

**1 ARTICLE 64 OF THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS..... 1**

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**1 ARTICLE 64 OF THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS**

**1.1 Text of Article 64**

**Article 64**

*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.

**1.2 Articles 64.2 and 64.3**

1. On 1 August 2004, the General Council adopted a Decision on the "Doha Work Programme". Paragraph 1.h of the Decision, entitled "Other elements of the Work Programme", provides *inter alia* that "the moratori[um] covered by paragraph 11.1 of the Doha Ministerial Decision on Implementation-related Issues and Concerns ... [is] extended up to the Sixth Ministerial Conference".<sup>1</sup>
2. On 18 December 2005, the Ministerial Conference adopted a Ministerial Declaration on the "Doha Work Programme". Paragraph 45 of the Declaration, entitled "TRIPS non-violation and situation complaints", reads as follows:

"We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to paragraph 11.1 of the Doha Decision on Implementation-Related Issues and Concerns and paragraph 1.h of the Decision adopted by the General Council on 1 August 2004, 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. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement."<sup>2</sup>

3. Paragraph 10 of the General Council Decision on "Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health", adopted on 30 August 2003, provides that "Members shall not challenge any measures taken in conformity with the provisions of the waivers contained in this Decision under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994".<sup>3</sup> On 6 December 2005, the General Council adopted a decision on "Amendment of the TRIPS

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<sup>1</sup> The text of the Decision can be found in [WT/L/579](#).

<sup>2</sup> The text of the Declaration can be found in [WT/MIN\(05\)/DEC](#).

<sup>3</sup> The text of the Decision can be found in [WT/L/540](#) and [Corr.1](#).

Agreement". Paragraph 4 of a new Article 31*bis* to be inserted into the TRIPS Agreement provides that "Members shall not challenge any measures taken in conformity with the provisions of this Article and the Annex to this Agreement under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994".<sup>4</sup>

4. In a Decision of 2 December 2009, the Ministerial Conference extended the moratorium to its next meeting (to be held in 2011):

"We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to paragraph 11.1 of the Doha Decision on Implementation-Related Issues and Concerns and paragraph 45 of the Hong Kong Ministerial Declaration, 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 2011. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement."<sup>5</sup>

5. In a Decision of 17 December 2011, the Ministerial Conference extended the moratorium to its next meeting (to be held in 2013):

"We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to our Decision of 2 December 2009 on "TRIPS Non-Violation and Situation Complaints" (WT/L/783), 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 2013. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement."<sup>6</sup>

6. In a Decision of 7 December 2013, the Ministerial Conference extended the moratorium to its next meeting (to be held in 2015):

"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."<sup>7</sup>

7. In a Decision of 19 December 2015, the Ministerial Conference extended the moratorium to its next meeting (to be held in 2017):

"We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to our Decision of 7 December 2013 on "TRIPS Non-Violation and Situation Complaints" (WT/L/906), 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 2017. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement."<sup>8</sup>

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<sup>4</sup> The text of the Decision can be found in [WT/L/641](#). Before the adoption of the decision, the Chairman made the following statement: "It is understood that paragraph 4 of Article 31*bis* in the proposed amendment is without prejudice to the overall question of the applicability of subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 to the TRIPS Agreement and to the different positions of Members on this subject." This statement is recorded in paragraph 28 of the minutes of the General Council meeting in [WT/GC/M/100](#).

<sup>5</sup> [WT/L/783](#).

<sup>6</sup> [WT/L/842](#).

<sup>7</sup> [WT/L/906](#).

<sup>8</sup> [WT/L/976](#).

8. In a Decision of 13 December 2017, the Ministerial Conference extended the moratorium to its next meeting (to be held in 2019):

"We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to our Decision of 19 December 2015 on "TRIPS Non-Violation and Situation Complaints" (WT/L/976), 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 in 2019. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement."<sup>9</sup>

9. In a Decision of 10 December 2019, the General Council extended the moratorium until the next Ministerial Conference:

"We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to the Ministerial Conference decision of 18 December 2017 on "TRIPS Non-Violation and Situation Complaints" (WT/L/1033), 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 12th Ministerial Conference. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement."<sup>10</sup>

10. In a Decision of 17 June 2022<sup>11</sup>, the Ministerial Conference extended the moratorium to its next meeting:

"We take note of the work done by the Council for Trade-Related Aspects of Intellectual Property Rights pursuant to the General Council Decision of 10 December 2019 on "TRIPS Non-Violation and Situation Complaints" (WT/L/1080), 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 13<sup>th</sup> Ministerial Conference. It is agreed that, in the meantime, Members will not initiate such complaints under the TRIPS Agreement."

11. Paragraph 7 of the Ministerial Decision on the TRIPS Agreement adopted on 17 June 2022 provides that "Members shall not challenge any measures taken in conformity with this Decision under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994".<sup>12</sup>

Current as of: August 2022

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<sup>9</sup> [WT/L/1033](#).

<sup>10</sup> [WT/L/1080](#).

<sup>11</sup> [WT/L/1137](#).

<sup>12</sup> [WT/L/1141](#).