



Analysis of Intellectual Property Issues Ahead of the WTO 14th Ministerial Conference

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ABSTRACT

This policy brief analyses the issues pertaining to the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) that were discussed in the General Council meeting on 16-17 December 2025. Despite the strategic importance of these issues, the divergence on TRIPS issues and on the priorities for the future work of WTO among Members did not allow the General Council to decide on any of these matters. None of the issues were noted for decision in the 14th Ministerial Conference (MC14), which is scheduled to be hosted in Yaoundé, Cameroon in March 2026. This reluctance of some Members to engage substantively on intellectual property (IP) issues has become a regular dynamic in the TRIPS Council. However, the MC14 should, at the least, decide to extend the moratorium on TRIPS Non-Violation and Situation Complaints and extend the period for acceptances by Members of the Protocol Amending the TRIPS Agreement. Moreover, there is an understanding that all issues remain on the table, regardless of whether they are taken up at the Conference.

KEYWORDS: Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), World Trade Organization (WTO), General Council, 14th Ministerial Conference (MC14), TRIPS Council, Intellectual Property, Moratorium on TRIPS Non-Violation and Situation Complaints, Protocol Amending the TRIPS Agreement, Technology Transfer, Least Developed Countries (LDCs), G-90, Article 31bis

Ce rapport sur les politiques analyse les questions relatives à l'Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce (Accord sur les ADPIC) de l'Organisation mondiale du commerce (OMC) qui ont été examinées lors de la réunion du Conseil général des 16 et 17 décembre 2025. Malgré l'importance stratégique de ces questions, les divergences entre les Membres sur les questions relatives à l'Accord sur les ADPIC et sur les priorités des travaux futurs de l'OMC n'ont pas permis au Conseil général de prendre des décisions sur ces points. Aucune de ces questions n'a été inscrite à l'ordre du jour de la 14e Conférence ministérielle (CM14), qui doit se tenir à Yaoundé, au Cameroun, en mars 2026. La réticence de certains Membres à s'engager de manière substantielle sur les questions de propriété intellectuelle (PI) est devenue une dynamique récurrente au sein du Conseil des ADPIC. Toutefois, la CM14 devrait au moins décider de proroger le moratoire sur les plaintes pour non-violation et les plaintes de situation au titre des ADPIC, ainsi que de prolonger le délai accordé aux Membres pour accepter le Protocole portant amendement de l'Accord sur les ADPIC. En outre, il est entendu que toutes les questions restent à l'ordre du jour, qu'elles soient ou non abordées lors de la conférence.

MOTS-CLÉS: Accord sur les aspects des droits de propriété intellectuelle qui touchent au commerce (ADPIC), Organisation mondiale du commerce (OMC), Conseil général, 14e Conférence ministérielle (CM14), Conseil des ADPIC, propriété intellectuelle, moratoire sur les plaintes pour non-violation et les plaintes de situation au titre des ADPIC, Protocole portant amendement de l'Accord sur les ADPIC, transfert de technologie, pays les moins avancés (PMA), G-90, article 31bis

KEY MESSAGES

- "... given the inability of the WTO Members to reach consensus on the scope and modalities of non-violation and situation complaints over 29 years since the adoption of the TRIPS Agreement, it would be pertinent for the General Council to recommend for the WTO Ministerial Conference to adopt a decision making such complaints inadmissible under TRIPS. Alternatively, the Ministerial Conference must extend the moratorium as in the past."
- "The G-90 proposal represents a constructive effort to revitalize the implementation of Article 66.2 of the TRIPS Agreement. By offering a voluntary, non-binding tool grounded in established principles and current best practices, the submission provides a tangible pathway for progress. It reframes the issue from a point of contention to an opportunity for collaborative, practical action."
- "While extending the acceptance deadline for the Protocol incorporating Article 31bis is a procedural step to allow more members time to ratify—potentially broadening the system's applicability—it does not address underlying flaws. Instead of routine extensions, the General Council should instruct the TRIPS Council to investigate why certain members have not accepted the Protocol and to evaluate the real-world impact of Article 31bis, including reasons for the system's non-use."

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Este informe sobre políticas analiza las cuestiones relativas al Acuerdo sobre los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio (Acuerdo sobre los ADPIC) de la Organización Mundial del Comercio (OMC) que se debatieron en la reunión del Consejo General celebrada los días 16 y 17 de diciembre de 2025. A pesar de la importancia estratégica de estos temas, las divergencias entre los Miembros en relación con las cuestiones de los ADPIC y con las prioridades para la futura labor de la OMC impidieron que el Consejo General adoptara decisiones al respecto. Ninguna de las cuestiones se incluyó para su decisión en la 14ª Conferencia Ministerial (CM14), prevista para celebrarse en Yaundé, Camerún, en marzo de 2026. Esta renuencia de algunos Miembros a participar de manera sustantiva en las cuestiones relacionadas con la Propiedad Intelectual (PI) se ha convertido en una dinámica habitual en el Consejo de los ADPIC. Sin embargo, la CM14 debería, como mínimo, decidir prorrogar la moratoria sobre las reclamaciones por situaciones y por incumplimiento del Acuerdo sobre los ADPIC y ampliar el plazo para que los Miembros acepten el Protocolo de Enmienda del Acuerdo sobre los ADPIC. Además, se entiende que todas las cuestiones siguen sobre la mesa, independientemente de que se aborden o no en la Conferencia.

PALABRAS CLAVES: Acuerdo sobre los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio (ADPIC), Organización Mundial del Comercio (OMC), Consejo General, 14.ª Conferencia Ministerial (CM14), Consejo de los ADPIC, Propiedad intelectual, Moratoria sobre las reclamaciones por situaciones y por incumplimiento del Acuerdo sobre los ADPIC, Protocolo de Enmienda del Acuerdo sobre los ADPIC, Transferencia de tecnología, Países menos adelantados (PMA), G-90, Artículo 31bis.

本简报分析了在2025年12月16日至17日世界贸易组织 (WTO) 总理事会上讨论的、与《世界贸易组织与贸易有关的知识产权协定》(TRIPS协定) 相关的议题。尽管这些议题具有战略重要性, 但成员方在TRIPS议题及世界贸易组织未来工作优先事项上的分歧, 导致总理事会未能就任何事项作出决定。所有议题均未被列入定于2026年3月在喀麦隆雅温得举行的第十四届部长级会议 (MC14) 的决策议程。部分成员国在知识产权议题上缺乏实质性参与的做法, 已成为TRIPS理事会的常态。但第十四届部长级会议至少应决定延长《与贸易有关的知识产权协议》非违约和情况申诉的暂停期, 并延长成员接受《修订与贸易有关的知识产权协议议定书》的期限。此外, 各方达成共识: 无论会议是否讨论, 所有议题均保留在谈判桌上。

关键词: 《与贸易有关的知识产权协定》(TRIPS), 世界贸易组织 (WTO), 总理事会, 第十四届部长级会议 (MC14), TRIPS理事会, 知识产权, TRIPS非违反之诉和情势之诉暂停期, 《TRIPS协定修正案议定书》, 技术转让, 最不发达国家 (LDCs), G-90, 第31条之二

1. Introduction

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) Council is the body within the World Trade Organization (WTO) that is mandated to monitor the operation of the TRIPS Agreement, in particular, Members' compliance with their obligations, and to provide a forum for consultations on trade-related intellectual property (IP) matters. It reports to the General Council. The Ministerial Conferences are the highest decision-making bodies of the WTO.

The South Centre regularly provides updates on developments

and analysis of the issues on the TRIPS Council agenda.¹ The TRIPS Council has been stuck in a pattern where few issues are substantively discussed, while some Members eagerly try to bring dynamism back to the discussion.² In the run up to the 14th Ministerial Conference (MC14), Members are advancing their priorities, among which intellectual property does not feature prominently. This Policy brief analyses the intellectual property issues that were part of the agenda of the WTO General Council meeting held on 16-17 December 2025.

2. Improving the Reporting on Incentives Provided by Developed Countries to their Enterprises for Technology Transfer to Least Developed Countries

The G-90—a coalition of the African Group, the African, Caribbean and Pacific States (ACP), and the Least Developed Country (LDC) Group—submitted a formal communication (document IP/C/W/727) to the TRIPS Council and the Committee on Trade and Development, Special Session (CTD SS). This document, a revision incorporating feedback from member consultations, presents a strategic proposal designed to break the long-standing implementation deadlock on technology transfer obligations for LDCs.

The core legal foundation for this proposal is Article 66.2 of the TRIPS Agreement. This provision mandates that developed country Members shall provide incentives to enterprises and institutions in their territories to promote and encourage technology transfer to LDCs. The specified objective is to enable LDCs to establish a "sound and viable technological base." The G-90's communication seeks to operationalize this mandate by outlining the specific objectives and tools required for more meaningful implementation.

The central element of the proposal is to reach agreement on a "non-binding, voluntary illustrative list of incentives." This is intended to offer a practical guide for developed countries to report on or design effective programs and meet their obligations under Article 66.2. It would not impose any new legal obligations. The G-90 requested the General Council instruct the TRIPS Council to consider using the illustrative list. The G-90 also proposed that the list be "reviewed periodically to ensure relevance to evolving technological needs." The proposal designates the TRIPS Council as the primary venue for substantive deliberations, suggesting that discussions be advanced through established mechanisms such as informal thematic sessions and the annual workshops dedicated to Article 66.2.

The first set of examples of possible incentives in the illustrative list is derived from the original illustrative list submitted by the LDC Group in 2018 (document RD/IP/24) for promoting technology transfer. They can be seen in the table on the next page.

¹ See, e.g., South Centre Health, Intellectual Property and Biodiversity Programme, Matrix of Key Issues in the WTO TRIPS Council, November 2024. Available from <https://www.southcentre.int/matrix-of-trips-council-issues-18-november-2024/>.

² See, e.g., Communication Related To Having Technical, Informal And In-Depth Discussions At The Council For TRIPS On Various Issues, Communication From Brazil, Colombia, India And South Africa, WTO document IP/C/W/723, 30 October 2025.

A second set of examples comes from an analysis of 2024 reports³ submitted by developed country Members and reflects innovative, possibly effective practices. They include:

- Co-financing private sector investments and matching funds that can leverage public resources to mitigate investment risks, thereby incentivizing private sector involvement in technology transfer programs targeted at LDCs.

- Trade and export facilitation that embeds technology transfer into normal commercial activity by easing export procedures and providing trade finance, which cuts friction and cost.

- Ecosystem and infrastructure development focusing on building innovation hubs, research and development (R&D) facilities, and incubators in LDCs, strengthening local capacity rather than relying on one-off transfers.

- Quality infrastructure linkages tying public support to measurable standards milestones, shifting attention from inputs to outcomes that help LDCs meet global market requirements.

- Comprehensive infrastructure incentives with a combined package of tax advantages, risk guarantees, and procurement preferences that could attract firms willing to establish substantial R&D or innovation infrastructure in LDCs.

The G-90 proposal represents a constructive effort to revitalize the implementation of Article 66.2 of the TRIPS Agreement. By offering a voluntary, non-binding tool grounded in established principles and current best practices, the submission provides a tangible pathway for progress. It reframes the issue from a point of contention to an opportunity for collaborative, practical action.

In our view, there should be support for the proposal for the General Council to instruct the TRIPS Council to consider the list of examples illustrated in the proposal for further discussions in the formal TRIPS Council sessions in 2026.

3. TRIPS Non-Violation and Situation Complaints – Moratorium

The TRIPS Council has regularly recommended a draft ministerial decision for the extension of the moratorium of the non-application of non-violation and situation complaints (NVCs) under TRIPS. When the TRIPS Council adopts this recommendation well ahead of a Ministerial Conference, it sends a positive signal to Ministers of agreement reached and allows the membership to focus on the other items on the agenda that still remain to be resolved. However, the TRIPS Council to date has not agreed on any recommendation on this issue.

Colombia has submitted a communication to the General Council to update on the discussions on NVCs relating to disputes under TRIPS (document WT/GC/W/976).

Incentive Category	Mechanism / Description	Examples
Financial & Investment	Providing direct funding, risk mitigation, or preferential financial treatment to stimulate private sector investment in LDC technology projects.	Incentives to invest; Funds for low-carbon tech; Government funds for technological access; Grant or risk insurance.
Fiscal Incentives	Using the tax system, such as exemptions or credits, to encourage enterprises to transfer technology to LDCs.	Tax exemption for enterprises transferring technology.
Procurement & Tendering	Leveraging government purchasing power by awarding merit points in tenders for proposals that include technology transfer to LDCs.	Awarding additional merit points in government tenders for proposals with a technology transfer plan.
Public Sector R&D	Facilitating the direct transfer to LDCs of publicly funded innovations, intellectual property, and technology generated by government projects.	Issuing government technology licenses; Transferring technology from government-funded projects.
Direct Support	Offering targeted support, such as voucher schemes, to reduce the costs for enterprises acquiring specific inputs for LDC-focused projects.	Provision of a voucher scheme for the acquisition of inputs.

³ See WTO document IP/C/R/TTI/EU/5, IP/C/R/TTI/CAN/5, IP/C/R/TTI/GBR/5, IP/C/R/TTI/CHE/5, IP/C/R/TTI/NOR/5, IP/C/R/TTI/NZL/4, IP/C/R/TTI/USA/5, IP/C/R/TTI/AUS/5, IP/C/R/TTI/JPN/5, IP/C/R/TTI/NZL/3. Available from [https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=\(+%40Symbol%3d+\(ip%2f*+and+%40Title%3d+\(implem*+and+66.2+not+\(least*+or+decision\)\)\)\)+&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(+%40Symbol%3d+(ip%2f*+and+%40Title%3d+(implem*+and+66.2+not+(least*+or+decision))))+&Language=ENGLISH&Context=FomerScriptedSearch&languageUIChanged=true).

The dispute settlement system of the WTO is a cornerstone of the multilateral trading system. Most disputes brought before it involve allegations that a Member has violated a specific agreement or broken a formal commitment. However, WTO law also provides for a distinct category of dispute designed to address situations where the spirit, rather than the letter, of an agreement is undermined.

Based on this concept, a Member can initiate a dispute even when no explicit rule has been broken. Accordingly, disputes could be raised challenging measures that nullifies or impairs a benefit that could be expected to arise from a covered agreement. These are known as a “non-violation complaint”.⁴ Another form of complaint that could be raised are “situation complaints” - where the existence of a situation could be deemed to be nullifying or impairing a benefit under a covered agreement even though no identifiable measure exists. To do so, the complaining Member must demonstrate that an action taken by another Member, or any other existing situation, has deprived it of an expected benefit under a WTO agreement. This mechanism ensures that the negotiated balance of concessions is preserved and not nullified by unforeseen policy measures.

The application of NVCs to the complex and sensitive field of intellectual property rights has been a subject of long-standing contention. This disagreement led to a temporary arrangement to not apply NVCs until there is consensus on the scope and modalities of such complaints in respect of TRIPS, effectively suspending the use of such complaints from its inception.

This suspension, or “moratorium”, was established during the final negotiations of the Marrakesh package that created the WTO. Article 64.2 of the TRIPS Agreement stipulated that non-violation complaints would not be permitted for an initial five-year period, from 1995 to 1999. Since the end of that initial term, the moratorium has been consistently extended with Members agreeing not to initiate NVCs. The primary justification has been rooted in significant public policy considerations. This moratorium is supported by many developing countries as essential for preserving their regulatory autonomy, or “policy space,” to utilize TRIPS flexibilities and address, in particular, public health crises without the threat of legal challenges that could have a chilling effect on legitimate domestic policy.

The moratorium on TRIPS NVCs is not a permanent feature of the Agreement; its continuation depends on the consensus of the WTO membership, which must periodically decide to extend it. The work program on this issue is therefore defined by the decisions taken at the Ministerial Conferences.

The mandate currently in force stems from the 13th Ministerial Conference (MC13) held in Abu Dhabi. The formal decision, issued on 2 March 2024 (WT/L/1194), directs the next phase of work for the TRIPS Council:

“We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant

⁴ See Nirmalya Syam, *Non-Violation and Situation Complaints under the TRIPS Agreement: Implications for Developing Countries*, Research Paper, No.109 (South Centre, Geneva, 2020). Available from <https://www.southcentre.int/research-paper-109-may-2020/#more-14204>.

to our Decision of 17 June 2022 on “TRIPS Non-Violation and Situation Complaints” (document WT/L/1137), 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 the 14th Ministerial Conference. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement.”

This decision contains two core directives for the TRIPS Council: first, to continue its examination of the scope and modalities for NVCs, and second, to present formal recommendations on the matter to the 14th Ministerial Conference. Crucially, the decision reaffirms that the moratorium remains in effect while this work is underway.

Despite this clear mandate, subsequent discussions within the TRIPS Council have not yielded an agreed outcome. According to the communication from Colombia, “no consensus has been reached,” revealing a clear diplomatic impasse. The membership is divided, with a vast majority favouring the moratorium’s continuation or even making it permanent, while only the United States and Switzerland have expressed reservations. In light of this deadlock, the TRIPS Council has left the agenda item open for continued discussion—signifying the start of the negotiation cycle leading to the MC14.

In our view, given the inability of the WTO Members to reach consensus on the scope and modalities of non-violation and situation complaints over 29 years since the adoption of the TRIPS Agreement, it would be pertinent for the General Council to recommend for the WTO Ministerial Conference to adopt a decision making such complaints inadmissible under TRIPS. Alternatively, the Ministerial Conference must extend the moratorium as in the past.

This is particularly pressing, considering that there is significant pressure on developing countries to continue with a moratorium on customs duties on electronic transmissions (e-commerce moratorium), that reduces their policy space on fiscal policy.⁵ However, the linkage between the e-commerce moratorium and the TRIPS NVCs moratorium is merely a strategic link and not a legal one. The negotiation on the TRIPS NVCs and the electronic commerce transmissions moratorium should not be linked, considering each separately on their own merit.

Given that the General Council has not taken any decision, Members in the TRIPS Council will need continue to negotiate and agree on a recommendation to the 14th Ministerial Conference.

4. Acceptance Period and Review of the Special Compulsory Licensing System under the TRIPS Agreement Amendment

4.1 Extension of the acceptance period

⁵ See Rashmi Banga, *WTO Moratorium on Customs Duties on Electronic Transmissions: How much tariff revenue have developing countries lost?*, Research Paper, No. 157 (Geneva, South Centre, June 2022). Available from <https://www.southcentre.int/research-paper-157-3-june-2022/>.

Document IP/C/103, submitted by the WTO Secretariat, recommends that the WTO General Council once again extend the deadline for Members to accept the amendment incorporating Article 31*bis* to the TRIPS Agreement which established a special compulsory licensing system enabling export of pharmaceutical products under a compulsory license to Members with insufficient or non-existent pharmaceutical manufacturing capacity, through acceptance of the “Protocol Amending the TRIPS Agreement” (WT/L/641). This Protocol is the legal mechanism created to implement the “Decision of the General Council of 6 December 2005 on the Amendment of the TRIPS Agreement.”

The Protocol officially took effect and entered into force on 23 January 2017, based on formal acceptance of the Protocol by two-thirds of the WTO Members. For the remaining Members, its provisions become binding only upon their individual acceptance, as per paragraph 3 of Article X of the WTO Agreement. The proposed extension was sought due to the fact that several Members have not accepted the Protocol yet, and the process is taking longer than anticipated.

Initially open for acceptance until 1 December 2007, the deadline has been extended nine times by the General Council, with the most recent “2023 Extension Decision” (document WT/L/1180) setting it to 31 December 2025. A TRIPS Council report indicates that 25 Members have still not accepted the Protocol, prompting the request for a further extension.

The General Council also agreed to the recommendation by the TRIPS Council to extend the period for acceptance of the Protocol Amending the TRIPS Agreement.

4.2 Review of the compulsory licensing system

The General Council also considered the TRIPS Council's report on the annual review of the special compulsory licensing system adopted by the Waiver of 30 August 2003 (General Council Decision WT/L/540) pursuant to paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, now incorporated into the TRIPS Agreement amendment. Despite ongoing capacity-building and technical assistance from the WTO Secretariat, the system remains practically unused nearly two decades after the Protocol's adoption.

This lack of utilization has prompted arguments, echoed in South Centre analysis,⁶ that the mechanism is ineffective due to its burdensome requirements. While extending the acceptance deadline is a procedural step to allow more Members time to ratify—potentially broadening the system's applicability—it does not address underlying flaws. Instead of routine extensions, the General Council should instruct the TRIPS Council to investigate why certain Members have not accepted the Protocol and to evaluate the real-world impact of Article 31*bis*, including rea-

⁶ See, e.g., Carlos M. Correa, “Will the Amendment to the TRIPS Agreement Enhance Access to Medicines?”, Policy Brief, No. 57 (Geneva, South Centre, 2019). Available from https://www.southcentre.int/wp-content/uploads/2019/01/PB57_Will-the-Amendment-to-the-TRIPS-Agreement-Enhance-Access-to-Medicines_EN-1.pdf.

sons for the system's non-use. Such discussions have been absent from prior reviews and incorporating them into the TRIPS Council's regular agenda would enable a comprehensive assessment, potentially leading to revisions that make the system more practical and effective.⁷ This approach reconciles the need for procedural flexibility with the imperative for substantive reform, ensuring that ratification efforts align with improvements to the mechanism's functionality.

5. Conclusion and Recommendations

There has been little progress on issues raised by the Global South on IP at the WTO. This reflects the reluctance of developed countries to move beyond the status quo towards more fair and balanced international trade-related IP rules. For all other TRIPS issues, the understanding remains that all issues remain on the table, regardless of whether or not they are taken up at the 14th Ministerial Conference.

At the 14th Ministerial Conference, developing countries must ensure that a decision is taken with the effect of non-application of non-violation and situation complaints to the TRIPS Agreement. At the least, there should be an extension of the current moratorium. Beyond the Conference, developing countries should continue advancing substantive discussions in the TRIPS Council and General Council on key TRIPS issues including support for the G-90's proposal on technology transfer incentives under Article 66.2, making non-violation complaints permanently inadmissible under TRIPS, and advancing dialogue on why the Article 31*bis* compulsory licensing system remains unused.

Developing countries should pursue more open, technical, and in-depth discussions in the TRIPS Council on the various submissions developing countries have made for substantive engagement,⁸ including to have technical presentations and informal sessions on the relationship between TRIPS and the Convention on Biological Diversity, the World Intellectual Property (WIPO) Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge, examining data on trends on intellectual property and trade, and other cross-cutting issues. As part of shaping the future direction of the WTO, developing countries should make a priority the review of the impact of the implementation of the TRIPS Agreement⁹ and sustain a robust engagement on the matter leading into the 14th Ministerial Conference and beyond.

⁷ Nirmalya Syam, Viviana Munoz, Carlos M. Correa and Vitor Ido, “The Doha Ministerial Declaration on TRIPS and Public Health on its Twentieth Anniversary”, Policy Brief, No.107 (Geneva, South Centre, 2021). Available from <https://www.southcentre.int/policy-brief-107-november-2021/#more-17974>.

⁸ WTO document IP/C/W/723. Available from <https://docs.wto.org/dol2fe/Pages/SS/DirectDocsFM.aspx?MeetingId=240722&Language=e>.

⁹ See Nirmalya Syam, *Towards a Development Oriented TRIPS Review Under Article 71.1*, Research Paper, No. 229 (Geneva, South Centre, 2026). Available from https://www.southcentre.int/wp-content/uploads/2026/01/RP229_Towards-a-Development-Oriented-TRIPS-Review-Under-Article-71.1_EN.pdf.

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