

Initiatives by member countries to discuss enforcement of IP rights at the TRIPS Council have a long history. There was a good deal of discussion on the matter in the period of 2006 to 2008. More recently, some member countries wished to discuss, for different reasons, the Anti Counterfeiting Trade Agreement at this Council.

It has always been the understanding of Brazil that enforcement is not an item on the permanent agenda of the TRIPS Council. It has been on the agenda of the Council only at the request of one or more members. At the present meeting, it follows a request by the US delegation.

Brazil fully recognizes that members have the right to draw the attention of the Council to matters of their interest and may wish to share issues pertaining to their experience and domestic practices. However, that shall not be taken as recognition that enforcement should be regularly debated at the Council, nor that the Council has any mandate to adopt recommendations or best practices on enforcement.

Article 1.1 and 41.5 of the TRIPS Agreement provide members with leeway to implement the enforcement provisions of the Agreement according to their own priorities and their own legal systems and practice. Furthermore, Article 41.1 establishes that enforcement procedures implemented by Members must be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. I am recalling in view of the increasing number of measures that are being taken in the name of enforcement and for the purpose of combating trade in counterfeit and pirated goods.

Item K of the provisional agenda was originally entitled “Exchange of Information on Securing Supply Chains against Counterfeit Goods”, and I am glad to note that the title has been reformulated following a suggestion by China.

Yet, the title of the document circulated by the US delegation under this agenda item continues not to reflect adequately its contents. The title makes reference to counterfeit goods and to counterfeit goods only. By contrast, the document itself is not confined to counterfeit goods, as defined by the TRIPS agreement and applicable to violations of

trademarks. It goes much beyond. In some passages, such as, for example, paragraph 4, the document virtually equates counterfeit goods with substandard ones. It is true that counterfeit goods are often substandard ones also. But substandard goods may very well be genuinely branded ones. And the fact remains that counterfeit and substandard and concepts applicable to different realities that only occasionally overlap.

Moreover, section II of the document expands its scope beyond trademark counterfeiting by referring to seizures of “IPR infringing goods”, including, in that definition, pirated products, that is to say, those violating copyrights.

Here, in the TRIPS Council, we should be employing those definitions contained in the TRIPS agreement itself. Imprecise terminology often leads to misleading analysis.

Mr. Chairman,

In concluding, Brazil thanks the US and the Japanese delegation for having voluntarily provided the Council with a good deal of information of certain national practices on enforcement. This information will certainly be conveyed to the relevant authorities in Brasil dealing with enforcement issues.