

# WORLD TRADE ORGANIZATION

RESTRICTED

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

### MINUTES OF MEETING

Held in the Centre William Rappard  
on 9 March 1995

Chairman: Mr. S. Harbinson

#### Subjects discussed:

- A. Rules of procedure of the Council for TRIPS
- B. Arrangements for cooperation with WIPO
- C. Notification procedures
- D. Organizational matters and work programme
- E. Activities in other international fora relevant to the TRIPS Agreement
- F. Other business

1. In opening the meeting, the Chairman noted that non-voting participants and government observers to WTO bodies had been invited as agreed by the General Council at its meeting of 31 January 1995. In addition, WIPO had been invited in accordance with the recommendation made to the Preparatory Committee and the General Council. As provided for in document WT/GC/COM/2, invitations to this first meeting had been extended to the United Nations, UNCTAD, IMF and the World Bank. He noted that the Chairman of the General Council was holding consultations about more permanent arrangements regarding observer status for relevant intergovernmental organizations. He also noted that invitations to observers did not preclude the Council from holding meetings without their presence if it should so wish.

#### A. Rules of Procedure of the Council for TRIPS

2. The Chairman recalled that Article IV:5 of the WTO Agreement required the Council for TRIPS to establish its rules of procedure subject to the approval of the General Council. He proposed to hold informal consultations on this matter and that, pending the results of those consultations, the business of the Council be conducted on the basis of established GATT practice.

3. The Council so agreed.

**B. Arrangements for Cooperation with WIPO**

4. The Chairman drew attention to the report of the Contact Group on TRIPS as contained in document PC/IPL/7 and Addenda 1 and 2. This report, which had been remitted to the Council for TRIPS for further consideration and action as appropriate, included a staged programme of work on the question of arrangements for cooperation with WIPO (PC/IPL/7, paragraph 6). He suggested that the Council might consider first whether any further information was desirable for having an adequate basis to consider this matter. The second point that could be addressed was the clarification of what WTO Members wished to achieve on certain issues and of what forms of cooperation they might seek with WIPO in the implementation of the TRIPS Agreement. It was for the TRIPS Council to come to a view on these matters first, since the issue at this stage concerned the cooperation that might be sought of WIPO in the implementation of the TRIPS Agreement. This would not be understood to preclude exploring in consultations any contribution that the TRIPS Council could make to the work of WIPO if WIPO should seek it; this would be consistent with the notion of a "mutually supportive relationship". The third point that he invited delegations to address was how the consultations between the two Organizations might best be organized. He also requested comments on the issue raised in paragraph 8 of the Contact Group's report, namely the suggestion that the TRIPS Council should consider whether WIPO should be invited to meetings of the General Council when matters of direct relevance to it were under discussion. He first offered the floor to the observer from WIPO so that he could update the Council on relevant activities of that Organization.

5. The representative of WIPO said that WIPO placed much emphasis on the policy of good relations and close cooperation with the WTO in general and the Council for TRIPS in particular, and conveyed the continued desire of the Director General of WIPO for a friendly, productive and cooperative relationship between the two Organizations. The appropriate form and substance of the cooperation between WIPO and the WTO had to be carefully examined and agreed, but steps to ensure the smooth establishment of a mutually supportive relationship had been undertaken by the Secretariat and Governing Bodies of WIPO. This showed the serious and active interest of the Member States of WIPO in the establishment of a cooperative relationship between the two Organizations. Emphasizing the importance in this respect of the Resolution adopted by the General Assembly of WIPO during its session held from 26 September to 4 October 1994, taken up in the report of the Contact Group on TRIPS, paragraphs 1 and 2 of which read as follows:

"1. Having noted that the Preamble of the Agreement on Trade-Related Aspects of Intellectual Property Rights states that the Members of the World Trade Organization desire to establish a mutually supportive relationship between the World Trade Organization and the World Intellectual Property Organization, the WIPO General Assembly hereby also expresses the desire to establish a mutually supportive relationship between the World Intellectual Property Organization and the World Trade Organization.

"2. In accordance with its desire to establish a mutually supportive relationship between the World Intellectual Property Organization and the World Trade Organization, the WIPO General Assembly decides to establish an *ad hoc* working group open to all Member States of WIPO:

- (i) to advise and cooperate with the Director General of WIPO in his contacts with the competent organs of GATT/WTO;
- (ii) to discuss matters concerning possible cooperation between WIPO and WTO;

(iii) to consider the establishment of an *ad hoc* informal WIPO/GATT-WTO Consultation Group on all matters concerning possible cooperation between WIPO and WTO."

6. As to the steps already taken towards cooperation between WIPO and the WTO, the representative of WIPO said that the Director General of WIPO had met several times with the Chairman of the Contact Group on TRIPS of the Preparatory Committee for the WTO and discussed with him, *inter alia*, questions of notifications under the TRIPS Agreement. In addition, certain informal meetings between staff members of the International Bureau of WIPO and the Secretariat of GATT had taken place in connection with the work of the Contact Group, in particular to discuss the collections of laws maintained by the International Bureau and notifications concerning matters other than the communication of laws and regulations, which would have to be made under the TRIPS Agreement by Members of the WTO. In this context, the International Bureau had also provided information in written form, on the implementation of Article 6*ter* of the Paris Convention for the Protection of Industrial Property<sup>1</sup> and had at the third meeting of the Contact Group on 25 October 1995, to which it had been formally invited, orally responded to questions on WIPO's collections of intellectual property legislation.<sup>2</sup>

7. The representative of WIPO then referred to the first meeting that had taken place on 8 February 1995 of the *ad hoc* WIPO Working Group on Cooperation Between WIPO and WTO, in fulfilment of the mandate given by the WIPO General Assembly in its October 1994 Resolution. Representatives of 79 States as well as of the WTO, the European Communities and the Organization of African Unity had attended the meeting, chaired by the Permanent Representative of Kenya, Ambassador Nanjira. Detailed discussions had led the Working Group to the adoption of the following conclusions:

"The Working Group invites the Director General of WIPO to submit to its next meeting suggestions on matters for possible cooperation between WIPO and WTO and concerning the question of the establishment of the *ad hoc* informal WIPO/WTO Consultation Group mentioned in the October 1994 decision of the General Assembly of WIPO.

"It is understood that the establishment, if any, of the said Consultation Group can be decided only by the competent governing bodies of WIPO and WTO."

8. The representative of Tunisia, speaking on behalf of the African Members of the WTO, referred to Article 68 of the TRIPS Agreement and said that the African countries attached great importance to the establishment of an *ad hoc* informal WIPO/WTO Consultation Group as referred to by the representative of WIPO, which they had also emphasized at the WIPO meeting of 8 February 1995. Cooperation between the two Organizations had to be encouraged in order to avoid duplication of efforts and waste of resources. The African countries recognized that the Uruguay Round negotiations had resulted in the most extensive package of trade agreements ever achieved in the history of GATT in terms of scope, complexity and impact on the international trading environment as well as on national policies and that they were now more than ever called upon to adapt to the higher level of multilateral disciplines in this new environment. They also had to identify, and take advantage of, the possibilities that the new trading system offered, and were aware of the implications of the TRIPS Agreement, of its impact on the world economy and of the need to adapt to the new environment resulting from its entry into force. In this respect, he noted that the African Ministers of Trade had met in Tunis in October 1994 and examined the results of the Uruguay Round negotiations and their consequences

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<sup>1</sup>Annex 3 of document PC/IPL/7/Add.2.

<sup>2</sup>Reflected in Annex 3 of document PC/IPL/7.

for the African economies. The Ministers had expressed the need for technical assistance in order to facilitate the implementation of the various agreements which together formed the results of the Uruguay Round and had requested the competent international organizations and agencies, in particular the WTO, to draw up programmes and policies in order to take up the challenge arising from the implementation of the Marrakesh Agreement. Tunisia had been entrusted with the coordination and the follow-up of technical assistance programmes with the WTO and other international organizations involved in international trade.

9. Continuing, the representative of Tunisia said that the African countries were aware of the need for harmonization of national legislation and its adaptation to the new requirements, and to facilitate the notification of this legislation and to ensure the transparency required through the TRIPS Agreement. However, their young national administrations were not always equipped to achieve what was asked of them in this respect. Therefore, duplication of efforts and unnecessary overlapping should be avoided. In their view, the establishment of an *ad hoc* informal group on, and the drawing up of an arrangement for, cooperation between the WTO and WIPO could only facilitate the attainment of these objectives. In the meantime, and without prejudice to the outcome of consultations between the two Organizations, two realistic areas for cooperation could be mentioned, namely the notification of national laws and regulations and technical cooperation. He also emphasized that technical assistance activities should not be limited to legal advice, but should also extend to the establishment of administrative infrastructures, the enhancement of human resources and the consolidation of national structures so that required functions could be fulfilled in the best possible way. The African countries attached the highest priority to these issues. In conclusion, he wished to reaffirm their commitment to a continued active participation in the work of the Council for TRIPS in order to promote consensus on these matters of major interest to all.

10. The representatives of Egypt, Kenya and Morocco supported Tunisia's statement.

11. The representative of Korea emphasized the need for arrangements based on a mutually supportive partnership of the WTO and WIPO, in order to avoid any duplication of efforts or unnecessary extra burdens on Members. In addition to the areas already identified by the Contact Group, he referred to geographical indications as an area where cooperative arrangements between the two Organizations might be considered. While under the TRIPS Agreement negotiations should take place on the establishment of a multilateral system for the registration of geographical indications for wines, WIPO already had gained experience in this respect through the operation of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration. The WTO could, on the other hand, give useful input to WIPO in respect of the system for the settlement of disputes between states that was being negotiated under its auspices. He expressed support for the establishment of an informal joint body by the WTO and WIPO for further consultations on matters concerning possible cooperation. His delegation also believed that WIPO should be invited to meetings of the General Council as long as matters of direct relevance to WIPO were under discussion but was of the opinion that this issue had to be considered in a broader perspective in the General Council itself.

12. Elaborating on the three possible areas of cooperation identified in document PC/IPL/7/Add.2, the representative of Egypt believed that it was still premature to seek any kind of agreed cooperation between the WTO and WIPO in the areas of technical assistance and dispute settlement and that the priority for close cooperation lay in the area of notification procedures. She noted that the type of technical assistance that could be expected from the WTO Secretariat had not yet been defined, bearing in mind its modest capacity in terms of manpower and finance. Of course, advice and assistance could be sought from the International Bureau of WIPO, since such was the prerogative of each country. Only one provision of the TRIPS Agreement, Article 67, referred to the issue of technical cooperation, addressing solely the obligations of developed country Members. However, her delegation would welcome an exchange of views and ideas between the Secretariats of the WTO and of the WIPO on

an informal basis concerning the interpretation of some of the provisions of the TRIPS Agreement. In the area of dispute settlement, seeking information and technical advice from WIPO was the prerogative of panelists, arbitrators, Appellate Body members, as well as the parties to any dispute. There was no urgency for designing the modalities of any type of cooperation between WIPO and the WTO in this respect, since the dispute settlement mechanism would not become really operational in respect of the TRIPS Agreement until January 1996. Moreover, the outcome of the forthcoming meeting of the WIPO Committee of Experts on the Settlement of Disputes Between States had to be awaited. As to the area of priority where close cooperation should be worked out between the WTO and WIPO - notification requirements - the general rule should be to avoid the notification of measures and laws which had already been the subject of notifications in other fora. Such avoidance of double notifications would certainly lessen the burden on Member States as well as on the Secretariats. It would also ensure clearer efficiency in the gathering of information and its dissemination; fragmented distribution usually led to uncertainty and confusion. As regards the staged programme of work which the Contact Group had established with a view to developing appropriate arrangements for cooperation between the WTO and WIPO, it was certainly true that the Members of the WTO, being the initiators behind the search for cooperation with the International Bureau of WIPO, were entitled, in the framework of the TRIPS Council, to take the time necessary to formulate first and in concrete terms the forms of cooperation they would deem most appropriate and adequate. To that end, the Council was given one full year. Nevertheless, her delegation believed that there were many urgent questions which the TRIPS Council had to address at this time and which needed to be dealt with jointly with WIPO. In addition, it would seem difficult for one body to decide unilaterally on issues which fell within the purview of another body. To this end and in accordance with the desire to establish a mutually supportive relationship between the Organizations, a joint *ad hoc* informal working group should be established, in order to facilitate achieving the objective of developing appropriate arrangements for cooperation. Her delegation would not suggest that such a working group be institutionalized, but only be established for the purpose of servicing stages two and three of the staged programme of work agreed in the Contact Group, i.e. the consideration of forms of cooperation and of how consultations between the two Organizations had best be conducted. Such a working group was not an end in itself, but a means of developing the desired appropriate arrangements for cooperation.

13. The representative of Kenya said that Africa attached great importance to the question of TRIPS and that it was for this reason that the African Ministers of Trade had taken last October a political decision on this matter as part of their implementation of the Uruguay Round. Referring to the statement of the representative of WIPO, he said that it was gratifying to note the willingness of WIPO to cooperate closely with the WTO. When the *ad hoc* WIPO Working Group had met on 8 February 1995 last under his chairmanship, a representative of WTO had also made a statement on behalf of his Organization which had also been very helpful. He was therefore persuaded that there would be fruitful cooperation. After all, generally speaking, the WIPO and WTO served the same continents and states. While he was quite clear as to where WIPO stood on cooperation, he hoped to learn more about the modalities for cooperation as perceived by WTO Members.

14. The representative of Chile, addressing the issue of possible cooperation in the area of technical assistance, suggested that the Secretariat make an inventory of the existing supply of and demand for technical assistance, thus helping the Council to organize a "market" in the area of such technical assistance. This would facilitate the identification of where technical assistance was lacking and the modalities that needed to be worked out. The guiding principle for decisions to provide technical assistance should be which Organization was the most apt in providing the assistance needed. No institution should have a monopoly in providing technical assistance but have its appropriate share as determined by market forces. As to the issue of cooperation with WIPO, his delegation believed that this should be looked at in greater detail with the Secretariat of WIPO, focusing on which forms of cooperation would be to mutual benefit. The area of prime urgency in this respect was that of notification procedures, where technical assistance was needed to enable all countries to make notifications as

promptly as possible. He concluded by emphasizing that WIPO and the WTO should be enabled to operate in a complementary fashion so as to ensure a beneficial allocation of resources.

15. The representative of Paraguay pointed to complementarity as a guiding principle in trying to find the most practical and efficient form of cooperation between the two Organizations and their Secretariats. In this context, an informal joint working group might be considered sooner or later. Such a group could be a helpful means for achieving certain results, in particular in the area of prime urgency, notification procedures, since with the help of WIPO's infrastructure and experience duplication of efforts could be avoided. Also in the area of technical assistance the need for a cooperative relationship with WIPO was obvious. WIPO had been offering technical assistance for some years already and a system of mutual support between the two Organizations should be considered, aimed at adapting WIPO's present system of technical cooperation to countries' needs in respect of the implementation of the TRIPS Agreement. Thus, countries would be enabled to meet their obligations at the appropriate time.

16. The representative of Uruguay, stressing the importance of an excellent cooperation between the WTO and WIPO, said that the notifications in the WTO under the TRIPS Agreement could not be dissociated from the notifications made under the conventions administered by WIPO. As to the issue of technical assistance, she subscribed to the views expressed by Paraguay. WIPO should also identify, from its side, areas in which the two Organizations should cooperate. Finally, she expressed support for the creation of an *ad hoc* informal joint consultation body which should be monitored by both Organizations, on the understanding that cooperation should be a matter not only for the two Secretariats but also for the member countries of the two Organizations.

17. The representative of Morocco said that, when discussing the basic question of what cooperation should be sought, the focus should be on notifications and technical cooperation. As to how cooperation could best be organized, his delegation supported the proposal of the African countries for the establishment of an *ad hoc* informal WIPO/WTO Consultation Group jointly organized by WIPO and the WTO.

18. The representative of the Philippines, speaking on behalf of the ASEAN countries, emphasized the need for close and mutually supportive cooperation between the WTO and WIPO, both being Organizations of which ASEAN countries were members. He welcomed the presence at the meeting of a representative of WIPO and said that it would be indispensable that the two Organizations would be invited as observers to each other's meetings. Accordingly, WIPO should not only be invited to meetings of the TRIPS Council but also to that of other WTO bodies, including the General Council and the Ministerial Conference, in so far as these would deal with intellectual property matters. The WTO should be invited to meetings of the Governing Bodies of WIPO. GATT had always been invited to meetings of Committees of Experts and similar meetings in WIPO and the ASEAN countries would expect this continued in respect of the WTO. He then expressed the hope that the cooperation between the two Organizations would enable the avoidance of duplication of efforts and resources, a matter on which ASEAN took a perennial stand. This might be achieved by setting up mechanisms, whether administrative or financial in nature, which would enable WTO Members to draw on WIPO's expertise and facilities, wherever and whenever possible. For example, systems for the notification of national legislation and matters such as those related to Article 6*ter* of the Paris Convention as had to be considered by the TRIPS Council could be established on the basis of WIPO's existing arrangements. Furthermore, as regards legal and technical assistance to developing countries, full account should be taken of WIPO's extensive experience, expertise and indispensable non-partisan approach. In conclusion, he said that the ASEAN countries were of the view that the meeting of the *ad hoc* WIPO Working Group on Cooperation between WIPO and WTO on 8 February 1995 had been fruitful and had put the process towards cooperation between the two Organizations in the right direction.

19. The representative of Switzerland said that cooperation between the WTO and WIPO was indispensable and desired by both Organizations. He noted that preliminary and exploratory work had already started between the two Secretariats in this respect, which was useful for the establishment, eventually, of real and effective cooperation. Consideration of the matter by the Council should take place in three phases. The first concerned the identification of the needs of the Members of the WTO that had to be met in order to ensure an appropriate implementation of the Agreement. He suggested that the Chairman hold informal consultations to enable Members to express their views as to what they believed was needed to ensure an appropriate implementation of the Agreement and what they believed should be the priorities. The second phase should be the identification, by means of informal contacts through already-established channels, of what WIPO could, or would wish to, supply in answer to these identified needs. In the third phase it would be up to the TRIPS Council to assess the possibilities for cooperation and determine a framework within which cooperation with WIPO would be finally established. As to WIPO's attendance at meetings of the General Council, he preferred to await the outcome of the on-going consultations on observer status in the General Council.

20. The representative of the United States agreed with the delegation of Switzerland that the most important issue for the TRIPS Council in its early days of operation was to decide what its needs were. In that respect, the question of notification procedures was of primary importance. As others had mentioned, technical assistance was an important issue as well. The notification requirements under the Agreement could be very substantial and, while some discussion on this had already taken place in the Contact Group, more discussion was necessary. Before determining WIPO's possible rôle in this respect, the TRIPS Council first had to take some basic decisions on the content of notification requirements.

21. The representative of Japan said that the contacts between the Secretariats of the WTO and WIPO had already identified some specific issues which required some cooperation, such as in respect of notifications. Based on these findings, the TRIPS Council should first give substance to the phrase "mutually supportive relationship", since agreement on this, for example on details of notification requirements, would facilitate considerably both the elaboration of an institutional framework and the contacts on various levels between the WTO and WIPO and their Secretariats.

22. The representative of the European Communities doubted that there had been concrete ideas in the minds of the TRIPS negotiators as to what could or should be the subject matter of "appropriate arrangements for cooperation with WIPO" as referred to in Article 68 of the Agreement. It was now up to the TRIPS Council to define what was meant by this; the prime, if not the exclusive, responsibility for doing so rested with the TRIPS Council. As far as the substance of that cooperation was concerned, an important, perhaps prime, candidate for further discussion and elucidation was the issue of notification requirements. Others had also referred to technical assistance as an area of possible cooperation between the WTO and WIPO. His delegation would also like to have a discussion on that issue in further detail, if for no other reason than that it was essential that, when technical assistance was provided - be it by WIPO or other international organizations - and covered matters arising under the TRIPS Agreement, such technical assistance would be provided in a manner which was consonant with the way in which the TRIPS provisions should be interpreted. In that context the only source could be, apart from the collective wisdom of the TRIPS Council, the WTO Secretariat. When considering the question of cooperation with WIPO, substance should precede procedure. Over the next several months, the TRIPS Council should first seek a sufficient degree of consensus on the substance of possible cooperation between the WTO and WIPO. Thereafter, the question had to be addressed of how such possible cooperation be best discussed with WIPO. His delegation was not convinced that the establishment of joint working parties, working groups or the like would necessarily be the best possible way of approaching these questions at this stage, although he did not necessarily exclude such possibilities later.

23. The representative of Canada said that in trying to ensure a constructive and cooperative relationship between the WTO and WIPO, the cart should not be put before the horse. It would be premature to discuss institutional arrangements, whether formal or informal, between the WTO and WIPO before the substantive questions had been dealt with as identified and referred to by previous speakers. First the activities to be undertaken had to be determined as well as the appropriate procedures for pursuing these activities. In tackling the questions of substance, the TRIPS Council had to take an efficient and practical approach and should, therefore, first discuss the issue of notification requirements. Another important area at this stage was technical cooperation. On the issue of notifications, the first order of business should be to reach consensus on what was really required in the relevant provisions of the TRIPS Agreement and what was the most sensible approach in meeting these requirements. Undoubtedly, this would involve consideration of whether existing WIPO facilities could be used in this respect. Of course, the WTO was not in a position to determine unilaterally what rôle WIPO might play. Options had to be discussed with WIPO and, at the appropriate stage, appropriate channels of communication had to be established. Informal channels of cooperation were already operative in a constructive way and should certainly continue, as the TRIPS Council might build on this cooperation when any arrangements needed to be formalized.

24. In concluding the agenda item, the Chairman first noted that the discussion had reaffirmed the desire of WTO Members for a close, cooperative and mutually supportive relationship with WIPO. As to the question of WIPO's attendance at meetings of the General Council, he would convey to the Chairman of the General Council a recommendation that this matter be included in the consultations the Chairman of the General Council was holding on the issue of observer status for intergovernmental organizations. The discussion on the substance of cooperation with WIPO and how such cooperation might best be organized had revealed some points of convergence but also some points of divergence and no definite conclusion would seem to be within reach at the present time. Therefore, he proposed to hold informal consultations on these questions.

25. The Council so agreed.

### C. Notification Procedures

26. The Council took up first the general question of notification procedures and then the question of notifications in respect of legislation to give effect to obligations already applicable.

#### (1) General notification procedures

##### (i) Article 63.2 concerning the notification of laws and regulations

27. The Chairman drew attention to the information contained in Section III of document PC/IPL/7/Add.2 and in Annex 3 of document PC/IPL/7 itself. As in other rule-based agreements, both under the GATT in the past and under the WTO, the efficient functioning of the procedure provided for in Article 63.2 for the notification of laws and regulations would be a critical element in determining the effectiveness of the Council in carrying out its tasks. In this regard, the main question before the Council was how the Council, while preserving the essential function which this type of notification procedure was expected to perform in the GATT/WTO context, could maximize cooperation and minimize duplication with WIPO.

28. The representative of Japan said that notifications were the key to transparency and the operation of the system as a whole. However, the provisions on notification in the TRIPS Agreement were not necessarily very detailed and clear. Several aspects of the notification procedures needed to be clarified, such as timing, format and language of notifications. In other areas of the WTO Agreement detailed



discussions had already taken place and notification formats had been designed. He proposed that the Chairman hold informal consultations on this matter.

29. The representative of the United States emphasized the considerable extent of the undertaking flowing from the requirement to notify laws and regulations for all countries, in particular for those with more advanced intellectual property systems, and considered that the development of a mechanism for such notifications under Article 63.2 was an urgent matter. In this connection, he noted that an examination of the notification formats established in other areas of the WTO with respect to the notification of legislation might provide guidance to the Council. He suggested that the Secretariat prepare a note containing a compilation of the various arrangements made in the WTO for the notification of legislation and that the Secretariat and/or the Chairman develop suggestions for a format for notification of legislation under the TRIPS Agreement.

30. The representative of Switzerland stressed that it was of fundamental importance that the Council addressed the notification procedures under the Agreement. It was necessary for the Council to establish priorities in considering these various notification procedures. Some of the notification requirements could be dealt with at a later stage, but others had to be addressed urgently, in particular those which defined the beneficiaries under the Agreement or which related to laws and regulations that were already in force. The reason for giving these matters priority lay in the fact that the very existence of rights was involved in the notifications in question, i.e. whether or not rights had been introduced in the Member in question in accordance with the Agreement or which options a Member had chosen for the determination of beneficiaries. Some of the notification requirements also concerned the work of other international organizations. In this regard, a question of cooperation arose in relation to WIPO because of its collections of existing laws and regulations. Having said this, it should be borne in mind, however, that these collections had not been established on a basis which could serve TRIPS purposes without further ado. The notification of laws and regulations under the TRIPS Agreement had a function in the prevention of disputes through the monitoring of the operation of the Agreement and the review of Members' laws. In WIPO, the function was only to provide information on Members' laws. The publication of texts by WIPO would not seem to be satisfactory as a working instrument for the purposes of the TRIPS Agreement. In light of these differences, he considered that notifications of laws and regulations should be submitted officially to the Council for TRIPS. This would not prevent the Council from subsequently making some arrangements with WIPO on technical and mechanical matters concerning the collection of these laws and regulations. It was both essential and possible to establish a clear division of responsibilities taking into account the distinct competences and needs of both organizations.

31. The representative of Paraguay said that all intellectual property laws and regulations in force in his country could already be found in the WIPO collections. Although he did not disagree with the view expressed by the representative of Switzerland regarding the different purposes of notifications in the WTO and the WIPO, the key issue before the Council was the use that could be made of notifications already available in WIPO. He noted that soon documentation could be expected to be produced by the International Bureau of WIPO on possible areas of cooperation between the two Organizations. He suggested that the Chairman hold consultations with a view to determining what contribution could be made by WIPO.

32. The representative of the European Communities said that the views of his delegation were similar to those expressed by the representative of Switzerland. The Council first had to agree on a number of details concerning the interpretation of the transparency and notification requirements in Article 63. The text of Article 63 already provided a substantial amount of guidance and only relatively little needed to be done in addition to the preparatory work prior to the first meeting of the Council. Nevertheless, some important questions still had to be addressed as identified in PC/IPL/7/Add.2, including the question of languages. He believed that it was essential that the basic and quite ambitious notification requirement contained in Article 63 be implemented in a sufficiently practical and rapid

fashion as to make this part of the Agreement operational. He suggested that the Chairman hold informal consultations on the nuts and bolts which still had to be discussed. Only after completion of that technical work could the question be addressed of how the implementation should be carried out and whether such could be done by the WTO or whether it could or should be done in cooperation with WIPO. In that context, he said that his delegation had a predisposition in favour of a cooperative relationship between the WTO and WIPO on this matter. However, the cart should not be put before the horse and the Council should first clarify the substance of the notification requirements before the extent of cooperation that would be practical could be identified.

33. The representative of Korea said that most obligations under the Agreement would not apply until 1 January 1996 at the earliest, so that there was sufficient time to consider the various notification issues in combination with the issue of cooperation with WIPO. The issue of the implementation of the notification requirement contained in Article 63.2 was closely related to the question of cooperation with WIPO. He noted that there were apparent differences between the notification procedures in WIPO and the notification procedures provided for in the TRIPS Agreement. While the WIPO system placed emphasis on the provision of a database for on-going reference, the purpose of the notification system under the TRIPS Agreement was to facilitate the monitoring of the implementation of its provisions. Consequently, a harmonized system or common register needed to be developed for the collection and handling of data in the most effective manner. His delegation hoped that a cooperative mechanism between the WTO and WIPO, if established, would pursue this matter as a priority issue. He also supported the suggestion for further informal consultations on the matter.

34. The representative of India supported holding informal consultations.

35. In the light of the discussion, the Chairman suggested that the Secretariat be requested to make a compilation of how similar notification requirements regarding the notification of legislation were being handled in other WTO bodies. He also proposed that the Council revert at a later stage to the question of the implementation of the notification requirement of Article 63.2 and that he would hold informal consultations on this matter in the meantime.

36. The Council so agreed.

(ii) **Article 4(d)**

37. The Chairman recalled that, if a Member sought to justify an exception to the m.f.n. rule on the basis of an international agreement relating to the protection of intellectual property which had entered into force prior to the entry into force of the WTO Agreement, Article 4(d) required that such an agreement be notified to the Council for TRIPS. The first part of paragraph 12 of document PC/IPL/7/Add.2 raised one or two questions related to this provision.

38. As there were no statements made on this issue, the Chairman proposed that the Council revert to Article 4(d) at a later stage and that informal consultations be held on this matter in the meantime.

39. The Council so agreed.

(iii) **Article 69**

40. The Chairman recalled that Article 69 required the notification of contact points established in the administrations of Members with a view to cooperation in the elimination of trade in infringing goods, notably through the exchange of information.

41. The representative of Switzerland wondered whether these contact points necessarily had to be established in customs administrations; focusing on the rôle of contact points in relation to cooperation in the elimination of trade in infringing goods appeared to suggest this. His delegation, however, was of the view that contact points were, above all, points where information could be obtained, which existed on a national level for *all* questions relating to TRIPS.

42. In response, the representative of the Secretariat said that the intention had not been to limit the concept of contact points so as to necessarily relate only to customs administrations. This would be for the Council to decide. However, the words "For this purpose" at the beginning of the second sentence of Article 69, which laid down the obligation to establish contact points, made it clear that there was a link between that sentence and the first sentence of Article 69, which addressed the general question of cooperation between Members with a view to eliminating trade in infringing goods.

43. The Chairman proposed to hold informal consultations on procedures for implementing the provisions of Article 69.

44. The representative of India said that the wording of Article 69 was clear. His delegation had no problem with the Chairman's proposal, provided that the consultations would be within the broad scope of Article 69.

45. The Council agreed that the Chairman would hold informal consultations and that it would revert to the matter at a later stage.

(iv) **Articles 1.3 and 3.1**

46. The Chairman recalled that Articles 1.3 and 3.1 of the TRIPS Agreement relating to the definition of beneficiary persons under the Agreement and to national treatment allowed certain exceptions to the normal rules, provided that notifications were made to the TRIPS Council. Various issues in this connection were discussed in paragraphs 13-17 of document PC/IPL/7/Add.2. It would seem important that any procedures for giving effect to these notification requirements be developed with as little delay as possible since Members wishing those notifications that stem from provisions of the Rome Convention to be effective from 1 January 1996 should make them before the middle of 1995. He invited delegations to address in particular the question raised in paragraph 14 of document PC/IPL/7/Add.2 concerning possible procedures for handling this matter.

47. The Chairman asked whether it would be acceptable to proceed so that WTO Members would be invited to make any notifications they wished to make under these provisions by the end of June 1995. To facilitate such notifications and to forestall any unintended differences between notifications under the TRIPS Agreement on the one hand and the Berne and the Rome Conventions on the other, the Secretariat would be requested to compile, with the assistance of WIPO and the United Nations Legal Office, a complete listing of the notifications already made under the relevant provisions of the Berne Convention or the Rome Convention and to circulate that compilation to the TRIPS Council. It would be understood that these arrangements would be without prejudice to the right of a Member to make notifications at a later date if it so wished.

48. The representative of Argentina believed that it would be most appropriate to have this document provided by the Secretariat. His delegation supported the proposal in the first indent of paragraph 14 of PC/IPL/7/Add.2, i.e. that notifications already made under the Berne Convention and the Rome Convention should be considered also to have been made for TRIPS purposes unless there was an indication to the contrary by the state concerned.

49. The representative of Mexico shared the views expressed by the representative of Argentina.

50. The representative of the Secretariat recalled that in paragraph 14 of PC/IPL/7/Add.2 alternative procedures for possible decision by the TRIPS Council had been suggested. The first provided that, in the absence of any action on the part of a Member who had already made notifications under the Berne Convention or the Rome Convention, its existing notifications in those contexts would be assumed to be valid also under the TRIPS Agreement on the basis of a decision from the Council for TRIPS that would give legal status to those notifications under the TRIPS Agreement. The second approach would require each Member to confirm an earlier notification or to notify something different. Under this approach, passivity or failure to do something would mean that no notification had been effected under the TRIPS Agreement. On reflection, it seemed that this more active approach might be preferable. One problem with the first approach was that if a Member took no action, there could be room for doubt as to whether the absence of action was due to the matter having been overlooked or due to a deliberate policy decision. Also, the obligations in the TRIPS Agreement on "related rights" were somewhat different from those under the Rome Convention. Therefore it did not necessarily follow that a country which had made certain notifications under the Rome Convention would want to make the same notifications in the TRIPS context.

51. The representative of Paraguay said that while he sympathized with the position expressed by the representative of Argentina, the points made by the Secretariat indicated that the matter still required further reflection and that one had to be fairly cautious.

52. The representative of Hong Kong emphasized the importance of Articles 1.3 and 3.1 as they had a direct relation to the scope of obligations. He shared the caution expressed by the Secretariat and the representative of Paraguay. He suggested that, after examining the compilation proposed by the Chairman, agreement might be reached on something that would not require completely new notifications. He proposed that the matter be included in the informal consultations.

53. The representative of the European Communities agreed with the comments made by Hong Kong. As the obligations under the TRIPS Agreement and the Rome Convention were not identical it would be appropriate that governments, including those he represented, would reflect upon the reservations that they had found necessary with respect to the Rome Convention. It was also important that the respective rights and obligations of the Members were known precisely. Confusion would arise from a situation where some Members would not notify their reservations under the Rome Convention as they would consider them to be valid under the TRIPS Agreement, while others would confirm their earlier notifications or notify something else. He was in favour of all Members notifying reservations they wished to maintain.

54. The Chairman proposed that the Secretariat compile, with the assistance of WIPO and the United Nations Legal Office, a complete listing of the notifications already made under the relevant provisions of the Berne Convention and the Rome Convention and that the Council revert at a later stage to the exact course of action to be taken with regard to the notification requirements of Articles 1.3 and 3.1. In the meantime, he would hold informal consultations.

55. The Council so agreed.

(v) **Article 63.2 concerning notifications pursuant to TRIPS obligations stemming from the provisions of Article 6ter of the Paris Convention**

56. Referring to paragraphs 18-21 of document PC/IPL/7/Add.2, the Chairman introduced the agenda item by asking whether the TRIPS Council would wish to seek the cooperation of the International Bureau of WIPO to handle on its behalf the notifications pursuant to these obligations.

57. The representative of the United States said that there was a rôle to be played by WIPO in this context, given the existing collection of notifications made under Article 6ter by member states of the Paris Convention, including the reactions to those notifications that had been made by other member states. However, the problem remained that the provisions of Article 6ter would be extended under the TRIPS Agreement to other countries that were not members of the Paris Convention. Any action under Article 6ter by WTO Members in the latter category could not simply be left to the WIPO alone.

58. The Chairman proposed that this question also be the subject of informal consultations and be reverted to at a later stage.

59. The Council so agreed.

(vi) **Other notification requirements**

60. The Chairman drew attention to paragraphs 7-9 of document PC/IPL/7/Add.1 which listed a number of notification requirements under provisions of other intellectual property conventions that were incorporated by reference into the TRIPS Agreement but not explicitly referred to in it. He suggested that the Council leave these provisions aside for the time being.

61. The Council so agreed.

(2) **Notification of legislation giving effect to obligations already applicable**

62. The Chairman recalled that the Contact Group had agreed that under Article 63.2 national laws and regulations should be notified promptly as of the time that the corresponding substantive obligation applied and that national laws and regulations implementing the provisions of Article 70.8 should consequently be notified as of the date of entry into force of the WTO Agreement. As of today, notifications had been received from India and Brazil in documents IP/N/1/IND/1 and IP/N/1/BRA/1, respectively.

63. In introducing document IP/N/1/IND/1, the representative of India said that, through the Presidential Ordinance of 31 December 1994 reproduced in that document, India had met its obligations under paragraphs 8 and 9 of Article 70 of the TRIPS Agreement.

64. The representative of Brazil introduced document IP/N/1/BRA/1 and said that it had not been necessary to pass a new law to enable patent applications to be filed under Article 70.8, since the current law did not forbid the Brazilian National Institute of Industrial Property from receiving such patent applications. Consequently, implementation of the provision in question had been possible by the administrative measure passed by the President of the Brazilian National Institute of Industrial Property described in the notification.

65. The representative of the European Communities said that there were three types of legislative and related actions taken by Members which were relevant as of 1 January 1995 and which should therefore be subject to rapid notification to the TRIPS Council. First, Article 65.5 contained an obligation to ensure that any changes in laws, regulations and practice made during the transitional period did not result in a lesser degree of consistency with the provisions of the TRIPS Agreement. His delegation deduced from this obligation that, in order to allow Members to monitor compliance with this obligation as of 1 January 1995, any subsequent changes in domestic law relevant to the TRIPS Agreement should be notified. Second, he mentioned national legislation enacted for the purpose of ensuring conformity with the provisions of the TRIPS Agreement. Although no Member was obliged to submit for circulation such modifications of their national legislation before its corresponding TRIPS

obligation came into force, he believed that it would be very useful if Members, nevertheless, were to do so; his delegation would do so shortly. Third, he mentioned the obligations arising from Article 70.8. He welcomed the notifications made by Brazil and India but noted with concern that quite a number of other Members who should have enacted national legislation or measures in order to implement Article 70.8 either had not done so or had not submitted notifications.

66. The representative of the United States agreed with most of the points made by the representative of the European Communities and also strongly urged other countries to which Article 70.8 applied to submit notifications as soon as possible. He expressed doubts, though, as to the comments made by the European Communities in relation to their second category of laws and regulations.

67. The representative of Japan emphasized the importance of Article 65.5 from a monitoring perspective and expressed support for the points made by the European Communities and the United States. He also supported these delegations on the issue of Article 70.8 and added that attempts by his Government to acquire information through diplomatic channels as to how the countries concerned had implemented that provision had not been fruitful.

68. The representative of Switzerland supported the views expressed by the representatives of the European Communities and the United States concerning Article 65.5. He expressed concern regarding the limited number of notifications received so far under Article 70.8. He was pleased, however, that two notifications had been received.

69. The representative of Canada said that the modalities for any notifications pursuant to Article 65.5 had first to be clarified and that, therefore, Article 65.5 should be included as a priority item in the informal discussions.

70. The representative of India preferred to reflect on the matter and come back to it during the informal consultations.

71. The representative of Paraguay said the he had no difficulties in notifying any amendments to the legislation of his country and that in fact the collection of laws in WIPO could be consulted in this respect, since modifications to the legislation of his country were always communicated automatically to WIPO.

72. The Chairman proposed that Article 65.5 would be the subject of informal consultations and that the Council revert to the matter at a later stage. As to the second suggestion of the European Communities, relating to the situation where a country had amended its legislation to bring its laws and regulations into conformity with the provisions of the TRIPS Agreement in advance of its obligations to do so, he suggested that information concerning such legislation would be submitted to the TRIPS Council on a best endeavours basis. As regards Article 70.8, he proposed that the TRIPS Council urge those Members to whom Article 70.8 applied to notify the relevant legislation prior to the next meeting of the TRIPS Council and that the Council revert to the matter at the next meeting.

73. The Council so agreed.

74. The representative of Egypt said that there should be no decision that would add or lessen any obligations under Article 65.5.

75. The Chairman noted that no decision had been taken in respect of Article 65.5 other than to have informal consultations.

D. **Organizational Matters and Work Programme**

76. The Chairman invited delegations to consider which other items should be addressed this year and how the TRIPS Council should proceed in this respect.

77. The representative of the European Communities had two comments with respect to the activities of the TRIPS Council, in particular, its responsibilities for monitoring the operation of the Agreement. The first comment concerned the question of patent applications under Article 70.8. Emphasizing the great importance his delegation attached to operationally relevant procedures under Article 70.8 and 70.9 in all countries that should have introduced such procedures with effect from 1 January 1995, he proposed that the implementation of these provisions be put on the agenda of the next meeting of the TRIPS Council. In this context, it would be helpful to have available prior to the next meeting, in addition to the notifications already received, the relevant legislation of all participants concerned relating to these provisions so as to permit examination at that meeting. Apart from discussing this matter in the TRIPS Council, his delegation remained, of course, fully open to pursuing related questions on a bilateral basis, if countries in question so wished. His second comment related to Article 23.4 of the Agreement concerning the establishment of a multilateral system of notification and registration for geographical indications, which was a matter that had been discussed at great length during the negotiations on TRIPS and which his delegation wished to address at an early opportunity in the TRIPS Council, preferably at the Council's next meeting.

78. The representative of Egypt said that the highest priority should be attached to the issue of technical cooperation. In this regard, her delegation believed that the TRIPS Council might play a rôle in the context of Article 67 of the Agreement by reviewing, starting this year, technical and financial cooperation and assistance provided by developed countries in favour of developing and least-developed countries with a view to assisting them in the implementation of the Agreement. It would be useful if periodically adequate information would be provided to and examined by the Council with a view to identifying areas where additional efforts might be necessary to respond to the needs of developing and least-developed countries.

79. The representative of Canada, referring to the issue of non-violation nullification or impairment in the TRIPS context, said that her delegation attached considerable importance to the inclusion of this matter in the work programme of the TRIPS Council. While recognizing the time available for a review and further consultations on this question, she stressed that the issues concerned were conceptually difficult and had not been taken up in substance in any previous discussions, including the TRIPS negotiations. The discussion of these issues should not be delayed too much, so as to leave an adequate period to complete examination of the matter, as called for in Article 64 of the TRIPS Agreement. She suggested that the Council include the matter in its work programme with a view to, at least, setting a work plan this year on how to deal with it.

80. The representative of Korea referred to Article 68 of the Agreement, in particular the Council's task of monitoring the operation of the Agreement, and said that the basic and necessary information for monitoring Members' compliance with their obligations under the Agreement would be the laws and regulations notified. Considering the volume of this information, his delegation would suggest that, this year, a checklist or questionnaire be prepared as well as a monitoring schedule for the submission of responses based on the entry into force of the substantive obligations under the TRIPS Agreement. A working group might be established to prepare such a checklist or questionnaire and examine the responses received from Members. An additional advantage of such a system would be that the responses could be distributed to the Members instead of the laws and regulations themselves.

81. The representative of the United States agreed with the first comment by the European Communities, that Article 70.8 should be kept on the agenda and should be an important topic for

the next meeting of the TRIPS Council. He expressed disagreement, however, with the Canadian delegation and believed that it was premature to begin considering questions of non-violation dispute settlement cases. The Council had five years for the examination of this matter and this year already had many other important issues to turn its attention to.

82. The representative of India associated himself with the suggestion by Egypt on Article 67 and also endorsed the views expressed by the Canadian delegation.

83. The representative of Hong Kong was of the view that, at this stage, the Council should concentrate its efforts on getting the business going and should, consequently, focus on the monitoring function under Article 68, in particular in respect of Article 70.8 and 70.9. He also supported the Egyptian suggestion to consider the implementation of Article 67. The issues of non-violation disputes and a notification and registration system for geographical indications had a strong negotiating element: discussion on these matters had, therefore, better be reserved for later.

84. The representative of New Zealand said that in her delegation's view the early work of the Council should include the implementation of Article 68 of the Agreement, i.e. arrangements for monitoring the operation of the Agreement and consideration of what assistance the Council might provide in the context of dispute settlement. Other priorities for future work were, in order, the implementation of Articles 23.4, 64.3, 69 and 67 and 66.2.

85. The representative of Egypt said that it would not be necessary to take up the issue of non-violation disputes until the third year after entry into force of the Agreement.

86. The representative of Japan agreed with Hong Kong that consideration this year of the issues of non-violation disputes and geographical indications would be premature.

87. The representative of Switzerland believed that it was not at all premature to consider Article 23.4 of the Agreement. The establishment of a notification and registration system for geographical indications should be one of the priorities for the Council.

88. In conclusion, the Chairman noted that some of the points put forward would seem to be more readily agreeable as items for a work programme than others. He proposed to take this agenda item up in the informal consultations he would be holding.

89. The Council so agreed.

#### E. Activities in other International Fora Relevant to the TRIPS Agreement

90. The Chairman referred to document IP/C/W/1 and Corrigendum 1 concerning draft model legislation under consideration in the World Customs Organization aimed at assisting countries in giving effect to their obligations on border enforcement under the TRIPS Agreement and opened the floor to delegations wishing to comment on this or other matters relating to relevant activities of other international fora.

91. The representative of the United States was concerned that the World Customs Organization was on a rather fast track. While all delegations had the opportunity to consult with their own customs authorities on this, he was concerned that model legislation interpreting one aspect of the TRIPS Agreement was about to be adopted and that there might not be much left to discuss in the TRIPS Council in relation to document IP/C/W/1 if the model legislation were adopted by the World Customs Organization in June of this year, as scheduled.



92. The Chairman proposed to take up this item in the informal consultations he would be holding and to convey to the Chairman of the General Council the desire of the TRIPS Council to invite the Secretariat of the World Customs Organization to be represented in an observer capacity at the next meeting of the TRIPS Council.

93. The Council so agreed.

F. **Other Business**

94. The Chairman proposed that the Council hold its next meeting on 24 May 1995 and that, in the meantime, he would hold informal consultations on the various matters which had been discussed.

95. The Council so agreed.

96. The Chairman then suggested that the Council might have an additional meeting before the summer break if necessary, for which he suggested some time in the week of 10 July 1995, and one or two meetings in the autumn period according to the needs of the Council, for which he suggested, on a tentative basis, some time in the weeks of 9 October and 20 November.

97. The Council took note of these suggestions.