrain, Kingdom of | Initial notification Updates | 3 and 29 December 1999, 15 June 2001 and 4 September 2004 - | 12 June 2001 |
| Bangladesh | | 19 June 2002 17 July 2007 | |
| Barbados | Initial notification Updates | 3 October 1995, 11 March 1996, 15 June and 20 September 2001 and 4 April 2002 - | 15 June 2001 |
| Belgium | Initial notification Updates | 31 January, 1 February, 26 March, 17 May and 18 July 1996 - | 18 July 1996 17 March 1997 <i>(addendum)</i> |
| Belize | Initial notification Updates | 17 May 2000, 22 April 2003 and 14 April 2005 - | 17 May 2000 |
| Bolivia | Initial notification Updates | 12 January and 12 February 2001 - | 12 January 2001 |
| Botswana | Initial notification Updates | 18-22 June 2001 - | |
| Brazil | Initial notification Updates | 26 January 2000 - | 26 January 2000 |

| WTO Member | Description | Dates of communications of initial notification and updates ¹ | Dates of responses to checklist (IP/C/5) ² |
|--------------------------|-------------------------------------|---|---|
| Brunei Darussalam | Initial notification Updates | 22 November 2001 - | 6 November 2001 |
| Bulgaria | Initial notification Updates | 20 March and 22 May 1997 and 24 February 1998 6 December 1999 17 January 2000 5 May 2000 29 May 2000 24 July 2000 20 February 2001 | 1 May 1998 20 February 2001 <i>(addendum)</i> |
| Burkina Faso | | 18 December 2001 | |
| Burundi | | 3 April 2001 | |
| Cameroon | Initial notification Updates | 13 July 2001 - | |
| Canada | Initial notification Updates | 31 January, 26 March, 14 August, 26 August, 7 November and 22 November 1996, and 4 February 1997 29 May 1997 8 June 2005 24 January 2007 19 October 2007 6 December 2007 20 October 2008 | 7 January 1997 |
| Chad | | 18 July 2000 | |

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|----------------------|-------------------------------------|--|---|
| Chile | Initial notification Updates | 31 January 2000 5 September 2000 15 November 2000 26 June 2009 | 31 January 2000 |
| China | Initial notification Updates | 11 June and 15 July 2002 23 August 2002 30 August 2002 22 September 2003 20 June 2004 | 15 July 2002 |
| Colombia | Initial notification Updates | 31 January 2000 - | 20 September 2000 20 November 2000 <i>(addendum)</i> |
| Congo | Initial notification Updates | 18-22 June - | |
| Costa Rica | Initial notification Updates | 23 November and 12 December 2000 14 February 2001 21 May 2001 17 September 2001 10 June 2002 | 14 February 2001 |
| Côte d'Ivoire | Initial notification Updates | 18-22 June 2001 (TRIPS Council) - | 29 June 2001 |
| Croatia | Initial notification Updates | 14 February and 19, 20 and 26 April 2001 - | 27 February 2001 19 April 2001 <i>(addendum)</i> |

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|---------------------------|-------------------------------------|--|---|
| Cuba | Initial notification Updates | 12 and 19 November 2001 - | 8 November 2001 |
| Cyprus | Initial notification Updates | 24 July and 20 November 1996, 26 April, 1, 2 and 20 June 2000 - | 26 April 2000 |
| Czech Republic | Initial notification Update | 5 February 1996 10 March 2008 | 3 September 1997 |
| Denmark | Initial notification Update | 28 December 1995, 30 January and 30 April 1996 9 April 1999 | 7 January 1997 |
| Dominica | Initial notification Updates | 8 February and 4 May 2001 - | 15 May 2001 |
| Dominican Republic | Initial notification Updates | 19 April, 8 May and 14 June 2001 - | 14 June 2001 |
| Ecuador | Initial notification Updates | 1 and 30 April, 11 and 26 May, 2 June and 24 August 1998 - | 27 November 1988 |
| Egypt | Initial notification Updates | 22 May 2003 - | |
| El Salvador | Initial notification Updates | 31 January 2000 - | 6 June 2000 |

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|--|-------------------------------------|--|---|
| Estonia | Initial notification Updates | 3, 6, 7, 8 and 9 March, 14 August and 21 December 2000, 13 February, 27 March and 16 December 2001 and 26 February 2002 - | 6 March 2000 |
| European Communities | Initial notification Updates | 17 March 1995 23 January 1996 12 January 2007 13 February 2007 18 August 2009 | 13 December 1996 |
| Fiji | Initial notification Updates | 19 June 2001 - | 24 September 2001 |
| Finland | Initial notification Update | 30 January and 9 April 1996 7 April 2006 | 9 June 1997 24 April 2006 <i>(addendum)</i> |
| Former Yugoslav Republic of Macedonia | Initial notification Update | 29 October 2003 1 March 2007 | |
| France | Initial notification Update | 21 February and 2 April 1996 30 May 1996 | 25 July 1997 |
| Gabon | Initial notification Updates | 26 February 2002 - | |
| Georgia | Initial notification Updates | 20 February and 14 March 2002 - | 14 March 2002 |

| WTO Member | Description | Dates of communications of initial notification and updates ¹ | Dates of responses to checklist (IP/C/5) ² |
|------------------|-------------------------------------|---|--|
| Germany | Initial notification Updates | 31 January 1996 9 May 1996 22 December 1997 12 and 28 August 1998 12 January 1999 18 and 28 May 1999 3 November 2000 6 April 2001 8 August 2002 9 December 2002 23 December 2003 18 May 2009 | 7 April 1997 |
| Ghana | Initial notification Updates | 26 and 27 November 2001, and 1 March 2002 - | 26 November 2001 |
| Greece | Initial notification Update | 19 April and 15 July 1996 4 and 8 November 1996 | 3 September 1996 23 September 1997 <i>(addendum)</i> 5 November 1997 <i>(addendum)</i> |
| Grenada | Initial notification Updates | 30 March and 21 June 2001 - | |
| Guatemala | Initial notification Updates | 5 and 24 October and 7 November 2000 5 April 2001 15 July 2002 16 June 2003 | 7 November 2000 |
| Guyana | Initial notification Updates | 9 September 2002 - | |

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|-------------------------|-------------------------------------|--|---|
| Haiti | | 8 October 1998 | |
| Honduras | Initial notification Updates | 2 March and 8 June 2001 - | 2 March 2001 |
| Hong Kong, China | Initial notification Updates | 28 July 1997 27 January 2000 29 February 2000 9 July 2001 13 July 2001 28 June 2002 7 August 2002 17 December 2002 1 May 2003 24 December 2003 26 May 2004 16 September 2004 19 July 2005 1 March 2006 28 June 2006 3 August 2006 27 July 2007 22 February 2008 14 May 2008 1 August 2008 | 27 January 2000 |
| Hungary | Initial notification Updates | 16 September, 5, 12 and 15 November 1996 20 November 1997 5 March 1998 | 15 July 1997 |
| Iceland | Initial notification Update | 4 October 1996 8 April 1997 | 10 October 1997 18 November 1997 <i>(corrigendum)</i> |

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|-------------------|-------------------------------------|--|---|
| India | Initial notification Update | 22 December 2000 and 16 July 2001 20 November 2001 | 23 November 2001 |
| Indonesia | Initial notification Updates | 18 and 31 March, and 18 April 2000 - | 18 April 2000 |
| Ireland | Initial notification Updates | 29 February, 14 March and 24 June 1996 - | 20 December 1996 9 April 1997 <i>(addendum)</i> |
| Israel | Initial notification Update | 27 January 2000 20 May 2008 | 19 April 2000 |
| Italy | Initial notification Updates | 31 January and 3 June 1996 24 February 1997 12 May 1997 | 3 September 1996 |
| Jamaica | Initial notification Updates | 24 January 2000, 8 June and 17 July 2001, and 7 October 2002 - | 17 July 2001 |
| Japan | Initial notification Updates | 31 January 1996 29 May 1996 3 September 1996 10 April 2000 11 August 2004 12 July 2005 7 June 2006 25 July 2006 29 September 2006 13 September 2007 5 September 2008 | 11 December 1996 |

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|---------------------------|-------------------------------------|--|---|
| Jordan | Initial notification Updates | 9 October and 29 November 2000 - | 9 October 2000 |
| Kenya | Initial notification Updates | 10 April 2001 - | |
| Korea, Republic of | Initial notification Updates | 27 January 2000 - | 27 January 2000 26 June 2000 <i>(addendum)</i> |
| Kuwait | Initial notification Update | 21 August 2000 13 June 2001 | |
| Kyrgyz Republic | Initial notification Updates | 25, 28 and 29 June 1999 23 December 2000 8 June 2001 19 March 2002 22 October and 3 November 2003 31 January 2005 18 April and 8 November 2006 | 25 June 1999 |
| Latvia | Initial notification Updates | 21 May, 4 June, 15 and 22 July 1999 - | 21 May 1999 |
| Liechtenstein | Initial notification Updates | 6 February, 1 March, 8 May, 7 June and 14 June 1996 - | 20 December 1996 |
| Lithuania | Initial notification Updates | 2 August and 24 October 2001 - | 12 October 2001 |

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|---------------------|-------------------------------------|--|---|
| Luxembourg | Initial notification Updates | 11 July and 8 November 1996, and 10 January 1997 - | 9 September 1997 |
| Macao, China | Initial notification Update | 15 April and 7 May 1997, 31 January, 8 and 21 June 2000 23 January 2002 | 20 April 2000 |
| Malaysia | Initial notification Updates | 31 October 2001 - | 22 November 2001 |
| Malta | Initial notification Update | 7 March and 9 May 2000 17 July 2000 | 9 May 2000 |
| Mauritius | Initial notification Updates | 6 June 2001 25 April 2003 16 January 2008 | |
| Mexico | Initial notification Update | 30 January 2000 20 July 2006 | 24 March 2000 |
| Moldova | Initial notification Updates | 7, 16, 25 and 28 January, and 4 and 12 February 2002 - | 7 January 2002 |
| Mongolia | Initial notification Updates | 3 February 1998 - | 9 November 1998 |

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|--------------------|-------------------------------------|---|---|
| Morocco | Initial notification Updates | 10 October 2000 and 14 and 15 June 2001 27 June 2002 8 April 2003 11 June 2007 | 5 April 2001 |
| Namibia | Initial notification Updates | 2 April 2001 - | 30 March 2001 |
| Netherlands | Initial notification Update | 9 May and 22 July 1996 15 October 1996 | 6 December 1996 |
| New Zealand | Initial notification Updates | 7 November 1995 18 February 1997 18 January 1999 24 February 2003 | 18 February 1997 |
| Nicaragua | Initial notification Updates | 19 March and 28 April 2001 5 June 2008 17 July 2009 | 3 May 2001 |
| Nigeria | Initial notification Updates | 17 September 2001 - | 16 November 2001 |
| Norway | Initial notification Updates | 22 February and 15 May 1996 18 March 1998 5 May 2009 | 22 February 1996 |
| Oman | Initial notification Updates | 9 January 2001 - | |

| WTO Member | Description | Dates of communications of initial notification and updates ¹ | Dates of responses to checklist (IP/C/5) ² |
|-------------------------|-------------------------------------|--|---|
| Pakistan | Initial notification Updates | 17 July and 8 October 2001 - | 4 November 2001 |
| Panama | Initial notification Updates | 4 March 1998 and 5 April 2001 - | 3 June 1998 21 July 1998 <i>(corrigendum)</i> |
| Papua New Guinea | Initial notification Updates | 2 July 1998 11 April 2005 | |
| Paraguay | Initial notification Updates | 10 May and 15 September 2000 - | 18 September 2000 |
| Peru | Initial notification Updates | 31 January 2000 - | 7 August 2000 |
| Philippines | Initial notification Updates | 12 March 2001 3 July 2002 21 February 2009 | 12 March 2001 |
| Poland | Initial notification Updates | 21 December 1995 24 December 1997 9 February 2000 19 April 2000 | 23 March 1998 23 June 2000 <i>(addendum)</i> |
| Portugal | Initial notification Update | 31 January, 3 May, 13 May and 4 June 1996 27 October 1999 | 9 November 1998 |
| Qatar | Initial notification Update | 27 May and 20 June 2002 24 April 2006 | 20 June 2002 |

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|---|-------------------------------------|--|---|
| Romania | Initial notification Updates | 4 November 1996 and 4 July 1997 - | 15 October 1997 |
| Saint Lucia | Initial notification Update | 12 March 2001 20 April 2004 | 12 March 2001 |
| Saint Vincent & the Grenadines | Initial notification Updates | 6 January and 14 October 2009 - | |
| Saudi Arabia | Initial notification Updates | 3 October 2006 - | 9 February 2007 |
| Senegal | | 20 January 1997 | |
| Singapore | Initial notification Update | 28 January 2000 15 April 2009 | 1 March 2000 |
| Slovak Republic | Initial notification Updates | 5 March 1996 27 June 1996 12 November 2008 | 15 August 1997 |
| Slovenia | Initial notification Updates | 25 July 1995 29 July 1996 20 December 1999 4 September 2000 17 April 2001 6 August 2001 22 November 2006 8 January 2007 | 29 July 1996 16 July 2007 <i>(revision)</i> |

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|-----------------------|-------------------------------------|---|---|
| South Africa | Initial notification Update | 20 February 1996 30 April 1999 | 23 February 1998 |
| Spain | Initial notification Updates | 31 January 1996 28 March 1996 6 May 1997 24 June 1999 23 February 2004 | 13 March 1997 |
| Sri Lanka | Initial notification Updates | 4 September 2001 - | |
| Suriname | Initial notification Updates | 2 April 2001 - | 6 March 2002 |
| Swaziland | Initial notification Updates | 22 March 2004 - | 4 June 2007 |
| Sweden | Initial notification Update | 27 December 1995, 30 January, 7 March and 18 April 1996 13 October 2005 | 26 June 1996 |
| Switzerland | Initial notification Updates | 31 January 1996 12 November 1997 12 August 2003 22 August 2008 19 February 2009 | 10 October 1997 12 August 2002 <i>(addendum)</i> 22 August 2006 <i>(addendum)</i> |
| Chinese Taipei | Initial notification Updates | 2 May 2002 - | 2 May 2002 |

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|-----------------------------|----------------------|--|---|
| Thailand | Initial notification | 31 January 2000, 9 January 2001 and 10 September 2002 | |
| | Updates | - | |
| Tonga | Initial notification | 21 April 2009 | |
| | Updates | - | |
| Trinidad and Tobago | Initial notification | 10 March, 7 and 11 April 2000 | 7 April 2000 |
| | Updates | - | |
| Tunisia | Initial notification | 20 July, 6 November 2001, 18 January and 19 March 2002 and 3 January 2003 | 26 November 2001 |
| | Updates | 11 September 2007 22 February 2008 2 February 2009 8 September 2009 | |
| Turkey | Initial notification | 25 January 2000 | 25 January 2000 |
| | Updates | - | |
| Uganda | | 16 August 1996 8 November 2000 | |
| Ukraine | Initial notification | 23 July 2008 | 23 July 2008 |
| | Updates | - | |
| United Arab Emirates | Initial notification | 26 June 2003 | |
| | Updates | - | |
| United Kingdom | Initial notification | 30 January 1996 | 13 September 1996 |
| | Updates | - | |

| WTO Member | Description | Dates of communications of initial notification and updates¹ | Dates of responses to checklist (IP/C/5)² |
|---|--------------------------------------|---|---|
| United States of America | Initial notification Updates | 14 March, 24 May, 11 June and 10 September 1996 23 January 2004 12 February 2004 15 June 1998 5 June 2009 | 26 May 1997 |
| Uruguay | Initial notification Updates | 30 December 1999, 21 February 2000, 14 August, 12, 15, 22 and 23 November 2001 and 13 June 2002 - | |
| Venezuela (Bolivarian Republic of) | Initial notification Updates | 9 March and 15 January 2001 - | 2 April 2001 |
| Viet Nam | Initial notification Updates | 21 January 2008 7 May 2008 7 October 2008 | 21 January 2008 |
| Zambia | | 29 October 1996 28 July 1998 | |
| Zimbabwe | Initial notifications Updates | 19 November 2001 and 1 May 2002 - | |

ANNEX 3

WORLD TRADE
ORGANIZATION

RESTRICTED

IP/C/2

30 November 1995

(95-3867)

Council for Trade-Related Aspects of

Intellectual Property Rights

PROCEDURES FOR NOTIFICATION OF, AND POSSIBLE ESTABLISHMENT OF A COMMON
REGISTER OF, NATIONAL LAWS AND REGULATIONS
UNDER ARTICLE 63.2

Decision of the Council for TRIPS of 21 November 1995

These procedures will be reviewed by the Council, in the light of experience, at the end of 1997, *inter alia* to identify any elements which have proved unduly burdensome in relation to the usefulness of the information provided.

Section 1: General

1. Each Member shall notify to the TRIPS Council, through the WTO Secretariat, its laws and regulations pertaining to the subject matter of the TRIPS Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights), in accordance with the guidelines set out below.

2.1 As of the time that a Member is obliged to start applying a provision of the TRIPS Agreement, the corresponding laws and regulations shall be notified without delay (normally within 30 days, except where otherwise provided by the TRIPS Council).

2.2 Any subsequent amendments of a Member's laws and regulations shall be notified without delay after their entry into force (normally within 30 days where no translation is required and within 60 days where translation is necessary).

3. A Member who has amended a law or regulation to bring it into conformity with provisions of the TRIPS Agreement in advance of its obligation under the TRIPS Agreement to start applying those provisions will use its best endeavours to notify such law or regulation as soon as possible after its entry into force.

4. Where, on the date of its initial notification of a law or regulation relating to a provision of the TRIPS Agreement, a Member has already communicated the law or regulation in question to the International Bureau of WIPO in a language or languages consistent with these guidelines, that Member would be free, if it so wishes, to provide the WTO Secretariat with a statement to the effect that the full text can be found in the WIPO collections, instead of sending the full text to the WTO Secretariat. The WTO Secretariat would seek from the International Bureau of WIPO a copy from its collections which would then be treated in accordance with Sections 2 and 3 below.

5. Wherever possible, notifications shall be made in machine-readable as well as hard copy form.

Section 2: Main dedicated intellectual property laws and regulations

6. Each Member shall notify in a WTO language the texts of its main laws and regulations dedicated to intellectual property. These laws and regulations would include the main laws and regulations on the availability, scope and acquisition of each of the categories of intellectual property covered by the TRIPS Agreement, together with such other main laws and regulations as are dedicated to intellectual property, such as those on border enforcement.

7. These laws and regulations will be immediately circulated in the relevant WTO language by the WTO Secretariat to Members of the TRIPS Council as Council documents. Translation into other WTO languages will only be undertaken by the WTO Secretariat on the request of a Member made in the TRIPS Council and within the limits of the WTO Secretariat's resources.

8. Where an authentic national text of a law or regulation is not available in a WTO language, copies of the authentic text of that law or regulation in a national language shall be notified, in addition to the translation into a WTO language. Such copies shall be available in the WTO Secretariat for consultation by interested delegations.

Section 3: Other laws and regulations

9. This heading relates to all national laws and regulations which are not dedicated to intellectual property rights as such but which nonetheless pertain to the availability, scope, acquisition, enforcement and prevention of abuse of intellectual property rights (notably laws and regulations in the areas of enforcement and the prevention of abusive practices) as well as those laws and regulations dedicated to intellectual property which are not considered "main laws and regulations" falling under Section 2 above.

10. Each Member shall notify these laws and regulations in a national language to the WTO Secretariat. They shall also provide in a WTO language a listing of these laws and regulations, together with a brief description of the relevance of each law and regulation to the provisions of the TRIPS Agreement.

11. This listing will be distributed as a TRIPS Council document to the Members of the TRIPS Council. The copies of the laws and regulations in question will be available for consultation in the WTO Secretariat by interested delegations. Copies will only be distributed as Council documents if a request is made in the TRIPS Council. If such a request is made and where the law and regulation in question has not been notified in a WTO language, the notifying Member shall make available a copy of the law or regulation, or relevant part of the law or regulation, in a WTO language. Members agree to keep such requests to a minimum and, wherever possible, to seek the translation of a particular part of a legislative instrument, rather than request the whole text to be translated.

12. In regard to the provisions of the TRIPS Agreement on enforcement, each Member shall, in addition, provide, as soon as possible after the date of its application of these provisions, responses to the attached checklist of issues contained in document IP/C/5 indicating how its national legislation responds to the requirements of the TRIPS Agreement identified in the checklist. These responses shall identify the relevant provisions of national laws and regulations. The responses will be circulated as a document of the TRIPS Council.
