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Negotiating Group on Trade-Related Aspects
of Intellectual Property Rights, including
Trade in Counterfeit Goods

MEETING OF NEGOTIATING GROUP OF 5-6 JANUARY 1990

Chairman: Ambassador Lars E.R. Anell (Sweden)

Note by the Secretariat

1. The Group adopted the agenda proposed in GATT/AIR/2913. The Group initiated its work with a consideration of the new proposals submitted by delegations and then took up the items on its agenda. No interventions were made under items I(C) and II.

2. The Group had before it three new proposals - from Mexico (NG11/W/60), Chile (NG11/W/61) and Austria (NG11/W/62). In addition, the Group had the following new papers before it: four communications from international organisations (WIPO, CCC, Unesco and UNCTAD) providing information on their technical assistance activities relevant to matters under discussion in the Group (NG11/W/63 and Addenda 1-3); an informal checklist of issues prepared by the secretariat; a paper prepared by the secretariat on national legislation and practices deemed restrictive in connection with IPRs (NG11/W/64); and revisions of the synoptic tables on standards and principles and on enforcement (NG11/W/32/Rev.2 and NG11/W/33/Rev.2).

New Proposals Submitted By Participants

3. Introducing the communication from his delegation contained in document NG11/W/60, the representative of Mexico said that the submission set out the views of his delegation on agenda items I and II and was intended to contribute to the discussion in the Group. Mexico attached great importance to the existence of an appropriate international régime for intellectual property protection in order to attract foreign investment and encourage technological development. There was a need for an open discussion of intellectual property issues with a view to defining clearly those aspects which distorted or hindered international trade. The negotiations should maintain a suitable balance between the need, on the one hand, to protect intellectual property and, on the other, public interest and economic, technological and developmental objectives. In the submission, Mexico had set-out its views on patents, trade marks, copyright, integrated circuits and trade secrets; Mexico was still examining its position on other intellectual property rights and would be willing to discuss these IPRs in the Group.

4. Many participants welcomed the proposal. Some of these participants expressed support for the underlying philosophical basis set out in Section I.l and reiterated their view that strong intellectual property protection benefitted net importers, as well as net exporters of technology, by attracting foreign investment and technology. They also welcomed the proposal's comprehensive approach. Some other participants welcomed the stress on the need for balance between protection of intellectual property and other policy objectives and the

view that transitional arrangements should take account of countries' resource availability and of their stage of development. A participant commented that questions regarding the institutional framework for the implementation of the results of the negotiations should be addressed at the end when the scope and contents of the results of the negotiations had become clear. Even if implemented in the GATT framework, the question would remain whether the results should be incorporated as part of the General Agreement or be embodied in a code with limited signatories.

5. The following records the comments made and responses given to questions regarding specific aspects of the Mexican submission.

Section II. A participant said that the transparency obligation should also include the establishment of national enquiry points that would furnish information to foreign right-holders on intellectual property matters. Responding to questions, the representative of Mexico said that the transparency obligation should apply not only in respect of governmental action but also in respect of the responsibilities of market agents who enjoyed intellectual property protection. The provision for periodic evaluation of the level of protection was necessary because technological developments might render invalid in the future the standards of intellectual property protection emerging from the results of current negotiations; such evaluation should be done by the body responsible for the implementation of the results of the negotiations. In regard to the fourth paragraph in this Section, he said that his delegation had not adopted a firm position on the nature of panel procedures that should apply to intellectual property matters under a TRIPS agreement, e.g. whether panels should include technical experts or whether technical expertise should be furnished to panels through other mechanisms. Decisions on some of these matters would have to be taken at the end of the negotiations.

Section III: Patents. The representative of Mexico said that the suggested provision allowing restrictions on the scope of the patent right in exceptional cases referred essentially to compulsory licences and the grounds for their grant. Examples of such grounds were a situation of a critical shortage of a product in the domestic market or of an abusive use of a patent right by the rightholder. With regard to the proposal on the general minimum term of patent protection, he said that it should be read in conjunction with Section VI(i), which suggested that developing countries should be allowed to provide for shorter patent terms with the possibility for their extension. Mexico had not specified exactly what the minimum or maximum term should be, but believed that decisions in this connection should take account of the particular circumstances of participants.

Trademarks. The representative of Mexico clarified that the term "international guidelines" was not intended as a reference to the results of the ongoing negotiations in the Negotiating Group on TRIMS, the outcome of which his delegation did not wish to prejudge. His delegation would provide more detailed explanations in this regard at a later stage.

Copyright. The representative of Mexico said that it was difficult to answer at this stage whether adherence to the Berne Convention should be a part of the results of these negotiations.

Trade secrets. The representative of Mexico said that his delegation favoured the incorporation of trade secrets in the results of the negotiations, and would present at a later stage its views on the definition of the subject matter that should be protected by trade secrets and the appropriate form of such protection.

Section V: Multilateral dispute prevention and settlement. The representative of Mexico said that his delegation could agree in principle to the suggestion that the word "could" be replaced by "should". He said that the submission did not contain a reference to unilateral actions because, first, they were in any way contrary to the spirit of the multilateral system and, secondly, one of the main reasons for effective multilateral procedures was precisely to avoid recourse to such actions.

Section VI: Transitional arrangements. The representative of Mexico said that sub-paragraphs (i) to (iv) were not alternatives but complemented each other. Sub-paragraph (i) referred specifically to patents, while sub-paragraph (ii) could apply generally to all IPRs. He highlighted sub-paragraphs (iii) and (iv). In regard to (iii) he believed that the WIPO had the necessary infrastructure. In regard to sub-paragraph (iv), he recognised that infrastructure existed in other fora for the provision of technical assistance to developing countries, but felt that other complementary mechanisms could be envisaged for channelling financial resources provided by participants. With regard to sub-paragraph (v), he said that an example of developing countries receiving better access to the use of IPRs would be more expeditious IPR acquisition procedures for developing country applicants than for applicants from developed countries. His delegation would be interested in exploring further possibilities in this regard at a later stage.

Section VIII: Counterfeit goods. The representative of Mexico said that the enforcement measures envisaged were not limited to addressing the problem of trade in counterfeit goods and drew attention to Section IV which addressed enforcement measures in general. He clarified that the last sentence indicating that Mexico favoured the incorporation of "this agreement" in the GATT referred only to the proposed agreement on trade in counterfeit goods.

6. Introducing document NG11/W/61, the representative of Chile said that it had been submitted in response to the interest of participants in the views expressed by his delegation at earlier meetings (see NG11/17, paragraph 8 and NG11/16, paragraph 9). Some of the ideas expressed in the paper had not been fully developed, but this could be done during the course of the negotiations. He went on to highlight what he considered to be the salient features of the submission. First, it ensured compliance with the Punta del Este Declaration by calling upon the Group to discuss the trade-related aspects of intellectual property rights. Secondly, it emphasized that non-application of an IPR standard should not automatically be deemed to be a violation of the principle of free trade and hence subject to trade sanctions. Thirdly, it respected the role of WIPO, which was the proper forum for dealing with IPR standards; standards negotiated in the Group should be implemented in WIPO. Fourthly, it ensured that trade sanctions would not be applied unilaterally or in an arbitrary manner. Fifthly, it called upon WIPO to establish its own dispute settlement system that would apply to the legal rather than the trade aspects of intellectual property rights. Finally, it proposed a two-tier dispute settlement process. The dispute settlement system of WIPO would determine first if an internationally-accepted intellectual property standard had been applied. In a second stage, a GATT panel could be asked to evaluate whether the non-application of that standard had a trade-related effect. If the panel and the CONTRACTING PARTIES were to decide in the affirmative, Article XXIII of the General Agreement would be applied. This two-tier process would not only be a bridge between GATT and WIPO, but would also allay the justified concern regarding the unilateral and arbitrary use of trade sanctions in the field of intellectual property rights. In the final analysis the use of trade sanctions had to be accepted but the proposal provided sufficient guarantees to ensure its proper use. In response to various comments, the representative of Chile made clear that the submission did not deny the right of the Group to negotiate improved standards of intellectual property protection, but it would require these to be implemented to a large extent in the framework of WIPO.

7. Some delegations welcomed the submission and commended it for further consideration. Some other delegations, while welcoming the general idea of ensuring compatability and cooperation between GATT and WIPO, expressed concerns about the approach underlying different aspects of the submission.

8. A participant believed that it was premature to specify all the details into which the submission went because such details would depend to a great extent on the results of the negotiations and on the relationship agreed to at the end between the TRIPS agreement and other relevant organizations including WIPO. Some participants also had concerns about legal problems that they considered would arise from different memberships of a future TRIPS agreement and of WIPO and existing international conventions administered by WIPO. The representative of Chile did not consider this a major difficulty since what was agreed in the Group would only be binding on the participants who accepted it.

9. Some participants considered that the two-tier dispute settlement procedure proposed would be excessively protracted and cumbersome and would lack the essential qualities of predictability and certainty. This did not square with the April Decision which called upon the Group to provide for expeditious dispute settlement procedures. It might even increase fears regarding the use of unilateral trade sanctions, because the protracted nature of the process might make it difficult for governments to resist domestic pressures for rapid action. A participant believed that the proposal was better characterised as a three-stage procedure than as a two-stage one: it appeared to involve first a determination in WIPO; secondly a determination in GATT of trade-relatedness; and thirdly recourse to Article XXIII. In reply, the representative of Chile said that he was confident that, if the will existed, all these concerns could be addressed and met, especially if the dispute settlement procedures provided for in WIPO were sufficiently expeditious. A participant was concerned that the proposal seemed to assume that a determination in WIPO of a breach of an internationally-accepted intellectual property standard would be unenforcable in WIPO. It also appeared to assume that all subjects under negotiation were "neutral from the trade standpoint" and hence would require, in the event of a dispute, the application of the two-tier procedure envisaged; he asked for example would matters related to border enforcement also require a first determination in WIPO. In reply, the representative of Chile explained that the phrase "neutral from the trade standpoint" had been used to suggest that non-adherence to a standard would not automatically imply adverse trade effects.

10. Some delegations supported the proposed approach to dispute settlement which emphasized the determination of trade-relatedness in GATT. It was said that the principles of trade distortion and injury were intrinsic to GATT as exemplified in several fields such as subsidies and anti-dumping, where the use of countermeasures was not normally authorized until injury had been proved. A participant said that one of the tasks for the Group should be to specify the procedures and criteria that should apply for a dispute to be eligible to pass from the first stage in WIPO to the second stage in GATT.

11. Some other participants raised the question as to what standards would be established in GATT to determine whether there had been "trade-related effects" in the second stage of the dispute settlement procedure, namely that in GATT. If no specific standards were to be established in GATT, the proposal would imply the establishment of a new type of non-violation case, dangerously widening this concept in GATT. A participant said that the proposal would appear to require the demonstration in a GATT dispute settlement panel of actual effects on trade flows; this was a more limited criterion than that used generally in GATT, which concerned effects on the conditions of international competition. He also believed that the proposal would leave trade-relatedness to be determined in an ad hoc basis by a dispute settlement panel; this would be a failure to fulfill the Punta mandate. Another participant said that the determination of trade-relatedness through dispute settlement was based on a premise that a future TRIPS agreement would contain provisions that might not be trade-related which was not in keeping with the mandate for this Group. The Chilean proposal appeared to reduce GATT's role to that of merely providing for sanctions.

12. The representative of Chile replied that his delegation envisaged the specification of standards in GATT in the form of a provision along the following lines: "Contracting parties shall protect trade-related intellectual property rights in such a way as to facilitate and promote legitimate trade. In particular they shall (a) reduce the trade distorting effects which constitute barriers to trade, (b) eliminate disguised obstacles to trade and (c) facilitate the contribution of trade to innovation, research and development, as well as the transfer of technology between contracting parties and the due utilization of this technology in different countries in order to adequately protect trade-related intellectual property rights. Each contracting party shall strengthen the laws, regulations, practices and procedures which relate to intellectual property legislation so as to ensure that they are compatible with the provisions contained in international conventions administered by WIPO and with the principles of the General Agreement". Such a provision would constitute a yardstick by which trade-related effects could be determined. If this were felt to be unclear, it had to be borne in mind that several provisions of the General Agreement were themselves unclear, but jurisprudence had clarified these provisions. A similar situation could be envisaged in respect of intellectual property matters. However, his delegation would be

willing to explore in the Group the specification of further criteria that would assist in determining trade-related effects. In conclusion, the representative of Chile urged the Group to further consider the proposal: it was not complex, was of fundamental importance to developing countries and was intended to safeguard the role of both WIPO and GATT.

13. Introducing the Austrian proposal, contained in document NG11/W/62, the representative of Austria stressed the need for providing appropriate enforcement procedures in an international agreement within the framework of GATT. The lack of adequate procedures to ensure protection in most of the WIPO conventions was one of the reasons why the need for an international instrument, which would deal in particular with trade-related aspects of IPRs, had been so strongly felt by many contracting parties. Setting out the basic ideas underlying the proposal, the representative of Austria first referred to the importance of securing as broad-based a participation as possible in any instrument emerging from the negotiations. Broadened international cooperation was necessary to deal with the problems related to international networks engaged in counterfeiting and trade in other types of goods infringing IPRs; adequate measures in individual countries had proven not to be sufficient in this respect. The main goal of any agreement to be evolved within the framework of GATT should not be a complete harmonisation of the legal systems of the different participating countries; it should rather be to approximate the level of protection as much as possible. The ways in which protection could be ensured should first and foremost come under the authority of the individual countries. Further, the rights of all the parties to an enforcement procedure should be very carefully balanced, both for the defendant and the plaintiff. Initiatives taken to protect IPRs should not serve as a pretext for unfair or abusive competition; in other words, the creation of new barriers to trade should be avoided. In this context, the problem arose as to what degree border measures should be applied in cases of infringement of IPRs; further discussion was necessary on whether these should be applied to all IPRs or only to certain rights. Elaborating on some specific points in the proposal, the representative of Austria referred to paragraph 1 which reflected Austria's general preference for regular internal enforcement measures, since these were less likely to produce protectionist and trade distortive effects compared to measures at the border; the latter should only be available in certain specific circumstances as explained in Section II. Paragraph 1 further underlined the importance of providing legal remedies and enforcement mechanisms also against infringing activities at the domestic level, because these caused international trade distortive effects as well. Emphasis was put on the importance of fostering international cooperation to stop and prevent infringements of IPRs; instigators should be traced and illegal distribution channels be destroyed. Paragraph 6 in conjunction with Section III on transparency dealt with that issue.

14. A participant, giving his delegation's preliminary general remarks on the Austrian submission, said the proposal was in line with the general understanding that seemed present in the Group, that enforcement provisions should be elaborated in general terms and not in detail in any future agreement. In the further negotiations the Group should avoid undue complexity; there should be a realistic opportunity for all countries to implement the results which should be flexible and not entail excessive cost; and the position of developing countries, which had less sophisticated enforcement mechanisms, deserved special attention.

15. The following records the specific comments, questions and responses to those questions in connection with the Austrian submission.

> Paragraph 3. Responding to a question as to whether injunctions were envisaged as a form of remedy, the representative of Austria said that the prevention of infringement, to which Austria attached great importance, was dealt with in paragraph 6 and in Section II.
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> Paragraphs 4 and 5. The question as to what was meant by "reasonably" incurred was raised. In response, the representative of Austria said that the costs awarded should be consonant with the actual costs that the party concerned had had good reason to incur.
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> Paragraph 6. The question was raised whether information on the identity of the persons involved in the

production and the channels of distribution of infringing goods or services should only be obtainable through international cooperation or whether internal procedures to enable such information to be secured were also envisaged. In response, the representative of Austria said that for countries like Austria, international cooperation was of great interest as infringing products often originated abroad.

Paragraph 7. The representative of Austria, responding to questions, explained that quasi-judicial authorities referred to authorities that were independent, in that no other authority may interfere in influencing a decision to be rendered, and were charged with applying the law.

Paragraph 10. Responding to a view that the length of time during which customs authorities would take action following an application from the right holder should be fixed with the possibility of renewal, the representative of Austria said that an IPR holder should have the possibility to request an extended term, and it would be up to the authorities to decide whether or not the request was justified.

Paragraph 11. Responding to a question, the representative of Austria stressed that the proposed provision on the furnishing of security by the applicant did not have an obligatory nature. As regards what would be deemed "reasonable" by way of security, the authorities might well require the plaintiff to put up security whose value was proportionate to the costs and damages that might be incurred.

Paragraph 13. The question was raised whether the proposal did not impose excessive constraint on the possibility for ex officio action. In response, the representative of Austria said that this had not been the experience in his country. It also had to be recalled that in many instances involving serious infringements of IPRs other laws were also being broken which permitted ex officio action, for example the law on the safety of pharmaceutical products.

I(A) The Applicability of the Basic Principles of the GATT and of Relevant International Intellectual Property Agreements or Conventions

16. Responding to a question concerning the status of the secretariat checklist, the Chairman said that the basis for the work of the Group remained the agenda items and the various proposals put forward by delegations. The main reference documents were the synoptic tables and the notes on previous meetings of the Group. The checklist, which had been informally circulated, was a document that each participant could draw upon to the extent that it found it helpful in dealing with the issues before the Group.

17. A participant said that his delegation intended to make use of the checklist as a reference document. He further stressed that there was no change in the position of his delegation that intellectual property protection had no direct relationship to international trade.

National Treatment

18. Commenting in general on the question of national treatment, a participant said that it should be recalled that most aspects of this question were already dealt with by existing international instruments. In regard to the national treatment of persons, the Paris and Berne Conventions already secured this principle in relation to most IPRs; thus the main question to be dealt with in this respect concerned the application of the principle to IPRs not dealt with by these two Conventions. As regards the national treatment of imported goods, this matter was already covered by the provisions of the General Agreement. Another participant indicated that his delegation found it difficult to comment in detail on the national treatment question since the application of the national treatment provisions of the GATT and of WIPO depended on an identification of what were the trade aspects of intellectual property rights on the one hand and the legal aspects of the protection of intellectual property of the other. Such a process of identification had not yet been carried out by the Group. The point was also made that it was difficult to express views on certain aspects of basic principles until there was greater clarity on the legal

framework for the implementation of the results.

19. A number of participants responded to the various issues raised in paragraphs 7 to 15 of the secretariat checklist. The following summarizes the views expressed by these participants on these issues.

Paragraph 7. All speakers believed that the persons that should benefit from a national treatment provision should include nationals of other member States. Some considered that benefit of a national treatment provision should extend at least to persons domiciled in another participating State or with a real and effective industrial or commercial establishment in such a State. Some others considered that all the persons meeting the criteria referred to in the footnote to paragraph 7 should be considered beneficiaries. One of these participants, while stating that in principle his delegation believed that the work should start from the existing level of protection, considered that it would be important to ensure that the definition of beneficiaries did not give rise to a free-rider problem. In regard to the second issue raised in paragraph 7, all speakers believed that the beneficiaries of a national treatment provision should not be limited to persons seeking to protect their intellectual property, but should also include other persons subject to intellectual property law, for example defendants in legal suits or applicants for compulsory licences.

Paragraph 8. Most speakers favoured a national treatment provision preventing less favourable treatment of imported products along the lines of that contained in Article III:4 of the GATT. Some said that the manner in which such a principle was provided would depend on the legal form of the final agreement. One participant said that the matter needed further consideration in the light of the fact that Article III:4 of the General Agreement would continue to apply in any event among GATT Contracting Parties. Another participant said that since goods were not related to intellectual property per se and Article III:4 in any event applied irrespective of the subject area of laws, regulations and requirements, there was no need for elaboration of a national treatment principle relating to goods in the results of the TRIPS negotiations.

Paragraph 9. Some speakers favoured the inclusion of a national treatment principle relating to services. It was suggested that care should be taken to ensure that such a principle did not prejudice the negotiations under way on services in the GNS. In this regard it was suggested that such a national treatment provision should only relate to the extent that a service was protected by intellectual property. A participant said that it would be easier to take a position on the coverage of services by a TRIPS national treatment provision when the likely coverage of other parts of the agreement was clearer, for example whether service marks would be dealt with. Some other participants expressed their opposition to dealing with services in a TRIPS agreement, stating that negotiations on matters relating to services should be reserved for the GNS.

Paragraph 10. While one speaker preferred a formulation requiring all governmental actions affecting IPRs to be covered by a national treatment principle, most speakers favoured a more detailed formulation setting out the areas of governmental action that should be covered.

Paragraph 11. Most speakers considered that conditions established by governments on the use of IPRs by holders should be subject to a TRIPS national treatment provision. One of these speakers qualified this by stating that an exception should be made in respect of procedural matters, as under the Paris Convention. Some other speakers opposed coverage of use of IPRs. In their view the protection of IPRs, including the scope and availability of that protection, were quite separate questions from the use of IPRs. For example, the protection of pharmaceutical inventions did not in itself give rise to a right to use such inventions.

Paragraph 12. Most speakers considered that the coverage of a national treatment provision should not be confined to any particular classes of governmental instruments; in their view what was important

was the content, not the form of governmental action. One speaker considered that as a general rule national treatment commitments should relate to laws, regulations and administrative practices. In regard to the second question raised in this paragraph, all speakers believed that a national treatment provision should apply at least to the types of IPRs dealt with in the other provisions of a TRIPS agreement. Some of these speakers believed that all IPRs should be subject to such a provision.

Paragraph 13. All speakers believed that allowance should be made for the exceptions to national treatment contained in intellectual property conventions. One speaker believed that there might be need to clarify the scope of the application of Article XX(d).

Paragraph 14. Most speakers believed that national treatment provisions should involve a "no less favourable treatment" standard. One of these speakers said that this position was contingent on an MFN provision being provided for. Another speaker queried whether it was true that the national treatment provisions found in intellectual property conventions involved a "no less favourable treatment" standard, since they appeared to require application of the same treatment.

Paragraph 15. Most speakers favoured national treatment provisions that would prohibit not only de jure but also de facto less favourable treatment. One of these speakers said that purely formal equality of treatment or no less favourable treatment would not be sufficient; equality of opportunity should also be guaranteed. One participant said that in order to answer this question, his delegation would need clarification of the distinction between de jure and de facto less favourable treatment.

MFN/non-discrimination

20. Some participants said that the need for an MFN/non-discrimination rule would depend on the standard for national treatment adopted. If a strict standard of equality of treatment were provided for in a national treatment provision, there would be no scope for discrimination between other member States.

21. Responding to questions, the representative of WIPO confirmed that intellectual property conventions or agreements did not contain MFN/non-discrimination obligations of the sort under discussion in the Group. To his knowledge the possible application of such principles had not been raised in the drafting of these conventions and agreements. There was therefore no authoritative guide to the reasons for the absence of such principles. In his personal opinion, the reason why such principles did not figure in intellectual property treaties but were found in the GATT was that the basic principles regulating intellectual property were different from those regulating international trade. The national treatment provisions of intellectual property conventions, which applied to persons and not to products, would appear to have been considered adequate to prevent undesirable descrimination; the question of a rule forbidding discrimination between foreign nationals does not appear to have been raised.

22. Most participants believed that an addition to existing international disciplines regarding IPRs should be made through the negotiation of an MFN/non-discrimination provision requiring the benefits granted by a participant to the nationals of another participant be extended to those of all other participants and prohibiting discrimination between the nationals of other participants. One participant doubted the need for such an addition, but said that if it were to be made it should take the form of an unconditional MFN obligation with no exceptions. Other speakers favoured a relatively strict rule, with limited scope for exceptions.

23. Differing views were expressed on how an MFN/non-discrimination rule including any exceptions might be formulated. Some speakers favoured an unconditional MFN/non-discrimination provision with an exhaustive list of exceptions. One such speaker could accept the exceptions listed in paragraph 18. Another speaker indicated that the content of a list of exceptions would need further study. It was suggested that if exceptions were provided for, there would need to be safeguards to ensure that the scope of those exceptions was not wider than necessary and was not employed in a manner to allow discrimination of the sort that it was

intended to prevent. Concern was expressed about the scope for undue discrimination if all bilateral agreements relating to appellations of origin were to be exempt. In response, a participant suggested that there should be a qualified MFN provision applying to such agreements, entitling TRIPS participants to accede to or obtain similar agreements. Some participants were also concerned about what might be exempted through a grandfather provision. In response, it was suggested that any such provision should not constitute a permanent exception but should be accompanied by a phasing out obligation. Another suggestion was that any exceptions should be subject to a requirement that they were not used in a manner to give rise to distortions or impediments to international trade or to nullify or impair benefits accruing under the agreement. Some participants favoured the second approach referred to in paragraph 18 of the checklist, namely providing for a weaker MFN/non-discrimination standard, such as prohibiting arbitrary or unjustifiable discrimination between nationals of other signatories, but without allowing for any specific exceptions.

Transparency

24. Speakers expressed their support for provisions on transparency, although some had reservations about the extension of this principle to prior notification and consultation. As regards the subject areas that might be covered by a transparency provision, a participant expressed support for the coverage of governmental instruments relating to the scope, availability and use of IPRs, the acquisition and maintenance of IPRs and the enforcement of IPRs.

25. In relation to the first issue raised in paragraph 23 of the checklist, some participants were opposed to an obligation to publish judicial decisions of general application. In this regard they referred to the burden that such an obligation would place on States, especially developing countries, and that judicial decisions taken at a lower level were not necessarily definitive. One of these participants said that in his country it was left to the judiciary itself to determine which judicial decisions should be published. Some participants said that there should be a requirement to publish intergovernmental agreements entered into by signatory governments. In regard to the timing of the publication of governmental instruments, some participants favoured a requirement that publication be "as soon as possible", while one participant favoured a requirement to publish immediately after entry into force.

26. In regard to paragraph 24 of the checklist a participant favoured the establishment of enquiry points enabling participants to obtain information from other participants on request. His delegation was opposed to a requirement to notify all governmental instruments, but felt that the obligation should be confined to a requirement to notify summaries of major changes in national legislation. Other participants which wished to seek further information could do so through the enquiry point.

Other basic principles

27. Some participants emphasized the importance they attached to special and differential treatment, public interest, exceptions, safeguards, balance of rights and obligations, freedom on scope and level of protection, and access to technology. A participant added that one of the fundamental principles of relevant international intellectual property conventions was the freedom of States to adapt their intellectual property regimes in accordance with their national public interests and that full advantage of this freedom had been taken in the past by countries that were now developed. He said his delegation wished to emphasize that for developing countries different substantive standards and principles should be provided, reflecting their public interest and developmental needs. In relation to access to technology, a participant said the discussions should not be confined to how technology could be transferred, but should also address how restrictive business practices in any transfer of technology agreements could be prevented.

28. A participant wondered whether the representative of the WIPO would be able to provide information at a future meeting on how the nationality of corporate persons was determined and on the treatment of persons with more than one nationality. The Group agreed to invite WIPO to furnish it a list of the categories of persons

that are beneficiaries of national treatment obligations under the treaties administered by WIPO, and a list of the exceptions to national treatment contained in the treaties administered by WIPO.

I(B) The Provision of Adequate Standards and Principles Concerning the Availability, Scope and Use of Trade-related Intellectual Property Rights

29. Responding to a question, the representative of the secretariat said that the first issue raised in paragraph 34 of the checklist was intended to recognize that there was not agreement in the Group that all the matters referred to in the section on standards and principles were matters that should be the subject of negotiation in the Uruguay Round; for example there was the question as to whether these matters should be considered as trade-related aspects of intellectual property rights.

I(D) The Provision of Effective and Expeditious Procedures for the Multilateral Prevention and Settlement of Dispute Between Governments, Including the Applicability of GATT Procedures

30. A participant reiterated the importance his delegation attached to provisions on prior notification and consultation. He believed that the Group should benefit from the experience with the successful application of these principles in the Agreement on Technical Barriers to Trade. It had to be recognized that, once legislation had been adopted, it was often difficult to change since considerable prestige had been invested in it. In his view a formalized procedure concerning prior notification and consultation was particularly important for smaller trading nations which had less chance of having their views taken into account through less formal diplomatic channels.

I(E) Transitional Arrangements Aiming at the Fullest Participation in the Results of the Negotiations

31. Referring to the last indent of paragraph 140 of the checklist, a participant was opposed to any possibility for participants to be able to withhold any benefits accruing from the negotiations to another participant that invoked the transitional clause.

I(F) Other Matters

32. On behalf of the Group, the Chairman thanked the respresentatives of WIPO, Unesco, CCC and UNCTAD for having prepared documents concerning the technical assistance made available by their organisations.

33. Introducing document NG11/W/63, the representative of WIPO said that the programme of development cooperation was one of the most important aspects of WIPO's work programme. WIPO would be willing to furnish to interested delegations further information explaining in greater detail WIPO's technical assistance programmes.

34. Introducing document NG11/W/63/Add.2, the representative of Unesco drew attention to the different forms of technical assistance provided by his organisation. These included: assistance to member States in the form of advisory services for their activities related to copyright or the drawing up of educational projects in that field; financial assistance and advisory services to help organize national and regional congresses, seminars, etc., on copyright and related matters; organization of group courses for theoretical and practical training in the field of copyright and related matters; organization of individual theoretical and practical training courses for copyright specialists; and publications. Unesco was also trying to establish a data base on

national copyright and neighbouring laws, relevant case law, international conventions and treaties, all with a view to providing member States with relevant information in this field.

35. Introducing document NG11/W/63/Add.3, the representative of UNCTAD said that it drew attention to the specific mandate which the final act of UNCTAD VII provided the Secretary-General of UNCTAD for technical assistance for the Uruguay Round negotiations. In pursuance of this mandate, UNCTAD was providing technical assistance in the area of TRIPS under four UNDP-funded technical assistance projects, one for the three regions of Asia-Pacific, Latin America and Caribbean, and Africa, and an inter-regional project. In addition, the document drew attention to ongoing work in UNCTAD on advisory services on transfer of technology, work relating to the draft code of conduct on the transfer of technology, and work relating to restricted practices. UNCTAD would be willing to cooperate further should individual delegations request additional information.

III. Consideration of the relationship between the negotiations in this area and initiatives in other fora.

36. The representative of WIPO recalled that the first meeting of the Committee of Experts on the Settlement of Intellectual Property Disputes Between States would be held on 19-23 February, and urged delegations to take part in that meeting. He also informed the Group that the first working document for the eighth session of the Committee of Experts on Harmonisation of Certain Provisions in Laws for the Protection of Inventions would be distributed soon.

IV. Other business, including arrangements for the next meeting of the Negotiating Group.

37. The Group agreed to add another day to its next meeting in March, which would thus take place on 6-7 and 9 March. The Group confirmed the dates of 2, 4 and 5 April for the subsequent meeting. The Group agreed to
reserve the dates of 14-16 May and the week of 25-29 June for the following meetings. The Chairman said that he would be holding informal consultations with delegations on the organisation of the Group's future work with a view to making the most productive use of the limited time available.