



## BACKGROUND NOTE

### PROPOSAL TO PERMANENTLY EXCLUDE NON-VIOLATION AND SITUATION COMPLAINTS FROM THE WTO TRIPS AGREEMENT

20 September 2017

#### 1. Background

At the time of conclusion of the TRIPS Agreement, there was no agreement on whether to allow such complaints under the Agreement. As the negotiations on this issue remained inconclusive at the end of the Uruguay Round, a 5 year moratorium on non-violation complaints was provided under Article 64.2 of TRIPS. Accordingly, the TRIPS Council was requested to examine the scope and modalities of non-violation complaints under TRIPS during this period and submit recommendations to the Ministerial Conference. However, the TRIPS Council has been unable to arrive at an agreement on this issue. The moratorium has been extended 6 times by the WTO Ministerial Conference, with the latest extension made by the tenth Ministerial Conference in Nairobi till the eleventh Ministerial Conference to be held in 2017. Further extension of the moratorium on non-violation and situation complaints along with extension of the moratorium on e-commerce will be critical issues in the TRIPS Council in lead up to the eleventh WTO Ministerial Conference in Buenos Aires in December 2017.

In a communication dated 24 July 2015 by Peru on behalf of Argentina, Bolivia, Brazil, China, Colombia, Cuba, Ecuador, Egypt, India, Indonesia, Kenya, Malaysia, Pakistan, The Russian Federation, Sri Lanka and Venezuela proposed that the WTO Ministerial Conference adopt a decision text contained in document IP/C/W/607. Kyrgyzstan had submitted a communication to the March 2016 session of the TRIPS Council joining as a co-sponsor of the proposal.

The proposed decision text is as follows:

*The Ministerial Conference decides as follows:*

*We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to our Decision of 11 December 2013 on “TRIPS Non-Violation and Situation Complaints” (WT/MIN (13)/31);*

*After having examined the issue of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994, the 10th Ministerial Conference decides that those provisions of GATT 1994 shall not apply to the settlement of disputes under the TRIPS Agreement.*

The proposed decision text seeks to permanently exclude the application of non-violation and situation complaints to disputes arising under the TRIPS Agreement. This proposal follows an

earlier proposal submitted by the same group of countries in May 2015 that the Council for TRIPS recommend to the Ministerial Conference that complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under the TRIPS Agreement (IP/C/W/385/Rev.1).

The WTO Agreements with the exception of TRIPS allows WTO members to challenge a measure by another member even if it is compliance with the obligations under the relevant agreement, where the attainment of the objectives of the Agreement is impeded or the benefits accruing under that Agreement are nullified or impaired due to such measures or the existence of any other situation. Thus, non-violation complaints seek to render international liability for injurious consequences of lawful acts.

While traditionally such complaints were applicable in exceptional circumstances to disputes arising under GATT, this was extended to GATS after the Uruguay Round. There was no agreement on whether to allow such complaints under TRIPS and a 5 year moratorium on non-violation complaints was provided under Article 64.2 of TRIPS.

The TRIPS Council was requested to examine the scope and modalities of non-violation complaints under TRIPS during this period and submit recommendations to the Ministerial Conference. The TRIPS Council has been unable to arrive at an agreement on this issue.

The moratorium has been extended 5 times by the WTO Ministerial Conference, with the latest extension made by the ninth Ministerial Conference in Bali till 2015. The Chair of the TRIPS Council in 2013 undertook consultations with member States to intensify discussions on modalities and scope of non-violation and situation complaints. The TRIPS Council in 2013 recommended the Ministerial Conference to extend the moratorium for a two-year period. Any decision of the Ministerial Conference to approve the recommendations of the Council or to extend the moratorium have to be made “only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process” (article 64.3). The ninth Bali Ministerial Conference in December 2013 had decided to extend the moratorium until the 31 December 2015.

## **2. Bali Ministerial Conference Decision on TRIPS Non-violation and Situation Complaints**

The Ministerial Conference *decides* as follows:

“We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to our Decision of 17 December 2011 on “TRIPS Non-Violation and Situation Complaints” (WT/L/842), and direct it to continue its examination of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 and make recommendations to our next Session, which we have decided to hold in 2015. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement.”

### 3. Legal Basis

#### **Article XXIII of GATT 1994: Nullification or Impairment**

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of
  - (a) the failure of another contracting party to carry out its obligations under this Agreement, or
  - (b) the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or

#### **Article 64 of the TRIPS Agreement: Dispute Settlement**

- “1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.
2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.
3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.”

### 4. The Problem with Non-Violation Complaints under TRIPS

The following concerns in respect of non-violation complaints under TRIPS should be noted:

1. Non-violation complaints were introduced under the pre-WTO GATT agreement to ensure that the balance of tariff negotiations are not undermined by non-tariff measures that may be consistent with the rules under GATT 1947. However, this traditional justification for non-violation complaints has been removed by the introduction of disciplines on non-tariff measures under the WTO Agreements.
2. Non-violation complaints under TRIPS could lead to incoherence among TRIPS and other WTO Agreements. Non-violation complaints under TRIPS could be used to challenge measures that have been taken in accordance with provisions in the GATT and its covered agreements or GATS.
3. Introduction of non-violation complaints under TRIPS could enable legal challenges to regulatory and public policy measures that may be consistent with the obligations under the TRIPS Agreement. For example, public health measures such as issuance of compulsory licenses, or packaging restrictions on harmful products could be challenged even if these are consistent with TRIPS obligations if non-violation complaints are allowed. Unlike non-violation complaints in GATT, where a finding of nullification or impairment of the expected

benefits would lead to an adjustment of the impugned tariff measure, in TRIPS this would lead to an amendment of the substantive obligations under the agreement. In this way, it can undermine the balance of rights and obligations and interests of right holders and users in TRIPS.

4. Non-violation complaints could lead to narrowing the scope of flexibilities under the TRIPS Agreement. The experience of non-violation complaints under GATT suggests that the existence of non-violation complaints has led the panels to adopt a narrow interpretation of the provisions of GATT. For example, while TRIPS requires the grant of patents in all fields of technology if the patentability criteria are satisfied, it does not define what is novelty, inventive step or industrial applicability. This allows for diversity in the treatment of patent applications in different territories which enables developing countries to define what is patentable very narrowly. If non-violation complaints were allowed, it is possible that decisions to reject a patent based on a strict definition of the patentability criteria may be challenged. Therefore, non-violation complaints would seriously impair the balance of rights and obligations enshrined under TRIPS.

## 5. Past Discussions in the TRIPS Council

Discussions on the scope and modalities regarding non-violation complaints under TRIPS have remained inconclusive despite discussions in the TRIPS Council for almost two decades. Both developed and developing countries raised similar concerns as mentioned above in their submission to the TRIPS Council. In 1999, a submission by Canada (IP/C/W/127) stated that applying non-violation complaints to IP may constrain Members' ability to introduce important measures in many vital areas. Echoing the concerns raised by Canada, in 2002 a group of developing countries (Argentina, Bolivia, Brazil, Colombia, Cuba, Ecuador, Egypt, India, Kenya, Malaysia, Pakistan, Peru, Sri Lanka and Venezuela) made a submission (IP/C/W/385) in the TRIPS Council stating that the application of non-violation and situation complaints in TRIPS is unnecessary.

The reasons included the following:

- a) the TRIPS Agreement is a *sui generis* agreement that is not intended to provide market access or balance tariff concessions;
- b) in view of the balance of rights and obligations in the TRIPS Agreement and the explicit statement in article 1 of TRIPS that members are not required to grant more extensive protection of IP than required under TRIPS, it does not create any expectation of benefits extraneous to the express provisions of TRIPS;
- c) non-violation complaints under TRIPS are not necessary to protect commitments under the GATT or GATS; and
- d) good faith implementation of TRIPS in accordance with general principles of international law is sufficient.

It was also pointed out that attempts by proponents of allowing non-violation complaints in TRIPS to clarify and narrow the definition of measures under TRIPS that could give rise to non-violation complaints does not prevent the creation of legal uncertainty and the possibility

of undermining the TRIPS flexibilities. It was also pointed out that Article 26 of the WTO Dispute Settlement Understanding (DSU) and GATT/WTO jurisprudence on non-violation and situation complaints does not provide sufficient guidance for assessing the implication of allowing such complaints under TRIPS. Therefore, it was proposed that the TRIPS Council should recommend to the Ministerial Conference that non-violation and situation complaints be determined to be inapplicable to TRIPS.

In May 2003, the TRIPS Council chairperson had listed four possibilities for a recommendation on this issue: (1) banning non-violation complaints in TRIPS completely, (2) allowing the complaints to be handled under the WTO's dispute settlement rules as applies to goods and services cases, (3) allowing non-violation complaints but subject to special "modalities" (i.e. ways of dealing with them), and (4) extending the moratorium.

The United States (US) presented a new paper in February 2014 arguing for the end of the moratorium on non-violation and situation complaints under TRIPS (IP/C/W/599). For analysis of the paper, see point 7 below.

Most members favour banning non-violation complaints completely (option 1) similar to the proposal by developing countries under IP/C/W/385, or extending the moratorium (option 4). Option 3 – allowing non-violation complaints under TRIPS as applicable in GATT and GATS will be absolutely detrimental to the interests of developing countries and can impair the full use of the TRIPS flexibilities by developing countries. However, since 2002, discussions on allowing non-violation complaints through special modalities have remained inconclusive.

During the session of the TRIP Council in June 2016, the Chair of the TRIPS Council undertook informal consultation before the TRIPS Council session in June 2016 and suggested that some elements describing possible scope and modalities be put together that could in principle frame the application of non-violation and situation complaints under TRIPS. However, some member States held the view that proposals regarding scope and modalities for the applicability of non-violation and situation complaints should be made by interested member States and should not be the initiative of the WTO Secretariat or the Chair of the TRIPS Council. Some member States also held the view that discussions on scope and modalities are redundant if non-violation and situation complaints are inapplicable to disputes arising under TRIPS. Discussions remained inconclusive and the TRIPS Council requested the Chair to continue informal consultations with delegations. The situation remained unchanged at the end of the June 2017 session of the TRIPS Council.

## **6. WTO Jurisprudence on Non-Violation and Situation Complaints**

There have been very few cases where non-violation disputes were brought before the WTO.

Under the GATT 1947, non-violation claims were brought in eight cases. The non-violation claims were successful in three cases and the report was adopted by the panel, 2 cases were successful but the report was not adopted by the panel, and three such cases were unsuccessful. Since the establishment of the WTO, non-violation claims have been brought in 5 cases. However, none of the post-WTO non-violation cases have been successful.

*Pre-WTO disputes with non-violation claims*

Dispute	Year	Claim	Outcome on non-violation claim
Australia-Ammonium Sulphate	1950	Violation, alternatively non-violation	Adopted by panel
Germany - Sardines	1952	Violation, alternatively non-violation	Adopted by panel
EEC-Oilseeds	1990	Violation, alternatively non-violation	Adopted by panel
EEC-Citrus	1985	Violation, alternatively non-violation	Not adopted
EEC-Canned Fruit	1985	Non-violation	Not adopted
Uruguayan Recourse	1962	Non-violation	Claim rejected
Japan-Semiconductors	1960	Violation, alternatively non-violation	Claim rejected
US- Agricultural Waiver	1990	Non-violation	Claim rejected

*Post- WTO disputes with non-violation claims*

Dispute	Year	Agreement	Claim	Outcome on non-violation claim
Japan- Film	1998	GATT	Violation, alternatively non-violation	Claim rejected
EC- Asbestos	2000	GATT, SPS, TBT	Violation, alternatively non-violation	Claim rejected
EC-Asbestos	2001	GATT, SPS, TBT	Violation, alternatively non-violation	Claim rejected
Korea-Government Procurement	2000	Agreement on Government Procurement	Violation, alternatively non-violation	Claim rejected
India-Patents	1997	TRIPS; DSU	Violation, and non-violation under Article 3.8 of DSU	Claim rejected

It is noteworthy that most of the few cases in GATT-WTO jurisprudence where non-violation claims have been brought are not solely based on non-violation claims, but are presented as alternative claims to specific claims of violations of relevant provisions of applicable trade agreements. It is also noteworthy that since the establishment of the WTO with a diverse

range of rules on multiple aspects of trade going beyond tariff concessions, no successful non-violation claim has been made by the complaining party. Further, the no non-violation claim has been brought under GATS.

Significantly, though non-violation complaints are currently not allowed under TRIPS, in *India-Patents*, the US claimed that India's failure to establish a mailbox system constituted a nullification or impairment of benefits under TRIPS, based on a rule in the DSU. Rejecting this claim, the Panel stated that in accordance with the Vienna Convention on the Law of Treaties, the provisions of TRIPS must be interpreted in good faith which requires the protection of legitimate expectations derived from the protection of intellectual property rights provided for in the Agreement. This interpretation suggests that application of non-violation complaints to TRIPS is not necessary.

Since the introduction of non-violation complaints in GATT, over 60 years only two countries (US and EC) have brought non-violation complaints. One commentator has observed that non-violation complaints are mainly open to countries with significant legal human capital making it an unaffordable luxury to the immense majority of WTO members. Moreover, it has been observed that the lack of uniformity and clarity regarding non-violation complaints in WTO jurisprudence has jeopardized the security and predictability of the WTO dispute settlement system. While in some cases the panels have refrained from interpreting what constitutes non-violation complaints, in other cases panels have adopted diverse and conflicting interpretations. Nor have the panels been able to consistently define the scope of application of non-violation complaints.

This is particularly relevant in the context of discussions on modalities and scope of non-violation complaints under TRIPS. Since the WTO jurisprudence itself does not provide clarity on the meaning and scope of non-violation complaints, even if the TRIPS Council were to agree on special disciplines for non-violation complaints, the uncertainty created by WTO jurisprudence will also render the interpretative uncertainty to any such disciplines.

## **7. Comments on the US Paper on Non-Violation and Situation Complaints under TRIPS (IP/C/W/599)**

1. Comment on Paragraph 2.3 - The US contends that Article 64 of TRIPS clearly states that non-violation complaints would apply to TRIPS after 5 years since the establishment of the WTO, and any extension of the moratorium shall only be by consensus. Thus, the negotiators of TRIPS clearly envisioned the application of non-violation complaints to TRIPS. However, the US paper fails to recognize that the initial 5 year moratorium was provided by the TRIPS negotiators because there was no agreement in the negotiations on the applicability of non-violation complaints to TRIPS. The objective of the moratorium period was to examine the scope and modalities i.e. whether non-violation and situation complaints are appropriate for TRIPS; if so, the extent to which such complaints should be allowed; and the modalities or processes that have to be followed in respect of such complaints, if allowed. It should be stressed that none of these questions have been settled yet and that is why the moratorium has been extended by all Ministerial Conferences that have been held so far. So long as there is no agreement on the scope and modalities of non-violation and situation complaints, it cannot be said that Article 64 of TRIPS mandates the application of non-violation and situation complaints to the TRIPS Agreement. In fact, Article 64.3 clearly states that the TRIPS Council shall examine the scope and modalities for such complaints and

submit recommendations to the Ministerial Conference for approval. It states further that any decision of the Ministerial Conference to approve such recommendations (from the TRIPS Council) or extend the moratorium shall be made only by consensus. So the decision on whether to make non-violation and situation complaints applicable to TRIPS or whether to extend the moratorium has to be made by the Ministerial Conference upon consideration of the report of the TRIPS Council on this matter. Further, the rule of decision by consensus applies not only to the extension of the moratorium but also to the application of non-violation and situation complaints. Therefore, without consensus in the Ministerial Conference, non-violation and situation complaints cannot be made applicable to TRIPS.

2. Comment on Paragraph 3.10 - The US cites the observation by the Panel in Korea-Procurement case to suggest that non-violation complaints may be applicable to not just to agreements making tariff concessions, but also to non-traditional agreements with negotiated disciplines. However, as the US itself argues, the TRIPS Agreement is regarded by the US as a market access agreement, and therefore, TRIPS establishes specific legal rules applying to IP that clarifies the scope of market access in relation to technological and creative products. In this sense, the TRIPS agreement diminishes the need for non-violation complaints.

3. Comment on Paragraph 3.10 - It is difficult to argue that non-violation complaints are required to protect concessions made in the TRIPS Agreement itself. The US has offered no explanation of why existing obligations in the TRIPS Agreement are inadequate to protect the standards established in the Agreement. Moreover, they offer no suggestions about how or when the non-violation remedy would apply to the TRIPS Agreement, and how this would benefit WTO Members.

4. Comment on Paragraph 4.3 – The US argues that the TRIPS Agreement is a market access agreement and cites the Preamble of TRIPS where it states that the objective of TRIPS is to prevent distortions and impediments to international trade and ensure that measures and procedures to enforce IP do not in themselves become barriers to legitimate trade. Indeed, this objective of the Preamble of TRIPS makes it clear that IP protection and enforcement should not constitute barriers to legitimate trade and therefore appropriate measures may be taken to mitigate IP rights and their enforceability to facilitate legitimate international trade. While such measures will not be in violation of the TRIPS Agreement, enabling non-violation complaints would open up such measures to challenges that will have the effect of undermining international trade.

5. Comment on Paragraph 4.9 – It should also be noted that the TRIPS Agreement, unlike other market access agreements, do not involve an exchange of rights and obligations where concessions are made in exchange of concessions received.

6. Comment on Paragraphs 4.11 – The US argues that non-violation complaints under TRIPS will not introduce incoherence and upset the balance between various WTO Agreements because under Article 3.2 of the Dispute Settlement Understanding (DSU) the DSB cannot add to or diminish the rights under the covered agreements. However, the US fails to acknowledge that applying non-violation complaints to TRIPS will amount to establishing an entirely new cause of action under TRIPS. The US also asserts that it is highly unlikely that a panel would rule that something a WTO Member had agreed to under one part of the Marrakesh Agreement would nullify or impair benefits agreed to under another part of the single undertaking. However, this assertion does not note that as part of a single undertaking, all WTO obligations apply cumulatively, and consequently something that is



consistent with one WTO agreement (e.g. GATT) may still be found to nullify and impair benefits under another (e.g. TRIPS).

7. Comments on Paragraphs 4.18 to 4.22 – There is insufficient guidance – including in Article 26 of the DSU and in GATT dispute practice – for panels and the Appellate Body to apply non-violation complaints in the context of the TRIPS Agreement. Only three successful non-violation complaints were adopted in the entire history of the GATT, leaving WTO Members with little substantive development and application of the concept. Article 26 of the DSU merely restates the traditional view that detailed justification must support a complaint, and that a finding of non-violation does not require withdrawal of the measure but rather some other mutually satisfactory adjustment. It provides no guidance on the proper nature and scope of non-violation complaints, the appropriate modalities, or how they may be applied in the specific context of the TRIPS Agreement. Consequently, in the absence of appropriate guidance, panels or the Appellate Body would be required to apply the concept of non-violations to the TRIPS Agreement on an ad-hoc, case-by-case basis.

8. The US paper does not address specific concerns of developing countries. First, extending the non-violation remedy introduces legal uncertainty that may exacerbate the difficulties faced by developing countries when responding to the claims of other Members. Many WTO Members, especially some developing countries, lack the resources to make full use of the WTO's dispute settlement system to protect their rights to secure trade. Extending the non-violation remedy to the TRIPS Agreement may increase the number and complexity of claims facing developing countries, making it more difficult for them to defend their interests against challenges by more powerful WTO Members. Second, many developing countries have had little experience of the modalities or scope of the non-violation remedy. Third, LDCs that have the benefit of the transition period are not in a position to assess the implications of non-violation under TRIPS. In this context, the US assertion that non-violation will be an exceptional remedy must be seen with caution.

## **8. Strategic Considerations**

From the perspective from developing countries, the aim should continue to be to reach agreement for a final solution from the General Council in 2017 to recommend against allowing non-violation or situation complaints under TRIPS, as has been proposed in document IP/C/W/607. The fall-back position should be a continuation of the moratorium. Developing countries would not gain from the application of non-violation complaints to the TRIPS Agreement. It would also be a costly instrument to implement. Rather, it would serve as an additional tool by developed countries (in addition to the widely used free trade agreements, US Section 301 watch list, etc.) to increase pressure on developing countries and LDCs to implement obligations on intellectual property in a manner that is beyond the requirements of the TRIPS Agreement, reducing further the scope for the design of policy and implementation of balanced and development-friendly national intellectual property law.

It will also be important for developing countries to consider the discussions on the moratorium on non-violation and situation complaints strategically in the context of demands by developed countries including the US (which is seeking a waiver of the moratorium on non-violation and situation complaints under TRIPS) for making the moratorium on e-commerce permanent. In terms of the e-commerce moratorium, members will not charge import duties on electronic transmissions. The moratorium was part of the 1998 WTO

Ministerial Declaration directing the WTO General Council to establish a comprehensive work programme on e-commerce to examine all trade-related issues arising from e-commerce. The work programme was adopted by the General Council in September 1998 setting out the areas of work for the relevant WTO bodies (Council for Trade in Services, Council for Trade in Goods, TRIPS Council and the Council for Trade and Development). The Doha Ministerial in 2001 had agreed to continue with the work programme and the General Council agreed to hold “dedicated” discussions on cross-cutting issues, i.e. issues whose potential relevance may “cut across” different agreements of the multilateral system. So far, there have been five discussions dedicated to electronic commerce, held under General Council’s auspices. Participants in the dedicated discussions hold the view that the examination of these cross-cutting issues is unfinished, and that further work to clarify these issues is needed.

Developed countries that have recently intensified efforts in the WTO to establish new rules on e-commerce, would benefit from a permanent moratorium on application of import duties on electronic transmissions or transactions from developed countries to developing countries. On the other hand, many developing countries are of the view that the discussions on e-commerce in the various WTO bodies have not advanced substantially to make any decision regarding the moratorium. In this context, the demand by developing countries for a permanent moratorium on non-violation and situation complaints could be an important trade-off for any future agreement on having a permanent moratorium on e-commerce.

**Annex 1**

IP/C/W/607  
29 July 2015

(15-3895) Page: 1/1

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

Original: English

**NON-VIOLATION AND SITUATION COMPLAINTS**

COMMUNICATION FROM ARGENTINA, THE PLURINATIONAL STATE OF BOLIVIA, BRAZIL, CHINA, COLOMBIA, CUBA, ECUADOR, EGYPT, INDIA, INDONESIA, KENYA, MALAYSIA, PAKISTAN, PERU, RUSSIAN FEDERATION, SRI LANKA AND THE BOLIVARIAN REPUBLIC OF VENEZUELA

The Permanent Mission of Peru, on behalf of Argentina, the Plurinational State of Bolivia, Brazil, China, Colombia, Cuba, Ecuador, Egypt, India, Indonesia, Kenya, Malaysia, Pakistan, Russian Federation, Sri Lanka and the Bolivarian Republic of Venezuela has requested, in a communication dated 24 July 2015, that the attached draft decision on "Non-violation and situation complaints" for consideration at the 10th Ministerial Conference of the WTO be circulated to Members.

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**Ministerial Conference  
Tenth Session  
Nairobi, 15-18 December 2015**

**TRIPS NON-VIOLATION AND SITUATION COMPLAINTS  
MINISTERIAL DECISION OF \*\*\*\*\* DECEMBER 2015**

The Ministerial Conference decides as follows:

We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to our Decision of 11 December 2013 on "TRIPS Non-Violation and Situation Complaints" (WT/MIN (13)/31);

After having examined the issue of the scope and modalities for complaints of the types provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994, the 10th Ministerial Conference decides that those provisions of GATT 1994 shall not apply to the settlement of disputes under the TRIPS Agreement.