



Health, Intellectual Property and Biodiversity Programme

MATRIX OF KEY ISSUES IN THE WTO TRIPS COUNCIL

November 2024

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 of 6-7 November

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
<p>Review of implementation of the TRIPS Agreement under article 71.1</p> <p>Agenda item 9</p>	<p>Article 71.1 of TRIPS Agreement</p>	<p>Article 71 of the TRIPS Agreement, titled "<i>Review and Amendment</i>", establishes that the Council for TRIPS shall review the implementation of the 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.</p> <p>It is widely agreed that this article remains unimplemented to date.</p> <p>A draft Ministerial Declaration on TRIPS for Development was proposed by India for the 13th Ministerial Conference, that included call to instruct the TRIPS Council to undertake and finalize its first review of Article 71. It called that in undertaking this work, the TRIPS Council shall be guided by the objectives and principles set out in articles 7 and 8 of the TRIPS agreement and take fully into account the development dimension and shall provide a report on the progress made, including any recommendations, to the Ministers of the 14th conference. There was no agreement on this</p>	<p>On 15 April 2024, Colombia made a proposal to the TRIPS Council for a global review of the TRIPS Agreement, within the framework of Article 71.1 of the Agreement.</p> <p>At the Council's formal meetings on 25-26 April, and 10 July 2024, the Chair recalled that the Council was required under Article 71 to review the Agreement, having regard to the experience gained in its implementation, and that it had not discharged this obligation.</p> <p>The Chair continues consultations with Members and group coordinators.</p> <p>In May 2024, the Secretariat circulated a note with information on regular review procedures followed in selected WTO bodies. Further, the Chair circulated questions to Members in order to gain a better understanding of Members' expectations regarding the review process.</p> <p>A summary of the responses received to these questions was circulated on 28 June 2024. On 8 July 2024, the Chair also circulated a note on "Common elements on format, methodology and timeline" of the Article 71.1 Review, which she had drawn from consultations with Members and group coordinators. An updated version of this</p>

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		proposal during the 13 th Ministerial Conference.	<p>note was circulated on 27 September and 31 October 2024.</p> <p>See also https://mailchi.mp/southcentre/southnews-wto-members-head-towards-a-global-review-of-the-trips-agreement-en-es?e=68bd9f2db7.</p>
<p>Notifications under provisions of the Agreement</p> <p>Agenda item 1</p>	<p>Articles 63.2, 67, other notifications (Arts. 1.3, 3.1, 4(d), 9.1, 31 <i>bis</i>, TRIPS Ministerial Decision WT/L/1141)</p>	<p>Members are invited to discuss their domestic laws and regulations under the TRIPS Agreement. Article 63.2 requires notification of laws and regulations related to IP rights, while Article 67 mandates developed countries to provide technical and financial cooperation to developing and least developed countries. Article 69 calls for the establishment of contact points for information exchange on trade in infringing goods. Members must notify the Council of any changes in eligibility for protection (Article 1.3), exceptions to national treatment (Article 3.1), or MFN treatment (Article 4(d)), as well as their intent to use provisions from the Berne or Rome Conventions. They must also notify the Council if they plan to utilize the special compulsory licensing system for medicines, established by the 30 August 2003 General Council Decision and included in the amended TRIPS Agreement Article 31<i>bis</i>. Moreover, members are also required to notify any measure related to the implementation of the MC12 TRIPS Decision.</p>	<p>Notifications under article 63.2 have been submitted by Australia, Ireland, Malta, the Netherlands and Ukraine.</p> <p>Belize and India have communicated national contact points established under article 69.</p> <p>No other notification has been submitted by members.</p>

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<p>Reviews of national implementing legislation</p> <p>Agenda item 2</p>	<p>Article 63.2</p>	<p>Each WTO member is required to submit information about its laws and regulations, and final judicial decisions and administrative rulings of general application, pertaining to the subject matter of this Agreement, in response to a written request from another member.</p> <p>Submitted notifications from WTO members are discussed under agenda item 1 and requests for information from other members are discussed under agenda item 2 on review of national legislations.</p>	<p>No reviews are currently pending. The Council will consider preparing for the review of the implementing legislation of Samoa, which agreed to apply the TRIPS Agreement no later than 1 July 2013 and graduated from LDC status on 1 January 2014.</p>
<p>IP, COVID-19 and Pandemic Preparedness</p> <p>Agenda item 3</p>	<p>MC 12 TRIPS Decision (WT/L/1141), MC12 Pandemic Declaration (WT/L/1142)</p>	<p>Since July 2020, the TRIPS Council has discussed IP measures related to COVID-19 and has broadened focus to include pandemic preparedness. Renamed "IP, COVID-19, and Pandemic Preparedness" in April 2024, this agenda item now encompasses obligations from the MC12 TRIPS Decision and the Pandemic Declaration, which call for Members to share measures on implementing these decisions and to analyze pandemic-related challenges. The Council continues to explore lessons learned, as reaffirmed in the Abu Dhabi Ministerial Declaration.</p> <p>The WTO Secretariat has listed IP-related measures taken at national level in response to COVID-19 on the WTO website.</p>	<p>Joint proposal from Bangladesh, Colombia, Egypt, and India on TRIPS and development (IP/C/W/708) pursuant to the MC12 Pandemic Declaration to analyze lessons learned and challenges experienced during the COVID-19 pandemic, in order to build effective solutions in case of future pandemics.</p> <p>It urges the TRIPS Council to reassess the TRIPS Agreement with a focus on lessons from COVID-19 to better support pandemic preparedness, particularly for developing countries. The proposal calls for an accelerated review of its alignment with the Convention on Biological Diversity to enhance protections for traditional knowledge. It emphasizes the importance of facilitating technology transfer and information</p>

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		<p>No communication has been submitted by any member on measures taken to implement the MC12 TRIPS Decision.</p>	<p>sharing, especially to LDCs, to strengthen local production capacities during health emergencies. Additionally, the proponents call to review TRIPS flexibilities—such as those in the Doha Declaration on Public Health—so that countries can respond swiftly to future pandemics with broader access to essential health products.</p>
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<p>Review of Article 27.3 (b) Agenda Item 4</p>	<p>Specified in TRIPS Agreement Article 27.3 (b) Paragraphs 12 – 19 Doha Ministerial Declaration</p>	<p>The issue is whether the article is balanced or needs to be amended.</p> <p>Article 27.3(b) establishes that countries:</p> <ul style="list-style-type: none"> - 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 processes for the production of plants or animals (terms are undefined); - must provide protection for plant varieties, either by patents or by an effective sui generis system or a combination. <p>Few proposals have been made under this agenda item that could re-open the Article. A proposal by Bolivia (IP/C/W/545) in February 2010 to prohibit the patenting of all life forms, protect innovations of indigenous and local</p>	<p>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.</p>

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		<p>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.</p> <p>Proposal by Bolivia (IP/C/W/554) March 2011, to amend Article 27.3(b) to prohibit the patenting of life forms and parts thereof.</p>	
<p>The relationship between the TRIPS and CBD</p> <p>Agenda Item 5</p>	<p>Para 19 – Doha Ministerial Declaration 2001</p>	<p>The provisions of the TRIPS Agreement come into conflict with provisions of the CBD:</p> <ul style="list-style-type: none"> -TRIPS does not prevent a person from claiming patent rights on an invention based on a genetic resource or traditional knowledge - 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 - TRIPS does not require patent applicants to disclose origin of GR and TK used in a claimed invention. <p>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</p>	<p>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.</p> <p>A draft Ministerial Declaration on TRIPS for Development was proposed by India for the 13th Ministerial Conference, that included call to instruct the TRIPS Council to expedite the ongoing work to examine the relationship between the TRIPS Agreement and the CBD, and the protection of folklore. There was no agreement on this proposal during the 13th Ministerial Conference.</p> <p>The overall trend is that more countries are adopting a disclosure requirement at the national level, this will continue given the newly adopted WIPO treaty that establishes an international disclosure requirement.</p>

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		<p>invention, and evidence of prior informed consent and access and benefit sharing.</p> <p>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 GRs or associated TK used in an invention, and evidence of prior informed consent and access and benefit sharing. In July 2008 a draft modality text (TN/C/W/52) was submitted with the support of 108 countries.</p> <p>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.</p> <p>A joint proposal was made for a modality text linking the disclosure requirement with extension of geographical indications presented at Nairobi WTO Ministerial Conference. Discussions continued in the TRIPS Council.</p>	<p>A proposal was made to mandate the TRIPS Council to accelerate negotiation on a disclosure requirement in the WTO 13th Ministerial in 2024, not agreed.</p> <p>Developing countries have proposed since 2011 that the CBD Secretariat (non-observer) be allowed to brief the TRIPS Council. Chairs have led consultations, inconclusive.</p> <p>Developing countries have also proposed that the WTO Secretariat be tasked with preparing a report updating the status of this agenda, not agreed to date.</p>

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<p>Protection of traditional knowledge and folklore</p> <p>Agenda Item 6</p>	<p>Paragraphs 12 - 19 of Doha Ministerial Declaration</p>	<p>TRIPS Agreement does not mention traditional knowledge or folklore.</p> <p>Related to the question of how to ensure a mutually supportive relationship of TRIPS and CBD (elements of TK protection included)</p> <p>2003: Proposal by African Group (IP/C/W/404) to adopt a Decision on Protecting Traditional Knowledge</p> <p>Proposal by Bolivia (IP/C/W/545) February 2010.</p>	<p>Discussed as part of Review of Article 27.3b and CBD-TRIPS relationship.</p>
<p>Annual Review of the Special Compulsory Licensing System</p> <p>Agenda Item 7</p>	<p>Paragraph 7 of the Annex to the amended TRIPS Agreement (Article 31 <i>bis</i>)</p> <p>Paragraph 6 of the Doha Declaration on TRIPS and Public Health</p>	<p>Article 31 <i>bis</i> implements a special compulsory licensing system whereby a country may issue a compulsory license (CL) for producing and exporting pharmaceutical products to an LDC or a country that has none or insufficient pharmaceutical manufacturing capacity and has issued a notification as per the requirements of Annex 2 to the TRIPS Agreement.</p> <p>The TRIPS Council conducts an annual review functioning of the special compulsory licensing system.</p>	<p>Document JOB/IP/80 presents the annual report for 2024 reviewing the functioning of the special compulsory licensing system. 139 WTO members have accepted this amendment including Timor Leste and Tunisia in 2022. However, most of the countries that have accepted the Protocol have not ratified it. For countries that have not ratified or accepted the Protocol, the Paragraph 6 decision under the Doha Declaration continues to operate which makes this special CL system available to them as well.</p> <p>No specific case of actual use of this special CL system has occurred since the amendment came into force (there is only</p>

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			<p>one instance of this being used before in the case of Canada and Rwanda). However, Bolivia, Antigua and Barbuda have notified to the TRIPS Council of their intention to use the system as importing members. Bolivia has also specifically notified its intention to use the system for importing COVID-19 vaccines. However, no member has submitted any notification of using the system as an exporting Member.</p>
<p>Review of Application of the Provisions of the Geographical Indications (GIs) section of the TRIPS Agreement</p> <p>Agenda Item 10</p>	<p>In built in TRIPS Agreement Article 24.2</p>	<p>Article 24.2 requires the TRIPS Council to keep under review the application of the GI section of TRIPS.</p>	<p>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.</p> <p>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.</p> <p>For the November 2018 session, Ukraine had submitted responses to the checklist of questions (IP/C/W/117/Add.35)</p>

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			<p>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)</p> <p>No new submissions have been made under this agenda item for the November 2024 session of the TRIPS Council</p>
<p>Twenty-second annual review under paragraph 2 of the decision on the implementation of article 66.2 of the TRIPS Agreement</p> <p>Agenda Item 11</p>	<p>In built in the TRIPS Agreement Article 66.2</p>	<p>Article 66.2 requires developed countries to provide incentives to their enterprises and institutions to promote and encourage technology transfer to Least Developed Countries (LDCs).</p> <p>The General Council adopted a decision on the implementation of Article 66.2 that obliges developed countries to provide detailed annual reports on the actions taken to implement their commitments (IP/C/28).</p> <p>Independent reviews of the reports on Article 66.2 reflect difficulty in evaluating whether developed countries are complying with their obligations under Article 66.2.</p> <p>LDCs have called for clear definitions and parameters to have indicators to evaluate the implementation of Article 66.2. “Proposed Format for Reports”, (IP/C/W/561), and Questions by LDCs on the reports (IP/C/W/562), October 2011.</p>	<p>Annual review meetings are held to discuss the effectiveness of the mechanism to ensure compliance by developed countries on Article 66.2.</p> <p>For the TRIPS Council session in November 2024, reports were submitted by Switzerland, New Zealand, Norway, Japan, UK, US, and Canada for discussion.</p> <p>The content focuses on general activities and do not specifically refer to incentives provided to their enterprises for technology transfer as required in Article 66.2.</p>

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		<p>Continued concern that the reports are not focusing on reporting on developed country government incentives to private enterprises to transfer technology to LDCs.</p> <p>For various years, this agenda item discusses limited reports by certain countries (mainly Switzerland, Japan, Australia, EU and USA – not always submitted) which have a broad understanding of what technology transfer entails. University scholarships and grants are usually included, and any binding mechanisms are rejected by such delegations based on the fact that technologies being held by private companies. LDCs have voiced explicit opposition to this limited understanding on behalf of the LDCs and provided suggestions for improvement, including the creation of focal points.</p>	

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<p>Technical Cooperation and capacity building Article 67</p> <p>Agenda Item 12</p>	<p>In built in TRIPS Article 67</p>	<p>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.</p> <p>Intergovernmental organizations also report on their technical cooperation activities associated with IP.</p>	<p>Submissions from Switzerland, Canada, New Zealand, UK, US, Japan, GCC, WIPO, UNCTAD, WCO, WHO and WTO Secretariat.</p> <p>Continued concern that the submissions by developed countries on technical cooperation are similar to those reports for activities under Article 66.2 on technology transfer.</p>
<p>Non-violation and situation Complaints</p> <p>Agenda Item 8</p>	<p>Article 64.2, Decision WT/L/1194</p> <p>Article 64.3 of the TRIPS Agreement requires the TRIPS Council to examine the scope and modalities for complaints of the types provided for under Article XXIII:1(b) and (c) of GATT 1994, made pursuant to the TRIPS Agreement</p>	<p>Non-violation and situation complaints allow a country to bring on a dispute against another even in the case where no violation of an agreement has occurred, when the country considers that the others action or a situation has deprived of an expected benefit because of another government’s action, or because of any other situation that exists.</p> <p>For the time being there is a ban on non-violation complaints under the TRIPS Agreement. This means that members cannot initiate these complaints in respect to the TRIPS Agreement.</p>	<p>The TRIPS Agreement (Article 64.2) temporarily banned non-violation and situation disputes. Currently, non-violation complaints cannot be brought to the WTO dispute settlement procedure. The moratorium has been extended till the 13th Ministerial Conference by the 12th Ministerial Conference in June 2022.</p> <p>The TRIPS Council is required to examine the scope and modalities for these types of complaints. To date, Members have agreed not to undertake this exercise. The General Council has continuously extended the moratorium on their application to the TRIPS agreement.</p> <p>Argentina, Bolivia, Brazil, Colombia, Cuba, Ecuador, Egypt, India, Kenya, Malaysia,</p>

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			<p>Pakistan, Peru, Sri Lanka and Venezuela submitted a 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.</p> <p>No progress in Chair's informal consultations.</p> <p>Moratorium on non-violation complaints on TRIPS is linked (politically) to the moratorium on custom duties on electronic transmissions.</p> <p>Moratorium extended several times, most recently by the 2024 WTO Ministerial Conference in Abu Dhabi until the next WTO Ministerial Conference.</p>
<p>Intellectual property and innovation: Education on IP</p> <p>Agenda Item 13</p>	<p>Ad hoc agenda item</p>	<p>Submission by Australia; Canada; Chile; the European Union; Hong Kong, China; Israel; Japan; Korea, Republic of; New Zealand; Singapore; Switzerland; Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; UK and the US (IP/C/W/715)</p>	<p>The proposal advocates for enhanced education on IP across multiple educational levels and disciplines. It emphasizes the importance of integrating IP awareness into curricula, from primary schools to tertiary education, across fields like STEM and SHAPE, and calls for collaboration between IP offices, educators and industries to create effective resources and programs.</p>

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<p>Observer status for international intergovernmental organizations</p> <p>Agenda Item 15</p>		<p>The TRIPS Council may accept observers on a permanent or ad hoc basis.</p>	<p>For the November 2024 meeting, requests from the following international intergovernmental organizations for observer status in the Council for TRIPS are still pending, including:</p> <ul style="list-style-type: none"> •Secretariat of the Convention on Biological Diversity (CBD); •South Centre