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

MINUTES OF MEETING

Held in the Centre William Rappard  
on 27 February 1997

Chairman: Ambassador W. Armstrong (New Zealand)

Subjects discussed:

- A. Notifications under Article 4(d)
- B. Guidelines for notifications under Article 63.2 relating to Articles 3, 4 and 5
- C. Other notifications under provisions of the Agreement
- D. Follow-up to the review of legislation on:
  - (i) copyright and related rights
  - (ii) trademarks, geographical indications and industrial designs
- E. Implementation of Article 70.8 and 70.9
- F. Technical cooperation
- G. Follow-up to Section IV of the Council's report (1996)
- H. Observer status for international intergovernmental organizations
- I. Information on relevant developments elsewhere in the WTO
- J. Other business
- K. Election of the Chairperson of the Council for TRIPS

**A. Notifications under Article 4(d)**

1. The Chairman said that, since the Council's previous meeting, a notification under Article 4(d) of the Agreement had been received from the Slovak Republic. The notification indicated that two agreements that were no longer valid should be deleted from the list of bilateral agreements which

the Slovak Republic had notified earlier. This notification had been distributed in document IP/N/4/SVK/2/Corr.1.

2. The Chairman recalled that the Council, at its previous meeting, had agreed to allocate sufficient time at the present meeting to focus on the criteria that might be relevant to deciding whether a notification should be made under Article 4(d), in particular those listed in the informal Secretariat note of 25 April 1996 and in proposals from delegations. This note had been updated by the Secretariat on the basis of the consultations held on the matter and the proposals referred to and circulated as document No. 397, dated 27 January 1997. The criteria were contained in paragraph 7 of that document and were intended to assist individual Members in making or reviewing their notifications, it being understood that the criteria could not add to or diminish the rights and obligations of WTO Members under the provisions of Article 4(d). The only difference in the list of criteria, compared to the list contained in the earlier version of the note, was that a new point had been added concerning provisions of other multilateral intellectual property agreements which were incorporated into the TRIPS Agreement. The Chairman said that, prior to the present meeting, he had held further informal consultations on the matter and provided an opportunity to delegations to air any points that they had concerning the criteria listed in paragraph 7 of the updated Secretariat note. As a result of those consultations, and taking account of points made by delegations, a second revision of the note had been prepared by the Secretariat and distributed in document No. 930 of February 1997. In particular, the re-drafted paragraph 7 distinguished between, on the one hand, criteria flowing directly from the provisions of the chapeau of Article 4 and the text of sub-paragraph (d) itself and, on the other hand, criteria derived from other provisions of the TRIPS Agreement.

3. On the basis of the informal consultations held, the Chairman suggested that the Council take the following action:

- first, that the Council would note the existence of the Secretariat paper, the last paragraph of which was intended as an informal guideline to assist individual Member States in making or reviewing their notifications under Article 4(d);
- second, that the Council would revert to the issue in the autumn so as to take stock of the situation at that time and in the light of any new or revised notifications that had been made; and
- third, that the Council would note that in the meantime it remained open for any Member to raise specific points concerning the notifications under Article 4(d), either bilaterally or on the floor of the Council.

4. The representative of Mexico stressed that the document should serve as an informal guide to assist Members to determine whether a notification under Article 4(d) might be warranted and expressed support for the proposal to revert to the issue in the light of new or revised notifications. While recognizing the general right that any Member had to put a question to another Member, bilaterally or in the course of a Council meeting, he said that this possibility should not form part of a decision concerning notifications under Article 4(d), because it might be interpreted as a reference to a review of notifications made and nothing in Article 4(d) required such a review. Noting the changes that had been made to paragraph 7 on the basis of the informal consultations, he suggested a number of additional changes to that paragraph.

5. The representative of the United States supported the text of the informal background note and the Chairman's proposal on how to move forward on Article 4(d). The proposal would provide for an opportunity to revisit the notifications that had been made under that Article and the structure of the note presented a framework for such reviews. In the informal discussions, a number of Members

had expressed a preference for approaching the issue by Members posing questions to other Members directly rather than through a more formal procedure. Therefore, it was important to retain the statement that any Member may present questions to other delegations regarding their notifications, whether bilaterally or on the floor of the Council. An incentive was needed to ensure that Members would review their notifications in a timely manner and make the determination as to whether a notification under Article 4(d) had been appropriate. In a number of cases, Members appeared to have notified every bilateral or multilateral agreement to which they were parties and that contained the term "intellectual property", disregarding the threshold in Article 4(d) itself for notifications under the provision. He encouraged those Members that had followed such an approach in their notifications to consider seriously whether the breadth of those notifications was in fact appropriate. Finally, the representative of the United States drew attention to the fact that certain governments, including the governments of Germany, Portugal and Italy, had notified the entire contents of the Paris Convention, which his delegation found confusing in view of the obligation under Article 2.1 of the TRIPS Agreement to comply with Articles 1 through 12, and 19 of the Paris Convention (1967). This raised the question as to whether these WTO Members were suggesting that they did not have to extend MFN treatment to nationals of other WTO Members in respect of the obligations contained in Articles 1 through 12, and 19, of the Paris Convention (1967).

6. The representative of the European Communities said that the present text of the note was acceptable to his delegation and that the note was a helpful yardstick, not intending to be a qualitative interpretation of Article 4, in particular of its sub-paragraph (d). Referring to the comments made by the representative of the United States, he recognized that some Community Member States had made generous use of the option to make notifications under Article 4(d), but it should also be borne in mind that Article 4 introduced for the first time an MFN clause into a multilateral agreement on intellectual property and that some trial and error in advancing the matter could therefore be expected. Moreover, he was not aware of any problems that had arisen as a consequence of such notifications but, if any such problems would emerge, he would be perfectly prepared to address them at any time.

7. The representative of Mexico said that he would not raise objections to the Chair's proposals, including the element that delegations could put questions to other delegations whenever they needed clarification about any point, but it should be absolutely clear that, in his delegation's view, under Article 4(d) there was no obligation, first, to notify or, second, as certain provisions in other agreements annexed to the WTO Agreement explicitly required, to carry out a review of notifications and their validity.

8. The Chairman proposed that the Council take the action suggested by him earlier (paragraph 3 above), with the following additional fourth and fifth points:

- fourth, the Council would take note of the statements made; and
- fifth, the Secretariat would be requested to revise the last paragraph of the informal background note taking into account the points raised by the representative of Mexico.<sup>1</sup>

He also emphasized that the note was an informal background note intended as a helpful yardstick to assist individual Members.

9. The Council so agreed.

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<sup>1</sup>The last paragraph as revised to incorporate these suggestions is reproduced in the Annex to these minutes.

**B. Guidelines for notifications under Article 63.2 relating to Articles 3, 4 and 5**

10. The Chairman said that, at its meeting in September 1996, the Council had concluded that this matter should be approached on the basis of a range of options between which Members could choose in making their notifications and that the Secretariat should prepare a format for one of these options, namely making a general statement that nationals of other WTO Members enjoyed national and MFN treatment and listing any exceptions to that principle. At its meeting of 11-15 November 1996, the Council had noted that the document in question prepared by the Secretariat (IP/C/W/48) had only just been distributed and agreed that it would take a decision on the proposed format at its meeting in February 1997.

11. The Chairman reported that he had taken up this issue with Members in informal consultations prior to this meeting. As a result of comments made by delegations during those consultations, the Secretariat had revised the Annex to its note containing the draft format (document IP/C/W/48/Rev.1). On the basis of the revised note, further informal consultations had been held and in the light of those consultations he proposed three changes to the Annex to the note containing the proposed draft format:

- at the end of the second paragraph on page 3 of the document, after the word "option", a comma should be introduced and the following words added: "without adding to or subtracting from the rights and obligations of Members under the Agreement";
- under item 1 of the format, dealing with national treatment, the last four lines of the text under (a) should be deleted, i.e. from "Do the intellectual property laws and regulations ..." down to "relevant provisions";
- item 2 of the format on most-favoured-nation treatment should be changed in the same way as proposed for item 1.

12. In submitting the amended format to the Council, the Chairman said, first, that it was, as it stated, intended to be no more than a practical aid to assist Members to avail themselves of the option to which it related. As now clearly stated in the text, it could not add to or subtract from rights and obligations of Members under the Agreement. Second, the purpose of identifying a range of options and, in particular, the general statement approach contained in the second option was to find as lightweight a way as possible of Members making notifications, while at the same time providing the transparency required under Article 63.2 in order to assist the Council in its review of the operation of the Agreement. Third, it was clear that many delegations were waiting for the outcome of the discussion on this point before making their notifications.

13. The representative of Singapore, speaking on behalf of the ASEAN countries, said that, without delving into the underlying systemic issue, ASEAN wished it placed on record that, in not objecting to whatever consensus there might be on the various alternatives for notifications under Articles 3, 4 and 5 of the TRIPS Agreement, there should be no implication whatsoever that each and any of the ASEAN Member states had thereby waived any of their rights under Article 65.2 of the TRIPS Agreement, in particular the right "to delay for a further period of four years the date of application" of the provisions of the Agreement other than Articles 3, 4 and 5.

14. The representative of Brazil said that his delegation fully supported the document with the amendments proposed by the Chairman.

15. Following some discussion on its status, the Chairman suggested that the Council take note of the Annex to document IP/C/W/48 with the proposed amendments as a document which had been developed by the Council as a practical aid to assist delegations making notifications of laws and

regulations relating to Articles 3, 4 and 5 of the Agreement. He further suggested that the Council take note of the statements made.

16. The Council so agreed.

**C. Other notifications under the provisions of the Agreement**

*(i) Notifications under Article 63.2*

17. The Chairman recalled that the review of legislation in the areas of patents, plant varieties, integrated circuits, undisclosed information and the control of anti-competitive practices was scheduled for the Council's next meeting at the end of May in accordance with the Council's decision of 21 November 1995 (document IP/C/3). The Council had agreed at the previous meeting that Members wishing to ask questions should provide advance notice of them to the Member concerned and to the Secretariat by 15 March 1997 with written responses due by 30 April 1997. A reminder concerning this agreed procedure had been circulated to delegations in WTO/AIR/501, of 10 January 1997. With a view to assisting Members in the preparation of this work, the Secretariat had prepared an informal checklist reflecting in which WTO documents laws and regulations in the areas concerned had been distributed (document No. 1130 of 27 February 1997). As the checklist showed, a number of the Members concerned still had not notified certain legislation in these areas. The same was also true for other areas covered by the Agreement and which the Council had reviewed in July and November last year. He therefore again urged the Members concerned to make any outstanding notifications without delay so as to maximize the usefulness of the Council's review exercise of national implementing legislation. In this context, he also wished to refer to the point that he had made at the review meeting in November 1996, when he had mentioned that, in a number of cases, delegations had referred to legislative texts in their answers to questions put to them which had not been notified to the Council. Only a small number of such laws and regulations had subsequently been received by the Secretariat.

18. While on the subject of the review to be held in May 1997, the Chairman proposed that all Members covered by the review would respond, in respect of patents, to the same question on priority rights that had been included in the trademark review. This question would read: "Does your country recognize a right of priority on the basis of an earlier patent application filed in any other WTO Member by a national of a WTO Member?"

19. As regards new notifications made under Article 63.2, the Chairman informed Members that the notifications of Cyprus and Romania that he had mentioned at the previous meeting had been circulated as advance notifications under paragraph 3 of the decision of the Council contained in document IP/C/2. Senegal had notified that its national legislation relating to industrial property was the Bangui Agreement adopted on 2 March 1977, while informing the Council at the same time that the revision of that Agreement was under way, in particular with a view to harmonizing some of its provisions with those of the WTO relating to TRIPS (document IP/N/1/SEN/1). New Zealand had notified a set of recent amendments to several of the laws and regulations which it had initially notified under Article 63.2.

20. Finally, the Chairman updated Members on the status of the responses to the checklist of issues on enforcement, which the Council had agreed should have been notified by 31 December 1996. To date, the Secretariat had received eight notifications in addition to the eight that were already available at the time of the Council's previous meeting. Responses had now been notified by Austria, Belgium, Canada, Denmark, the European Community, Greece, Ireland, Italy, Japan, Liechtenstein, the Netherlands, New Zealand, Norway, Slovenia, Sweden and the United Kingdom. He urged other Members which had not yet notified their responses to the checklist to do so without delay so that the

Council's review of national implementing legislation in the area of enforcement, which would take place in November 1997, could be as useful as possible. He also noted that some of the responses received did not address all the questions in the checklist or did so only in relation to certain categories of intellectual property.

21. The representative of Romania stressed that the notification circulated to Members in document IP/N/1/ROM/1, of 20 February 1997, had been made for transparency reasons and without prejudice to the provisions of Article 65, paragraphs 2 and 3, of the TRIPS Agreement. Even so, Romania was interested in being included in the process of examination of laws and regulations related to the TRIPS Agreement and welcomed that it had already been included in the checklist which had been prepared by the Secretariat. Her delegation considered that the exercise of the examination of laws and regulations in the TRIPS field was a valuable test for the compatibility of laws and regulations with the TRIPS Agreement. She also wished to note that it was her delegation's understanding that through this notification it was meeting its obligations under Article 3, 4 and 5 of the TRIPS Agreement.

22. The representative of the European Communities expressed his appreciation for the statement made by Romania. He welcomed the fact that a country which might benefit from a transition period under Article 65 had submitted its legislation for review before the year 2000. As said before, a huge number of laws would need to be reviewed as from the year 2000 and it would, consequently, be useful if other delegations were to follow the Romanian example and allow review of their legislation in advance of the year 2000, without prejudice to Article 65. He also wished to draw the Council's attention to the issue of new notifications and their examination, in particular whether they should be reviewed individually or only after a certain number of such notifications had been received.

23. The representative of Norway, for reasons of transparency, wished to inform the Council that certain modifications of relevant Norwegian laws and regulations had entered into force as of 1 January 1997. These modifications concerned the following laws and regulations: the Trademarks Act, the Patent Act, the Designs Act and related regulations to all these three acts. These modifications did not alter the comprehensive protection already given. He said that the authorities of his country were working on translations into English and would notify the revised legal texts as soon as possible.

24. The representative of the United States said that his delegation also wished to commend the delegation of Romania for its statement and the notification it had made, in particular its desire to participate in a review that could feed it with valuable information. His delegation supported the suggestions and comments made by the European Communities that the Council should start to consider how it would tackle the work that lay ahead for Members as the transition periods came to an end. He emphasized the usefulness of the idea that, if possible, those WTO Members which had taken steps to implement TRIPS obligations should be encouraged to participate voluntarily in the review process in advance of the expiration of their transition periods, obviously not challenging their entitlement to that period, but merely to aid in the process of the review of legislation. This would be fully consistent with the first recommendation that the Council put in its report to the Singapore Ministerial, where all Members reaffirmed the importance of full implementation of the TRIPS Agreement within the applicable transition periods as well as the importance of each Member taking the steps which it considered appropriate so that the provisions of the Agreement would be applied.

25. The Chairman recalled that, at its November 1996 meeting, the Council had identified a certain way forward regarding this issue of the future review of legislation. The Council had agreed that the Chair would consult in the course of 1997 with individual Members whose legislation had not been subject to the present review exercise but whose legislation would have been in whole or in large part brought into conformity with the TRIPS Agreement in advance. The purpose of those consultations had been outlined as had the understanding that participation by a Member would be without prejudice

to its entitlements under Article 65 and would be considered as a practical contribution to the work of the Council (document IP/C/M/11, paragraph 35).

26. The Council took note of the statements made.

(ii) *Notifications under Article 69*

27. The Chairman said that, since the Council's meeting in November, new notifications had been received from India and from Barbados and that Poland had notified modifications to its earlier notification under Article 69. The Secretariat had circulated a second addendum to the revised compilation of notifications under Article 69 (document IP/N/3/Rev.2/Add.2), which contained notifications of contact points received since the first addendum to that list had been prepared in September 1996. Since the distribution of the second addendum, Canada had submitted updated information concerning its contact points. A total of 75 Members had now notified contact points under Article 69.

**D. Follow-up to the review of legislation**

(i) *Copyright and related rights<sup>2</sup>*

28. The Chairman recalled that the Council had agreed, at its meeting of 11 to 15 November 1996, to focus the follow-up to the review of legislation on copyright and related rights at the present meeting and that Members should make a particular effort to cover at the present meeting any issues that might have arisen from the review. Further follow-up questions posed to the United States had been received from the European Communities and their Member States and circulated in document IP/C/W/53. Questions posed to Australia, Canada, Japan and the United States had been received from Brazil and circulated in document IP/C/W/55.

29. The representative of the United States said that Members had been invited by the Council to provide advance notice of any follow-up questions by the end of January 1997 (document IP/C/M/11, paragraph 15) so as to allow enough time for delegations to prepare responses prior to the present meeting. Unfortunately, his delegation had received some of the questions only the week before the meeting and others just prior to the meeting and was not in a position to provide its responses at this time, but would do so in writing shortly so that they could be circulated in advance of the next meeting. Similarly, the representatives of Canada and Australia said that they had just received the questions posed to them and would provide responses in due course.

30. The representative of Korea, referring to the responses given by the United States to the question Korea had posed to the United States at the review meeting in July 1996 (see document IP/Q/USA/1, Part VI), had the following follow-up questions for the United States:

"Are the following works, the authors of which are nationals of other WTO Members, protected under the US Copyright Law:

- a work published after 1922, but the author of the work died before 1947;
- a work published after 1922, and the author of the work died after 1947;

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<sup>2</sup>Questions posed in the context of this follow-up will be circulated together with the answers given in the IP/Q/- series of documents.

- a work published before 1922, but the author of the work died after 1947;
- a work published before 1922, and the author of the work died before 1947?"

31. The Chairman proposed that the Council take note of the statements made and revert to the matter at its next meeting.

32. The Council so agreed.

(ii) *Trademarks, geographical indications and industrial designs*<sup>3</sup>

33. The Chairman said that the Secretariat had received written copies of virtually all the follow-up and other additional questions and replies that had been presented orally at the review meeting concerning legislation on trademarks, geographical indications and industrial designs in November 1996. The record of the introductory statements made by delegations, the questions put to them and the responses given were being circulated in the IP/Q2/COUNTRY/-series of documents. The documents concerning the legislation of the Czech Republic and Iceland had already been circulated, and others were being processed.

34. The procedures for the review (document IP/C/M/7, paragraph 6 and IP/C/M/8, paragraphs 69 and 70) provided that, at subsequent meetings of the Council, an opportunity would be given to follow up any point emerging from the review session which delegations considered had not been adequately addressed. Follow-up questions posed to the European Communities and the United States had been received from India and circulated in document IP/C/W/54.

35. The representatives of the European Communities and the United States said that they would provide responses in advance of the next meeting of the Council.

36. The Chairman proposed that the Council take note of the statements made and revert to the matter at its next meeting.

37. The Council so agreed.

#### **E. Implementation of Articles 70.8 and 70.9**

38. The Chairman said that a revised notification had been received from Kuwait, which had been circulated as document IP/N/1/KWT/1/Rev.1. Turkey had notified information additional to that in its earlier notification relating to Article 70.8, which concerned statistics about the number of applications received in the "mailbox" since 1995 (broken down by country of origin) and on the system of exclusive marketing rights applicable in Turkey as required by Article 70.9 of the Agreement. This information would be circulated as document IP/N/1/TUR/1/Add.1. He also drew Members' attention to the Senegalese notification (document IP/N/1/SEN/1) referred to under item C above which also contained information from Senegal on the filing of patent applications for pharmaceutical and agricultural chemical products in Senegal.

39. While thanking the WTO Members mentioned for their notifications, the representative of the United States said that, in respect of many other Members, it still remained unclear what the legal

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<sup>3</sup>Questions posed in the context of this follow-up will be circulated together with the answers given in the IP/Q2/- series of documents.

situation was with regard to the patentability of pharmaceutical and agricultural chemical products or whether Article 70.8 and 70.9 of the Agreement had been complied with. Although this point had been emphasized at various previous Council meetings, the information available from Members was still unsatisfactory and his delegation would appreciate the necessary clarifications from Members including, in particular, Bangladesh, Guatemala, Madagascar, Morocco, Myanmar, Nicaragua, Qatar, Tanzania, Zambia and Zimbabwe. The other point that he wished to stress again was that virtually all notifications received so far were limited to information on the establishment of a "mailbox" under Article 70.8 and not about the availability of exclusive marketing rights as required by Article 70.9. Finally, he informed the Council of developments in the disputes with Pakistan and India relating to these provisions, saying that he hoped to be in a position to notify a mutually agreed solution to the dispute with Pakistan to the Council shortly and that the panel established in the dispute with India had established a timetable for its work.

40. The representative of Pakistan said that his country had fulfilled its obligations under Article 70.8 and 70.9 of the TRIPS Agreement with the issuance by the President of Pakistan, on 4 February 1997, of an ordinance providing that all applications filed after 1 January 1995 should be considered validly filed and enabling persons who would have filed applications as from 1 January 1995 until the date the ordinance was issued to still do so and receive a filing date. With respect to the obligations under Article 70.9 of the TRIPS Agreement, the ordinance provided that exclusive marketing rights would be granted where (a) the applicant was granted a patent and marketing approval for the product that was the subject of a corresponding application in another WTO Member and (b) the applicant was granted marketing approval in Pakistan. He said that his delegation would notify the ordinance shortly and was working on the notification of a mutually agreed solution with the United States delegation.

41. The Council took note of the statements made.

#### **F. Technical cooperation**

42. The Chairman said that, since the previous meeting, the Secretariat had received updated information on technical cooperation activities from the Organization for Economic Co-operation and Development, which had been distributed in document IP/C/W/35/Add.7. The following developed country Members had so far provided updated information on their technical cooperation activities: Austria, Canada, Denmark, the European Communities, Finland, Germany, Japan, New Zealand, Norway, Spain, Sweden, Switzerland, the United Kingdom and the United States (documents IP/C/W/34 and addenda). As regards international intergovernmental organizations observers to the TRIPS Council, updated information had been provided by the FAO, the IMF, the OECD, UNCTAD, UPOV, WIPO, the World Bank and the WCO on their technical cooperation activities (documents IP/C/W/35 and addenda). Since the previous meeting, contact points for technical cooperation purposes relating to the TRIPS Agreement had been notified by Finland, Germany and Liechtenstein and an updated compilation of such contact points had been circulated as document IP/N/7/Rev.1. Since this document had been circulated, Canada had notified some changes concerning its contact point. 18 developed country Members had now notified contact points for technical cooperation purposes.

43. The representative of Peru recalled that one of the areas covered by the cooperation agreement between WIPO and the WTO was legal-technical assistance and technical cooperation and wondered whether the Secretariat could provide, before the Council's next meeting, any information on technical cooperation activities under that agreement.

44. The Chairman referred to the contributions from the international intergovernmental organizations observers to the TRIPS Council that he had mentioned a moment ago, which included updated information from WIPO. He also referred to the contribution from the WTO Secretariat on its technical

cooperation activities in the TRIPS area circulated in document IP/C/W/36. He emphasized the importance of the cooperation between WIPO and the WTO in the area of technical cooperation and mentioned as an example the Workshop on the Border Enforcement Provisions of the TRIPS Agreement held in September 1996, which had been jointly organized by WIPO and the WTO. He said that a significant amount of information had been made available on technical cooperation activities and that the expectation was that such information would also be made available in the future.

45. The representative of India said that it would be useful to get information on the implementation of the Agreement Between WIPO and the WTO, which could be considered at the Council's next meeting in connection with technical cooperation. He recalled that, according to paragraph 22 of the minutes of the Council's meeting in November 1996 (document IP/C/M/11), Japan had informed the Council that it was assisting the International Bureau of WIPO in organizing an Asian regional seminar on the implementation of the TRIPS Agreement, to be held in Singapore from 15 to 17 January 1997, and that an official from the WTO Secretariat would be invited as a speaker to that seminar. He wondered whether an official from the Secretariat had spoken at that seminar and expressed his interest in more information on the seminar.

46. The representative of the Secretariat said the seminar in question had been organized in the form of a roundtable, essentially for senior officials from the patent offices in the Asia-Pacific area. Such a seminar was organized annually by WIPO with financial assistance from the Japanese Government. The roundtable, in which he had participated, had largely been devoted to issues of implementation of the TRIPS Agreement. He recalled that two representatives from India had been present at the roundtable, one from the private sector and the other from the government. If the representative of India so wished, additional information on the seminar including papers presented at the seminar could be made available to him.

47. The representative of India said that it would be useful to make available the papers presented at the seminar, in particular because one of the topics had been how to facilitate further technical cooperation in the area of intellectual property and one of the ideas that had been presented concerned shifting the technical cooperation activities out of Geneva and into the different regions. The papers might help in understanding the concerns of the countries in the region and how the WTO Secretariat would be able to meet the requests made by countries.

48. The representative of Japan informed the Council that his delegation would provide information on the seminar at the next meeting.

49. The Council took note of the statements made.

#### **G. Follow-up to Section IV of the Council's report (1996)**

##### *(i) Implementation of the Agreement (paragraph 32 of document IP/C/8)*

50. The representative of the United States said that the discussions that had taken place earlier this meeting in relation to the review by the Council of the implementation of the Agreement had strengthened his delegation's view that it might be worthwhile to spend some time thinking about what might be done as a follow-up to paragraph 32 of the Council's report (document IP/C/8). Steps towards achieving implementation of the TRIPS Agreement in advance of the dates of the expiration of the transition periods might warrant some attention in the context of, in particular, the review of national implementing legislation.

51. The representative of Singapore, recalling the long and arduous negotiations on this matter last autumn, believed that the follow-up activity was quite clear: it was for each Member to decide what steps it would take to implement the TRIPS Agreement within the transitional period to which it was entitled.

(ii) *Technical and financial cooperation (paragraph 33 of document IP/C/8)*

52. The representative of India said that the implementation of the recommendations contained in paragraph 33 of the Council's report (document IP/C/8) could be seen in the context of the decision taken by Ministers in Singapore to organize a high-level meeting in Geneva in order to look at ways to enhance trade opportunities of least-developed countries. This might require, in the first instance, some coordination between the members of the Secretariat serving the TRIPS Council and those responsible for the organization of that meeting and would seem to be a matter of urgency, since the high-level meeting was expected to take place before the summer break.

53. The representative of the Secretariat said that the Intellectual Property and Investment Division of the WTO Secretariat was in touch with those who were handling the Secretariat end of the preparation for the high level meeting. He also informed the Council in this context that the Secretariat was organising a second workshop on the TRIPS Agreement specifically directed towards the least-developed and other Sub-Saharan African countries, which was scheduled to take place at the end of June or the beginning of July this year and to be conducted in French. Like the first such workshop, which had been held in October 1996 and conducted in English, the second workshop would be financed from the Norwegian contribution to the WTO Trust Fund. Speakers would include representatives of WTO Members, officials of the International Bureau of WIPO, private practitioners and staff members of the WTO Secretariat.

54. The representative of Norway said that, however important the obligation to provide technical and financial assistance on TRIPS related matters was, his delegation was hesitant to expand the scope of the high-level meeting. It had been agreed that the meeting should focus on least-developed countries in a serious attempt to enhance their integration in the multilateral trading system. Assistance to more advanced developing countries was also very important, but should be referred to other fora.

55. The representative of Brazil said that his delegation could support the suggestion made by India which, since the high-level meeting was limited to least-developed countries, would of course only be a partial follow-up to the recommendation in paragraph 33 of document IP/C/8.

(iii) *Built-in Agenda (paragraph 34 of document IP/C/8)*

- *Review of the application of the provisions of the section on geographical indications under Article 24.2*

56. The Chairman recalled that the Council, as agreed in its 1996 report (IP/C/8, paragraph 27), had taken up work on this matter at its meeting of 11-15 November 1996 after and taking into account the review of legislation in the areas of trademarks, geographical indications and industrial designs. At that meeting, the Council had agreed to give further consideration to how the issue of reviewing the application of the provisions of the Section on geographical indications under Article 24.2 would be handled and to do this through informal consultations in the first instance, which would be scheduled to take place at a time early in 1997. It had been agreed that the timing of these consultations would also need to take into account the timeframe in which delegations which had promised to table proposals were able to make them available (document IP/C/M/11, paragraph 60). Members would recall that the delegation of the European Communities had already made available last year some proposals for work to be undertaken by the Council on geographical indications in the context of Article 24.2. A

number of other delegations had indicated their intention to present papers. In the light of the consultations that he had held prior to the present meeting, he would not propose to invite a full-scale discussion of this issue at this time. It seemed clear that, as the Council had agreed at its meeting in November, the timing of further work on the issue of how the Council might handle the review under Article 24.2 needed to take into account the timeframe in which delegations which had indicated their intention to make proposals were able to do so. It would, however, be helpful if those delegations which intended to table papers were to indicate when they hoped to be able to make them available.

57. The representative of India said that his delegation would be in a position to circulate a non-paper on its views on the review of the application of the provisions of the geographical indications well in advance of the next meeting of the Council. He also suggested that the Secretariat start initial work in analysing the matter on the basis of the non-paper made available last year by the European Communities, in order to allow a more meaningful discussion of the subject.

58. The representative of the United States said that his delegation had concerns about how the work in relation to topics under Article 24.2 might be ordered. At its meeting last November, the Council had proceeded through a very extensive review process which had focused on, *inter alia*, implementation of the TRIPS provisions on geographical indications in Members obliged to comply with these provisions and his delegation was still in the middle of digesting the results of that meeting, which had produced a large amount of information. His delegation was working on the assumption that it would be able to come back, at the Council's meeting scheduled for 15 July 1997, with any further questions that might seem appropriate on any issues that had not been fully addressed in November. He believed, therefore, that it was appropriate to focus at that meeting on revisiting the question as to what could and should be done beyond what had already been done in the review of national implementing legislation. Additional thoughts and non-papers that might be forwarded to the Council would be considered once obtained. His delegation was also looking forward to additional information from the review in November consisting of notifications that still needed to be made with respect to geographical indications.

59. While referring to his delegation's views on this matter, which he considered well-known, the representative of the European Communities regretted that, at the meeting in November 1996, it had not been possible to agree on a concrete way of how to go about the review under Article 24.2. His delegation had made available today a new non-paper in which a follow-up was presented to the suggestions made in the non-paper it had distributed last year. An attempt was made to carry out what it had suggested in last year's non-paper the Secretariat could be asked to do. A comparison was made between the treatment in certain of the Communities' major trading partners in the area of wines and spirits, namely Canada, the United States, New Zealand and Japan, as regards definitions used according to the legislation notified under Article 63.2 and reviewed last November as well as the ways in which protection was granted (for example, through a registration system or through administrative enforcement) and the exceptions that applied as understood by his delegation. This exercise had resulted in additional questions as reflected on page one of the non-paper, which his delegation would wish to form part of the work to be carried out in the informal consultations agreed to take place at a time early in 1997. The non-paper was intended to stimulate the discussion and to be a first step in a wider exercise which his delegation would expect the Secretariat to carry out, which would entail an extension of the number of countries and issues covered and their consideration in more detail. At an appropriate moment, this work would contribute to the work which had to be done under Article 23.4 pursuant to paragraph 34 of the Council's report (1996) (document IP/C/8).

60. The representative of the United States said, as a preliminary comment on the non-paper that had just been presented by the European Communities, that it illustrated why his delegation believed, once it would have had the opportunity to give a full consideration to the responses to the questions

posed during the review of national implementing legislation, the Council might be able to identify what types of issues would in fact be relevant in terms of further work, if any, under Article 24.2. He also would like to recall that Article 24.2 spoke of a review of the application of the provisions of the Section on geographical indications, which contained a number of specific obligations that WTO Members had accepted as part of a prolonged negotiation, and that the European Communities' non-paper, at first glance, would not seem to have any relation to what was specifically provided for in the Agreement. Before engaging in a course of future work, he believed that it would be helpful to take as a first topic how that work should be structured so as to reflect what the obligations under the Agreement were. The most appropriate first step that might be taken under Article 24.2 was to look at the July meeting of the Council, which he assumed would be devoted, *inter alia*, to follow-up questions to the November 1996 review. At that time, the Council might be able to discuss fruitfully what steps would be necessary, if any, to obtain information which might be missing. He also wondered whether it would not be more appropriate for the European Communities to provide information regarding the application of the provisions in question in the Member States of the European Communities.

61. The representative of Switzerland expressed the view that the mutual education and reflection process should be started as soon as possible. In this regard, she welcomed the non-paper presented by the European Communities which, together with other proposals on the matter, such as the one her delegation would submit shortly, would give structure to the discussion. She said that it went without saying that the Secretariat had a rôle to play in this process, as it usually had in a process like this. As regards the timetable for the work, she believed that there was no need to set any deadlines at this time. Whenever submissions were made by delegations, they should be discussed in an informal framework first and, if requested, the item could be put on the agenda of the next Council meeting.

62. The representative of Brazil said that a longer timeframe was needed to discuss the modalities of the review under Article 24.2. His delegation had the intention to submit follow-up questions in the context of the review of national implementing legislation that the Council had carried out in November 1996 and he assumed that other developing countries were contemplating the same. The suggestion made by the United States to come back to this matter at the July meeting seemed appropriate to his delegation.

63. The representative of Hungary thanked the European Communities for their non-paper and looked forward to the other proposals foreshadowed, recalling that the modalities for the review under Article 24.2 were as outlined by the Council in paragraph 27 of document IP/C/8.

64. The representative of the European Communities said that the European Communities and their Member States would not have any objection to the preparation of a comparative table covering their system for the protection of geographical indications and would be pleased to comment on such a table when confronted with it.

65. The representative of New Zealand said that her delegation would examine with interest the non-paper presented by the European Communities. Her delegation was of the view that analytical work should be undertaken by Members rather than by the Secretariat and its understanding was that the Council had agreed that the agreement in previous discussions on this matter had been that this was a matter to be taken up, in the first instance, in informal consultations and that the timing for these needed to take into account the timeframe for the provision of inputs from delegations.

66. The representative of Canada shared the view expressed by other delegations that the matter was not ripe to be taken up in the Council at this time. Given the overlap between the work that might be needed under Article 24.2 and that under way in the context of the review of national implementing legislation, he believed that the appropriate procedure would be not to start a new process until an

on-going one was finished and that sometime this Summer, if that work would appear to be close to conclusion, the matter might be taken up again, initially in informal consultations.

67. The representative of the Czech Republic welcomed the European Communities' follow-up to their earlier non-paper of last Summer and informed the Council that his delegation was preparing the paper announced at the previous meeting and was aiming at making this available for the next meeting of the Council.

68. The representative of Australia wished to endorse the comments made by New Zealand and Canada, underlining that it was premature to discuss the rôle that the Secretariat might have. In her delegation's view, there were many issues to be discussed as a follow-up to the review of national implementing legislation and a lot more information to be expected. Only after these discussions, would it be sensible to talk about any timetable for the broader work or, indeed, the Secretariat's rôle therein.

69. The representative of Turkey said that his delegation supported the suggestion to start the informal consultations shortly and was in the process of preparing its contribution to the work on this matter that the Council had agreed to undertake.

70. While echoing the comments made by Canada and Australia that the topics under discussion were premature and that the responses to follow-up questions in the context of the review of national implementing legislation at the July meeting should be awaited before the Council could address the issue of the review under Article 24.2, the representative of Singapore emphasized that any discussions on this matter should take place essentially through informal consultations and that any papers to be submitted should focus on how the review should be conducted.

71. Concluding the discussions under this agenda item as reflected above, the Chairman proposed that the Council take note of the statements made by delegations concerning Section IV of the Council's report (1996), including in relation to the high level meeting on least-developed countries. With regard to the review of the application of the provisions of the Section on geographical indications under Article 24.2, he proposed to recall the Council's agreement in November 1996 that it give further consideration to how the issue of conducting the review under Article 24.2 would be handled and to do this through informal consultations, the timing of which would need to take into account the timeframe in which proposals promised by delegations would be made available. In the light of the discussion, he proposed that the Council might, in this respect, proceed on a step-by-step basis. First, the papers that had been foreshadowed should be submitted; then, the Council would schedule informal consultations, the timing of which would depend on the availability of the papers in question. Given the differing views that had been expressed, he did not think that the moment had come to agree on a more concrete schedule.

72. The Council so agreed.

- *Implementation of Article 23.4*

73. The Chairman said that, in its report (1996), the Council had agreed to initiate in 1997 preliminary work on issues relevant to the negotiations specified in Article 23.4 of the TRIPS Agreement concerning the establishment of a multilateral system of notification and registration of geographical indications for wines. It had also agreed that issues relevant to a notification and registration system for spirits would be part of this preliminary work (document IP/C/8, paragraph 34). He had held informal consultations on this matter, which had indicated broad support for initiating this preliminary

work through an information-gathering activity. In the light of these consultations, he suggested the following:

- The Council would invite Members to submit information on any systems for the registration of geographical indications which they operated. The target date for these submissions would be end July 1997;
- The Council would consider this information at its meeting in September 1997 and would, at that time, also revert to the preparation by the Secretariat of an outline of a factual background note on existing international notification and registration systems for geographical indications;
- While this information-gathering activity might cover systems that were applicable to other product areas, the exclusive purpose would be to gather information that would be useful to the work that the Council had agreed to undertake concerning wines and also issues relevant to a notification and registration system for spirits, in particular what types of notification and registration systems already existed.

74. The Council so agreed.

#### **H. Observer status for intergovernmental organizations**

75. The Chairman recalled that the General Council, in July 1996, had adopted procedures for observer status for international intergovernmental organizations in the WTO (Annex 3 of document WT/L/161). According to these procedures, requests for observer status would be considered on a case-by-case basis by each WTO body to which a request had been addressed, taking into account such criteria as the nature of the work of the organization concerned, the nature of its membership, the number of WTO Members in the organization, reciprocity with respect to access to proceedings, documents and other aspects of observership, and whether the organization had been involved in the past with the work of the GATT. After consultations on how to apply these procedures, the General Council, at its meeting of 7 February 1997, had noted that the IMF and the World Bank had been given observer status in the General Council and other WTO bodies as provided for in the Agreements between the WTO and these two institutions. With regard to other international intergovernmental organizations, the General Council had agreed: (a) that the organizations which already had observer status in the General Council on an *ad hoc* basis be granted observer status immediately; (b) that for international intergovernmental organizations whose requests had not yet been considered the Chairman would conduct consultations; (c) to invite the other WTO bodies to proceed in a similar way.

76. The Chairman referred to document IP/C/W/52, which listed the intergovernmental organizations that had sought observer status in the TRIPS Council, dividing them into two categories: first, those which already had observer status on an *ad hoc* basis; and, second, those whose requests were pending. He suggested that the Council grant regular observer status to the organizations in the first category, those that the Council had invited to its meetings in 1995 and 1996 on an *ad hoc* basis, and to do so on the basis that there would be reciprocity with respect to proceedings, documents and other aspects of observership.

77. The Council so agreed.

78. In considering the organizations in the second category, the Chairman said that EFTA, OAS and SIECA were regional organizations and were among those that the General Council was in the process of considering in the light of their requests for observer status at its meetings. The Council

for TRIPS might therefore wish to postpone action on their requests until such time as the General Council had come to a conclusion. The OIV, however, was a multilateral intergovernmental organization and was not requesting observer status in the General Council: it had limited its requests for observer status to three WTO bodies in whose work it considered it had particular interest, namely the TRIPS Council and the SPS and TBT Committees. Therefore, it might be possible for the TRIPS Council to act on this request without waiting for the General Council, having regard to the criteria provided for in the procedures concerning observer status.

79. The representative of the United States said that the information that his delegation had received from its representative to the OIV indicated that the question as to whether to seek observer status to the WTO, in particular to the TRIPS Council, was still a matter under discussion within the OIV, and that it might, therefore, be premature to take a decision on the OIV's request.

80. The Chairman proposed that the Council take note of the statements made and to revert to the pending requests for observer status at its next meeting.

81. The Council so agreed.

## **I. Information on relevant developments elsewhere in the WTO**

### *(i) Dispute settlement*

82. The Chairman said that the United States and Japan had notified to the Council and the Dispute Settlement Body, by means of a communication dated 24 January 1997, that they had reached a mutually satisfactory solution to the matter raised by the United States in February 1996 concerning the protection of past performances and existing sound recordings pursuant to the TRIPS Agreement (document IP/D/1/Add.1). He also drew Members' attention to document WT/DS50/5, which contained information on the constitution of the panel established by the DSB at its meeting of 20 November 1996 in the dispute between the United States and India concerning patent protection for pharmaceutical and agricultural chemical products in India, to which the United States had referred under agenda item E above and in which the European Communities had reserved third-party rights to participate in the panel proceedings.

### *(ii) Accession*

83. The Chairman said that Bulgaria and Mongolia had acceded to the WTO under Article XII of the WTO Agreement. The effective dates of their accession were, respectively, 1 December 1996 and 29 January 1997 (documents WT/Let/117 and WT/Let/130). Paragraph 2 of the Protocol of Accession for Bulgaria (WT/ACC/BGR/7) incorporated the commitment given by Bulgaria in relation to intellectual property as reproduced in paragraph 85 of the report of the Working Party on the Accession of Bulgaria. According to this paragraph, "[t]he representative of Bulgaria confirmed that his Government would apply the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights by the date of its accession to the WTO, without recourse to any transitional period." Paragraph 2 of the Protocol for the Accession of Mongolia (WT/ACC/MNG/11) incorporated the commitment given by Mongolia in relation to intellectual property as reproduced in paragraph 54 of the report of the Working Party on the Accession of Mongolia. According to this paragraph "[t]he representative of Mongolia stated that his country's laws in the field of intellectual property rights were already in conformity with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and that Mongolia would fully apply the provisions of the TRIPS Agreement by the date of its accession to the WTO".

**J. Other business**

*Timing of further meetings of the Council*

84. The Chairman said that the Council, at its meeting in November 1996, had agreed to reserve provisionally the dates of 26-30 May, 15 July, 30 September and 24-28 November for further meetings in 1997. He suggested that the Council confirm the dates for May and July. As regards the September and November dates, he suggested some modifications in the light of developments, namely that the September meeting be held on 19 September rather than 30 September and the November meeting be brought forward by one week to the dates of 17-21 November.

85. The Council so agreed.

**K. Election of the Chairperson of the Council for TRIPS**

86. The Chairman said that, before moving on to the election of his successor, he hoped that delegations would permit him, as the outgoing Chairperson, the liberty of some brief remarks about the work that the Council had performed over the last year. He recalled that his predecessor, Mr. Stuart Harbinson, had once described the work of the Council during his period in the Chair as essentially one of "pump priming" - putting into place certain arrangements as a basis for the future work of the Council. He believed that the Council over the past year had made useful progress in carrying out the tasks before it. In this connection, he would like to highlight four aspects of this work:

- The past year had been characterized by the "bedding-in" of the working arrangements that had been established in 1995 - giving concrete expression to them and their development. Examples to be mentioned were the notification procedures, the procedures for the review of national implementing legislation and the cooperation agreement with WIPO. He believed that the Council had been successful in beginning to put flesh on the bones.
- The second aspect to which he wished to draw attention was the value that he believed Members had found in the reviews of national implementing legislation, starting in July last year with the areas of copyright and related rights and continuing with trademarks, geographical indications and industrial designs in November. The review process had entailed a very substantive examination of the way that those countries already obliged to comply with the TRIPS Agreement as a whole were implementing their obligations. The reviews had been important as a vehicle for the Council to carry out its task of reviewing the operation of the TRIPS Agreement and monitoring compliance with its provisions. He was confident that equal value would be yielded by the up-coming reviews in 1997. He wished to add that he had noted the value that developing country Members still in the process of implementing their obligations had, as they had indicated to him, been able to draw from the review process, with an eye to the future. He said that, in that sense, he had drawn a particular satisfaction from that process.
- Another prominent feature of the Council's work during the course of the past year had been the issue of technical cooperation, in particular ensuring an expanded and updated information base on possibilities, together with relevant contact points. The Council's report to the Singapore Ministerial underlined the importance of technical and financial cooperation in accordance with Article 67 of the TRIPS Agreement, in order to facilitate implementation. He also wished to take the opportunity to express

appreciation for the very extensive activities of the World Intellectual Property Organization in helping developing countries implement the TRIPS Agreement. In addition, he recalled the pilot workshop on a specific aspect of technical cooperation organized jointly with WIPO. He expressed his hope that the cooperative spirit in the Council could be continued.

- Finally, he believed that the stress on the built-in agenda in the Council's report to the Singapore Ministerial showed an important forward-looking component to its work and provided a good platform for the further development of this aspect as foreseen in the TRIPS Agreement itself.

87. Turning then to the issue at hand, namely the election of the Council's new Chairperson, he recalled that the Chairman of the General Council had carried out informal consultations on a slate of names for appointment as Chairpersons of various WTO standing bodies, in accordance with the established guidelines for appointment of officers. These proposed nominations had been approved by the General Council earlier this month. On the basis of the understandings reached, he proposed that the Council for TRIPS elect H.E. Ambassador Carmen Luz Guarda of Chile as Chair of this body by acclamation.

88. The Council so agreed.

89. The Council expressed its appreciation and gratitude to H.E. Ambassador Wade Armstrong for his important and efficient work in the past year and the balanced and high-quality results his efforts had enabled the Council to achieve.

ANNEX

Paragraph 6 of the Revised Informal Background Note by the Secretariat  
on the Most-Favoured-Nation Treatment Clause of the  
TRIPS Agreement (Article 4) (Document No. 1548)

6. A Member, when examining whether an element of discrimination between the nationals of other Members - an "advantage, favour, privilege or immunity" accorded to the nationals of some Members and not accorded to the nationals of others - could be justifiable under Article 4(d) and therefore a notification might be warranted, might wish to ask itself the following questions. On the face of it, it would seem that only when the response to each of these questions is as indicated in square brackets would an Article 4(d) notification be appropriate.

- (i) Certain of these questions derive directly from the provisions of the chapeau of Article 4 and of sub-paragraph (d) of that Article:
- Whether the discrimination in question involves discrimination on the basis of the nationality of persons.<sup>4</sup> [Yes]
  - Whether the specific conditions of Article 4(d) can be satisfied:
    - Whether the discrimination derives from an international agreement and not simply from autonomous action.<sup>5</sup> [Yes]
    - Does the entry into force of the agreement predate that of the WTO Agreement? [Yes]
    - Is the discrimination against nationals of some other Members arbitrary or unjustifiable? [No]
- (ii) Some other questions derive from other provisions of the TRIPS Agreement of relevance:
- Whether the discrimination can be justified under sub-paragraphs (a), (b) or (c) of Article 4 or under Article 5. [No]
  - Would the notification include provisions of other multilateral intellectual property agreements with which your country is obliged to comply under the TRIPS Agreement? [No]
  - Whether according the "more favourable" treatment of the nationals of some Members to the nationals of all other Members can be refused without breaching other TRIPS obligations - the minimum standards required by Article 2.1 and Parts II, III and IV, including the commitment to comply with substantive provisions of certain WIPO conventions notably Paris and Berne, and the national treatment obligation of Article 3.<sup>6</sup> [Yes]

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<sup>4</sup>Discrimination on other grounds (such as the origin of goods or the place of invention) would not be relevant unless, *de jure* or *de facto*, it amounts also to discrimination on the basis of nationality.

<sup>5</sup>Article 4(d) is relevant only in the former case.

<sup>6</sup>Sub-paragraph (d) of Article 4 only provides an exception to the MFN obligation of Article 4. It cannot justify treatment less favourable than the minimum standards required by the TRIPS Agreement.