

Health, Intellectual Property and Biodiversity Programme

MATRIX OF KEY ISSUES IN THE WTO TRIPS COUNCIL

June 2023

The following matrix provides a factual overview and analysis of the standing and non-standing agenda items of the regular session of the WTO TRIPS Council

The matrix also discusses the TRIPS Implementation issues as part of the WTO Doha Development Round of negotiations.

TRIPS COUNCIL AGENDA ITEMS

Issue	Mandate	Description	Current Status
Ministerial Decision on the TRIPS Agreement, 17 June 2022 Paragraph 8 of the Ministerial Decision on	Decision WT/L/1141	the proposal by developing country members for a TRIPS waiver, the 12 th WTO Ministerial Conference on 17 June 2022 adopted a Ministerial Decision	
Decision on the TRIPS Agreement, 17 June 2022 Agenda item 3 and 11		authorization must be used predominantly for domestic purposes, in relation to vaccines for the COVID-19 pandemic and clarifying some of the provisions of TRIPS relating to compulsory licensing and test data protection. Paragraph 8 of the Decision mandated that Members will decide on its extension to therapeutics and diagnostics in no less than six	Informal discussions were held thereafter. Developed countries like Switzerland, EU, UK and Japan that have been generally resistant to a broader TRIPS waiver have called for factual and evidence-based analysis relating to supply, demand, production and distribution of specific drugs, and potential barriers arising from IP. Korea and Mexico sought clarity on the scope of the extension through a definition of drugs and diagnostics. Some members also raised questions on how to ensure drugs that have dual use potential are used only for COVID-19 under this Decision.

Developing countries have submitted a proposal IP/C/W/694 to the TRIPS Council with a decision text extending the MC12 Decision to therapeutics and diagnostics <i>mutatis mutandis</i> for a period of 5 years and any future extensions of the MC12 Decision.
The December 2022 meeting of the TRIPS Council recommended the General Council to extend the deadline for a decision on whether the MC12 Decision on TRIPS should be extended to COVID-19 therapeutics and diagnostics. The December 2022 meeting of the General Council did not take a decision and deferred the matter to the March 2023 session of the General Council. The matter remains open on the agenda of the General Council at the end of the March 2023 session.
Members reaffirmed their stated positions at the March 2023 session of the TRIPS Council and agreed to further continue discussions.
In a related development, the USTR has supported extension of the deadline for a decision on extension of the MC 12 decision and has requested the USITC to conduct an investigation to provide more data on COVID-19 diagnostics and therapeutics. The USITC investigation is expected to be concluded in October 2023.

			In another related development, on 5 May the WHO Director-General declared the end of COVID-19 as a global health emergency.
Issue	Mandate	Description	Current Status
Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics	Decision WT/L/1142	Conference adopted a declaration on the WTO response to the COVID-19 pandemic which among others stated that increasing the level of global preparedness to COVID-19 and future pandemics requires	No proposal has been submitted in the TRIPS Council.
Agenda item 3		strengthened productive, scientific and technological capacity across the world. It also recognized that such capacity is instrumental for developing solutions to public health crises beyond COVID- 19, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, as well as neglected tropical diseases, and for diversifying manufacturing locations. In line with WTO rules, the declaration underscored the importance of promoting technology transfer that	

		contributes to building capacity in related sectors. The declaration also mandated the TRIPS Council to continue or initiate work to analyse lessons learned and challenges experienced during the COVID-19 pandemic.	
Issue	Mandate	Description	Current Status
Covid-19: Measures Regarding Trade-Related Intellectual Property Rights Agenda item 3		WTO Secretariat has prepared a non-exhaustive list of IP measures taken in the context of the Covid-19 pandemic.	WTO secretariat is listing IP related measures taken at national level in response to Covid-19.
Issue	Mandate	Description	Current Status
The relationship between the TRIPS and CBD Agenda Item 5	Para 19 – Doha Ministerial Declaration 2001	The provisions of the TRIPS Agreement come into conflict with provisions of the CBD: -TRIPS does not prevent a person from claiming patent rights on an invention based on a genetic resource or traditional knowledge	This agenda item is currently discussed in the TRIPS Council together with two other agenda items: the review of Article 27.3 (b), and the protection of TK and folklore. In 2006, Brazil, India, Pakistan, Peru, Thailand and Tanzania submitted a proposal (IP/C/W/474) for an amendment to the TRIPS Agreement to introduce Article 29bis requiring mandatory disclosure of country or source of origin of

- TRIPS is indifferent to acts of biopiracy and obligations under the CBD in respect of prior informed consent and benefit sharing for accessing biological resources	č
patent applicants to disclose origin of GR and TK used in a claimed invention. Accordingly, developing countries have proposed that the TRIPS Agreement be amended to introduce a requirement of mandatory disclosure of the country or source of origin of GRs or associated TK used in an invention, and evidence of	A draft decision text (TN/C/W/59) was submitted in April 2011, revised to be consistent with the CBD Nagoya Protocol concluded in October 2010 (Brazil, China, Colombia, Ecuador, India, Indonesia, Peru, Thailand, ACP Group and African Group). The proposal received broad support from developing countries. Joint proposal for modality text linking the disclosure requirement with extension of geographical indications presented at Nairobi WTO Ministerial Conference. Discussions continued in the TRIPS
prior informed consent and access and benefit sharing.	Council. Some developed countries refuse discussion in TRIPS Council, noting that issue is being discussed in WIPO. Developing countries maintain the WIPO and WTO processes are supportive and do not overlap. Overall trend is more countries are adopting a disclosure requirement at the national level.

International agreement on minimum standards is useful for transparency purposes and legal certainty of users.
Developing countries seek since 2011 that the CBD Secretariat (non-observer) be allowed to brief the TRIPS Council concerning the Nagoya Protocol. Chair led consultations inconclusive.
No changes in the positions of the Member Countries on this item

Issue	Mandate	Description	Current Status
Review of Article 27.3 (b)	-		This agenda item is currently discussed in the TRIPS Council together with two other agenda items: the relationship of TRIPS and CBD, and the protection of TK and folklore.
Agenda Item 4	Paragraphs 12 – 19 Doha Ministerial Declaration	 may exclude from patentability plants, animals and essentially biological processes for the production of plants and animals; must allow patents for microorganisms and non- biological and microbiological 	Few proposals have been made under this agenda item that could re-open the Article. Proposal by Bolivia (IP/C/W/545) February 2010 to prohibit the patenting of all life forms, protect innovations of indigenous and local farming communities and continuation of traditional farming practices including the right to save and exchange seeds and sell their harvest, prevent anticompetitive practices which threaten food sovereignty and prevent IPR claims over TK.

plants or animals (terms are	
undefined);	Proposal by Bolivia (IP/C/W/554) March
	2011, to amend Article 27.3(b) to prohibit
- must provide protection for	the patenting of life forms and parts thereof.
plant varieties, either by	
patents or by an effective sui	No changes in the positions of the Member
6	Countries on this item
combination.	

Issue	Mandate	Description	Current Status
Protection of traditional knowledge	01	TRIPS Agreement does not mention traditional knowledge or folklore.	Discussed as part of Review of Article 27.3b and CBD-TRIPS relationship.
and folklore Agenda Item 6	Declaration	Related to the question of how to ensure a mutually supportive relationship of	 2003: Proposal by African Group (IP/C/W/404) to adopt a Decision on Protecting Traditional Knowledge Proposal by Bolivia (IP/C/W/545) February 2010.
		· · · · · · · · · · · · · · · · · · ·	No changes in the positions of the Member Countries on this item

Issue	Mandate	Description	Current Status
ReviewofNationalLegislationAgenda Item 2	Article 63.2 and 63.3 of the TRIPS Agreement	notify to the TRIPS Council the laws and regulations made effective by that member to assist the TRIPS Council in its review of the operation of the TRIPS Agreement. Each WTO member is also required to submit such information in response to a written request from another member. Submitted notifications from WTO members are discussed under agenda item 1 and	1 0

Issue	Mandate	Description	Current Status
	In built in TRIP Agreement Articl 24.2	1	The review process has taken the form of replies from member states, on a voluntary basis, to a checklist of questions (IP/C/13 and Add.1), on the understanding that the responses are without prejudice to the rights and obligations of countries with respect to the GI section of TRIPS.
Agenda Item 9			So far less than 50 members have submitted responses to those questions. At the TRIPS Council session in October 2017, Switzerland submitted an update to its responses initially provided in 1999. The Chair invited members to share information on their bilateral agreements related to the protection of GIs. For the November 2018 session, Ukraine has submitted responses to the checklist of questions (IP/C/W/117/Add.35) For the meeting on 13 and 14 February 2019 Montenegro and Norway responded to the checklist (IP/C/W/117/ADD.36 and IP/C/W/117/ADD.7/REV.1) No new submissions have been made under this agenda item for the October 2021 session of the TRIPS Council
Intellectual Property and	Work Programm on Electroni	0	IP-related issues pertaining to e-commerce have been discussed in the TRIPS Council

the 1998 Work Programme on Electronic Commerce	Commerce (WT/L/274) paragraph 4.1	General Council, in paragraph 4.1 provides that "the Council for TRIPS shall examine and report on the intellectual	E-commerce had regularly featured on the agenda of each TRIPS Council meeting
Agenda Item 12		 connection with electronic commerce. The issues to be examined shall include: protection and enforcement of copyright and related rights; protection and enforcement of trademarks; and 	among Members that continued further study was needed given the novelty and complexity of the intellectual property issues arising in connection with electronic commerce.
			From 1999 to 2001 the following broad proposals were advanced by developed countries in the TRIPS Council: 1) proposal by Switzerland (IP/C/W/286) on the need to discuss the extent to which TRIPS would be applicable to e- commerce, including rights of the author in the Internet; 2) proposal by Australia (IP/C/W/233) identifying future issues,

including patentability of new technology business methods, harmonization of copyrights, internet domain names and enforcement of IP; 3) proposal by EU for further studies on IP and e-commerce, such as its new potentials and new challenges (IP/C/W/224); 4) proposal by US (IP/C/W/149) on emerging issues of IP and e-commerce, including enforcement, extension of copyright protection and shoice of law
choice of law. No formal discussion on e-commerce related issues took place in the TRIPS Council since the Cancun Ministerial Conference in 2003 till the Nairobi Ministerial Conference in 2015.
In 2016 joint communication from Argentina, Brazil and Paraguay (JOB/IP/20) relating to developments within the MERCOSUR on the legal recognition of electronic documents, electronic signatures and advanced electronic signatures.
Canada proposed (IP/C/W/613) for an ad- hoc agenda item in the June 2016 meeting. Canada proposed to undertake an exchange of views on themes related to IP and e- commerce which may be of interest to the least developed, developing and developed countries (IP/C/613/Add.1). Canada also proposed an exchange of views from the

TRIPS Council Membership on the desirability of a dedicated standing TRIPS Council agenda item on the Work Programme on Electronic Commerce or an alternative option such as ad hoc discussions.
Communication by Brazil (JOB/IP/19) submitted in March 2016 relating to areas for developing shared understandings on the issue of national copyright systems in the digital environment. First, the proposal focuses on the management of copyright in the digital environment towards the fair payment for authors and performers, and calls upon WTO Members to stress the increased importance of the principle of transparency in the remuneration of copyright and related rights in the digital environment. Second, the proposal calls upon WTO members assert the principle that copyright exceptions and limitations available in physical formats should also be made available in the digital environment and the use of exceptions and
limitations should not be constrained by technological protection measures. Third, the proposal also calls for reaffirming the territoriality of copyright in the digital environment as a principle of the international trading system. In July 2016, Brazil submitted a non-paper in the WTO General Council (JOB/GC/98)

which called for protection of copyright and authors' rights, in conformity with the Berne Convention for the Protection of Literary and Artistic Works and the TRIPS Agreement, must be addressed in light of new technologies provided by the digital
environment such as streaming and cloud uploading. Joint communication from Canada, Chile,
Colombia, Cote d'Ivoire, the EU, Republic of Korea, Mexico, Moldova, Montenegro, Paraguay, Singapore, Turkey and Ukraine
(JOB/IP/21/Rev2) submitted in January 2017 presents a mapping of trade related elements that are relevant for e-commerce. The mapping includes trade aspects of intellectual property rights as one of the
regulatory issues relevant to e-commerce and generally asserts the importance of IP protection and enforcement as a component of e-commerce and digital economy discussions. No specific IP issue
is raised. Communications from Chinese Taipei (JOB/IP/24, JOB/IP25) submitted in June 2017 states that e-commerce environment should become a new topic for discussion
only if qualitatively different new problems arise which cannot be dealt with satisfactorily in the original articles and rules in the GATT, GATS or TRIPS. It states that protection of privacy, IP, public

morals or national security are frequently- cited reasons for imposing domestic Internet regulations. Accordingly, the submissions called for further discussion in relevant WTO bodies on these issues. However, no specific IP issue was raised for discussion.
Communication from Brunei, Colombia, Costa Rica, Hong Kong (China), Israel, Malaysia, Mexico, Nigeria, Pakistan, Panama, Qatar, Seychelles, Singapore and Turkey (JOB/IP22) submitted in February 2017 does not make any mention of TRIPS or IP issues relating to e-commerce.
Communications from Chinese Taipei (JOB/IP/29, JOB/IP/30) submitted in February 2018 calls for future discussion in WTO on cyberspace trade barriers, e- commerce and taxation and 3D printing. No specific IP issue has been raised.
For the June 2023 session of the TRIPS Council, South Africa has submitted a new proposal (IP/C/W/698). The proposal calls for making IP and e-commerce a standing agenda item. The proposal suggests that Members need to identify the intellectual property issues arising from e-commerce, and discuss appropriate policy responses that address the development concerns, including in relation to the protection of the rights of indigenous artists, creators and

small businesses, while also providing an
appropriate balance to promote economic
development and investment and achieve
the objectives that are set out in the TRIPS
Agreement, including in Article 7, 8 and
66.2. In this regard the proposal presents 9
guiding questions:
1. How can exceptions and
limitations, in the IP system, be used as
tools to ensure that the copyright and
patent systems contribute to the promotion
of innovation and to the dissemination and
transfer of technology?
2. What are Members' experiences in
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applying limitations and exceptions in the
digital environment?
3. Article 40.1 and 40.2 of the TRIPS
Agreement deal with anti-competitive
licensing practices. How have countries
addressed anti-competitive conduct and
structures with respect to e-commerce,
including abuse of IPRs?
4. There is a rapid expansion in the
number of patent applications related to AI
technologies, including AI-assisted
inventions and these may also be protected
through trade secrets. What are countries
adopting to improve access to such
technologies?
5. What IP related policies have
Members implemented in the area of
source code protection, software and
algorithms? What lessons have been
learned in this regard in relation to

 competition, technology transfer and public interest? 6. Countries may establish in their national laws and regulations a series of liabilities for internet service providers (ISPs) & digital platforms. How are these issues addressed to balance IP enforcement with facilitating online use and digital content creation? 7. What are Members' experiences with regards to regulating indigenous people's rights and protections over data, indigenous data privacy, indigenous data governance? 8. What are Members' experiences with regulating data that is derived from vulnerable populations, including rights and protections of those populations. What are the policy rationales for trade rules on e-commerce?' 9. What are the implications of new business models – such as streaming services, e-commerce retailing platforms, machine 	•	1	
learning companies, among others – on the IP system?			 public interest? 6. Countries may establish in their national laws and regulations a series of liabilities for internet service providers (ISPs) & digital platforms. How are these issues addressed to balance IP enforcement with facilitating online use and digital content creation? 7. What are Members' experiences with regards to regulating indigenous people's rights and protections over data, indigenous data privacy, indigenous data sovereignty and indigenous data governance? 8. What are Members' experiences with regulating data that is derived from vulnerable populations, including rights and protections of those populations. What are the policy rationales for this approach to regulation and the implications for trade rules on e-commerce?' 9. What are the implications of new business models – such as streaming services, e-commerce retailing platforms, machine learning companies, among others – on the

Technical Cooperation and capacity building Article 67 Agenda Item 10	In built in TRIPS Article 67	Developed countries are required to provide annual reports on the technical cooperation activities launched in order to facilitate the implementation of the TRIPS Agreement by developing and least- developed country (LDC) Members.	No document.
		Intergovernmental organizations also report on their technical cooperation activities associated to IP.	

Issue	Mandate	Description	Current Status
Non- violation and situation Complaints	WT/MIN(22)/26 Article 64.3 of the	dispute against another even in the case where no violation of an agreement has occurred, when the country considers	The TRIPS Agreement (Article 64.2) temporarily bans non-violation and situation disputes. Currently, non- violation complaints cannot be brought to the WTO dispute
Agenda Item 7	requires the TRIPS Council to examine the scope and modalities for complaints of the types provided for	expected benefit because of another government's action, or because of any other situation that exists. For the time being there is a	moratorium has been extended till the 13 th Ministerial Conference by the 12 th Ministerial Conference in

XXIII:1(b) and (c) of GATT 1994, made pursuant to the TRIPS Agreement	complaints under the TRIPS Agreement. This means that members cannot initiate these complaints in respect to the TRIPS Agreement.	Members have agreed not to undertake this exercise. The General Council has continuously extended the moratorium on their application to the TRIPS agreement. Argentina, Bolivia, Brazil, Colombia, Cuba, Ecuador, Egypt, India, Kenya, Malaysia, Pakistan, Peru, Sri Lanka and Venezuela submitted paper in IP/C/W/385 for why non-violation complaints should not apply to TRIPS. The United States presented a paper in June 2014 (IP/C/W/599) aimed at ending the moratorium so that non- violation complaints can be applicable to the TRIPS Agreement. No progress in Chair's informal consultations. Moratorium on non-violation complaints on TRIPS is linked (politically) to the moratorium on custom duties on electronic transmissions
		Moratorium on non-violation complaints on TRIPS is linked (politically) to the moratorium on
		Moratorium extended by 2017 WTO Ministerial Conference in Buenos Aires till the next WTO Ministerial Conference.

			The October 2021 session of the TRIPS Council agreed to recommend the Ministerial Conference to adopt a decision extending the moratorium until the next Ministerial Conference (JOB/IP/52).
Issue	Mandate	Description	Current Status
Review of the TRIPS Agreement Agenda Item 8	In built in Article 71.1	Art 71.1: The Council for TRIPS shall review the implementation of the TRIPS Agreement after the expiration of the transitional period referred to in paragraph†2 of Article†65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.	No proposals have been tabled.

Issue	Mandate	Description	Current Status
IP and	Ad hoc agenda item	Submission by Australia,	The proposal call for a discussion on
Innovation:		China, the EU, Hong Kong	the IP issues relating to international

Research Collaboratio n Across Borders Agenda Item 13	Switzerland, the separate customs territory of Taiwan,	research collaboration based on the following non-exhaustive guiding questions: 1) What are some of the international collaborations your country is involved in? For example, public- public, public-private, private- private? 2) What are some of the reasons for these collaborations? Why or how did they arise? 3) What are some of the benefits and challenges that have arisen as a result of these collaborations? 4) How have parties participating in international
		 considerations with respect to the collaboration? 5) Has your country seen more international collaboration as digital tools and technology have evolved? 6) Real-world cases can often provide the most illustrative examples. Are there any examples or case studies of international collaboration that particularly stand out in your country?

Observers - Pending Requests Agenda Item 15	The TRIPS Council may accept observers on a permanent or ad hoc basis.	For the October 2022 meeting, the requests from the following international intergovernmental organizations for observer status in the Council for TRIPS are still pending, including:
		 Secretariat of the Convention on Biological Diversity (CBD); South Centre
		Many delegations continue to support the inclusion of the South Centre.Support towards the South Centre would be much welcome.