



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

**DRAFT REPORT**

The Chair of the Council for TRIPS circulates the attached draft Report for consideration by Members. Delegations are invited to provide any comments they may have to the Secretariat in writing by 29 January 2024 c.o.b.

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**PARAGRAPH 8 OF THE MINISTERIAL DECISION ON THE TRIPS AGREEMENT  
ADOPTED ON 17 JUNE 2022**

**REPORT TO THE GENERAL COUNCIL**

1. Paragraph 8 of the Ministerial Decision on the TRIPS Agreement<sup>1</sup> adopted on 17 June 2022 (the "Decision") provides that

[n]o later than six months from the date of this Decision, Members will decide on its extension to cover the production and supply of COVID-19 diagnostics and therapeutics.

2. Since the adoption of the Decision in 2022, Members have held extensive discussions in this regard in informal consultations in various formats, as well as at all formal and informal meetings of the TRIPS Council in 2022 and 2023.

3. Delegations have exchanged views, asked questions, and provided responses, clarifications, and information, including through new submissions circulated as documents [RD/IP/49](#), [IP/C/W/693](#), [RD/IP/51](#) and [IP/C/W/694](#). Delegations engaged actively and their detailed substantive exchanges helped clarify various aspects and nuances of positions.

4. While delegations remain committed to the common goal of providing timely, equitable and secure access to high-quality, safe, efficacious and affordable medical technologies for all, disagreement persists on whether an extension of the Decision to cover the production and supply of COVID-19 diagnostics and therapeutics is necessary or appropriate to address any inequitable distribution of such COVID-19 related products.

5. On 6 December 2022 a group of 65 Members tabled a proposal for the General Council to extend the Decision *mutatis mutandis* to COVID-19 therapeutics and diagnostics.<sup>2</sup> Other Members preferred to continue fact- and evidence-based discussions on whether there are IP- and TRIPS-related barriers to accessing COVID-19 therapeutics and diagnostics, and on the exact scope of a potential extension of the Decision.

6. Following a recommendation by the TRIPS Council<sup>3</sup>, the General Council, at its meeting on 19 December 2022, agreed to extend the deadline for a decision under paragraph 8 of the Decision. At its subsequent meeting on 6-7 March 2023, the General Council agreed that it would keep the

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<sup>1</sup> Document [WT/L/1141](#).

<sup>2</sup> Document [IP/C/W/694](#).

<sup>3</sup> Document [IP/C/95](#), of 16 December 2022.

question of the duration of the extension on its agenda. In the meantime, substantive discussions would continue in the Council for TRIPS.

7. In order to broaden the base for further fact- and evidence-based discussions, the Council for TRIPS held a "Thematic Session for External Stakeholder Input" on 28 September 2023. This provided an opportunity for more than 20 representatives from data analysts, international organizations, civil society, business and academia to share facts, evidence and experiences relevant to the Council's discussions on this issue. The interventions at this thematic session reflected a broad spectrum of views, and provided more detail and analysis on certain elements of this long-running debate. A report on the thematic session was circulated in document [IP/C/W/706](#).

8. On 19 October 2023, Members were briefed by the U.S. International Trade Commission on its Report "[COVID-19 Diagnostics and Therapeutics: Supply, Demand, and TRIPS Agreement Flexibilities](#)", which had been requested by the United States Trade Representative in the context of WTO discussions under paragraph 8 of the Decision.

9. On 1 December 2023, the group of 65 Members re-circulated their proposal for the General Council to extend the Decision *mutatis mutandis* to COVID-19 therapeutics and diagnostics.<sup>4</sup> This proposal did not find consensus at the meeting of the General Council on 14-15 December 2023. On 21 December 2023, the co-sponsors of that proposal circulated a statement in document [WT/GC/W/920](#), expressing disappointment over the continued disagreement among Members on the question.

10. The Council acknowledges that discussions are exhausted and that there is no consensus on an extension of the Decision to COVID-19 diagnostics and therapeutics. It therefore recommends the conclusion of the discussion under paragraph 8 of the Decision.

11. The Council recognizes the considerable efforts Members have made during this debate to gather and assess facts and evidence on the role of IP, and on the market situation of the relevant health products. This has provided an improved factual basis and an increased level of policymaker understanding and engagement which can support the ongoing work under the Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics<sup>5</sup> (see document [JOB/IP/74](#)) as well the domestic work of governments when facing future health crises.

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<sup>4</sup> Document [IP/C/W/694/Rev.1](#) and [WT/GC/W/913](#).

<sup>5</sup> Document [WT/L/1142](#).