

**PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE**

**Extension of the Five-Year Period in Article 64:2 of the Agreement on TRIPS**

*Communication from the CEFTA countries and Latvia*

The following communication, dated 23 July 1999, has been received from the Permanent Mission of Hungary.

**Issue**

1. Paragraph 1 of Article 64 of the Agreement on TRIPS affirms the applicability of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, to the TRIPS Agreement. Paragraph 2 of Article 64 provides for the non-application of subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 to the settlement of disputes under the Agreement on TRIPS for a period of five years from the date of entry into force of the WTO Agreement. Paragraph 3 of Article 64 calls on the Council for TRIPS to examine, during the five-year period, the scope and modalities for complaints of the type under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 in the context of the Agreement on TRIPS with a view to submitting recommendations to the Ministerial Conference for approval. The five-year period is going to end on 1 January 2000.

2. The CEFTA countries and Latvia are of the view that the examination of the scope and modalities provided for in paragraph 3 of Article 64 is at its preliminary stages. In light of the lack of clarity regarding even the relevant basic notions with respect to complaints of the type under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to the TRIPS Agreement, the genuine complexity of the issues involved and the divergence of views as to their applicability and desirability, the CEFTA countries and Latvia believe that further in-depth analysis is needed. The CEFTA countries and Latvia think that the examination in the Council for TRIPS and, on its basis, the formulation of recommendations will prove to be time-consuming and that the deadline of 1 January 2000 fixed in the TRIPS Agreement cannot be met.

3. The CEFTA countries and Latvia believe that for the adoption of the recommendations called for in paragraph 3 of Article 64 consensus is needed in the Council for TRIPS. Furthermore, the approval by the Ministerial Conference of the recommendations on the scope and modalities is a precondition of the application of subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 in the TRIPS context. In other words, irrespective of the expiration of the five-year period provided for by paragraph 2 of Article 64, complaints of the type of subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 will remain inadmissible under the TRIPS Agreement until a decision is made by consensus at the Ministerial Conference on the approval of the TRIPS Council's recommendation on the scope and modalities of those complaints.

4. The CEFTA countries and Latvia are ready to continue with an open mind the thorough examination of the scope and modalities in the Council for TRIPS. However, at this stage the CEFTA countries and Latvia are not convinced of the need for and applicability of complaints under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 in the context of the Agreement on TRIPS.

### **Proposal**

5. In light of the fact that the Council for TRIPS has just started the examination required under paragraph 3 of Article 64 of the Agreement on TRIPS on 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 the Agreement on TRIPS, and that clearly more time is needed in order to fulfil the requirements of Article 64, paragraph 3 of the Agreement on TRIPS, it is proposed that the period in paragraph 2 of Article 64 of the Agreement on TRIPS be extended until this work, including the approval by the Ministerial Conference of the recommendations on the scope and modalities by consensus, is completed.

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