

WORLD TRADE ORGANIZATION

RESTRICTED

IP/C/M/2

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Council for Trade-Related Aspects of Intellectual Property Rights

MINUTES OF MEETING

Held in the Centre William Rappard
on 24 May 1995

Chairman: Mr. S. Harbinson (Hong Kong)

Subjects discussed:

- A. Rules of procedure of the Council for TRIPS
- B. Notification Procedures:
 - (1) Notifications under Articles 1.3 and 3.1
 - (2) Notifications under Article 63.2 concerning national laws and regulations
 - (3) Article 69: Notification of contact points
 - (4) Notifications under Article 4(d)
 - (5) Notifications related to Article 6*ter* of the Paris Convention
- C. Implementation of Article 70.8
- D. Implementation of Article 65.5
- E. Technical cooperation
- F. Assistance of the Council in the context of dispute settlement
- G. Arrangements for cooperation with WIPO
- H. Draft model legislation of the World Customs Organization
- I. Other business

1. Pursuant to the interim procedure on observer status for intergovernmental organizations evolved under the auspices of the General Council, the Council invited the IMF, the World Bank, the FAO, the OECD, UNCTAD and the United Nations to be represented as observers at the present and next meetings of the Council. The Council also noted that WIPO had been invited to the meeting, in accordance with the recommendation of the Contact Group under the Preparatory Committee, as confirmed by the General Council, and, as the Council had agreed at its previous meeting, the World Customs Organization had also been invited, given its work on model legislation aimed at assisting countries to give effect to their TRIPS border enforcement obligations.

A. Rules of Procedure of the Council for TRIPS

2. The Chairman informed the Council of the results of the informal consultations which the Council had agreed he should hold on this matter. In document IP/C/W/2, he had made suggestions for the rules of procedure of the Council for TRIPS. These were that the Council should adopt, subject to confirmation by the General Council, rules of procedure which followed those for the General Council itself, with the same modifications as had been agreed for the Council for Goods, plus one other point: Rule 5, which would require a second circulation of the proposed agenda one or two days before the meeting, could be dropped, as being a bureaucratic burden which added little that was of value to delegations. Since the proposed Rules of Procedure for the Council for TRIPS had been circulated as document IP/C/W/2, the question had arisen whether Rule 33 was consistent with Article 71.2 of the TRIPS Agreement. This Article provided that, under the special circumstances set out in that provision, a proposal for amendment of the TRIPS Agreement could only be referred for further action on the basis of consensus in the Council for TRIPS. The point had been made that Rule 33 might, however, appear to allow for further action also if no consensus on such a proposal could be arrived at in the Council for TRIPS. During the course of the consultations, it had been thought desirable to obtain a legal opinion on this matter from the legal services of the Secretariat. As a result, the Legal Affairs Division of the WTO Secretariat had provided the following opinion:

"According to Article IV:1 and 2 of the WTO Agreement the General Council has the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member. The General Council may exercise this authority not only at the request of an individual Member but also at the joint request of Members expressed in a decision of one of the Councils overseeing the functioning of the Multilateral Trade Agreements. Article IV:1, second sentence of the WTO Agreement makes clear that the General Council, when responding to such a request, must act "in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement". The mere fact that a matter is referred by the Council for TRIPS to the General Council for decision thus does not change the applicable decision making requirements. This means that the General Council, if a matter were to be referred to it in accordance with Rule 33 of the proposed Rules of Procedure for Meetings of the Council for TRIPS, would have to take its decision in accordance with the specific requirements for decision-making that the TRIPS Agreement imposes in respect of that matter."

Further consultations on this matter had indicated that there might nonetheless be some outstanding issues. In light of the situation, he suggested that the Council adopt the rules of procedure as contained in document IP/C/W/2, subject to the conclusion of a mutually agreeable solution to the particular issue concerning Rule 33 and its relationship to Article 71.2 and subject of course to the approval of the General Council. Since it had seemed from his consultations that this particular problem had implications which went beyond the scope of the TRIPS Agreement as such, he suggested that the Council mandate him to draw the matter to the attention of Ambassador Kesavapany, the Chairman of the General Council, and to discuss with him the most appropriate way of solving the issue.

3. The representative of India said that, while understanding the substance of the legal opinion, its logic and reasoning were not very clear to him. His delegation's preference would be to add a footnote to Rule 33 which would make it clear that this type of rule could not in any manner undermine the requirement of a provision in any agreement under the WTO that a decision could only be taken by consensus. There were provisions in the WTO Agreement relating to the powers of the General Council. As far as the subordinate Councils were concerned, when an Agreement provided for a decision by consensus, such a provision had to be respected and confusion should not be created by a procedure which would imply that a matter could be referred to another body even if there was no consensus. The second point he wished to make was that the appropriate course would not be to adopt the Rules

of Procedure in their current draft and hold consultations thereafter. He proposed that the Rules of Procedure be adopted with the exception of Rule 33. Rule 33 could be taken up at some later stage and delegations should be given time for reflection and bilateral consultations on the matter.

4. The representative of Korea expressed his delegation's support for the suggestion by India to adopt the Rules of Procedure with the exception of Rule 33. According to Article 71.2, unless there was a proposal made on the basis of consensus in the Council for TRIPS, there was no proposal to be referred to the General Council for further discussions. He believed that the legal opinion was unclear and that the issue should be discussed in subsequent informal consultations.

5. The Chairman suggested that the Council take note of the views expressed and adopt the Rules of Procedure with the exception of Rule 33 subject, of course, to the approval of the General Council. He further suggested that he take up the matter of Rule 33 with Ambassador Kesavapany, the Chairman of the General Council, to discuss with him the most appropriate way of addressing the issue. He would report to the Council any progress on further deliberations on this issue in due course.

6. The Council so agreed.

B. Notification Procedures

(1) Notifications under Articles 1.3 and 3.1

7. The Chairman recalled that Articles 1.3 and 3.1 of the TRIPS Agreement allowed Members to limit the beneficiaries of TRIPS treatment and the scope of national treatment in ways permitted under certain provisions of the Berne Convention or the Rome Convention. The Council had at its meeting of 9 March 1995 agreed that he should hold informal consultations on this matter. Document IP/C/W/3, which the Secretariat, as agreed at the Council's meeting of 9 March 1995, had drawn up with the assistance of WIPO and the United Nations Legal Office, contained a complete listing of the notifications already made under the corresponding provisions of the Berne Convention and the Rome Convention themselves. In response to requests from delegations, the Secretariat had also circulated in document IP/C/W/5 a background note aimed at explaining the nature of the options available to all WTO Members under the provisions of Articles 1.3 and 3.1 and of the notifications required if a Member would wish to avail itself of any such option. In addition, the Secretariat had issued an airgram, WTO/AIR/70, reminding all delegations of the importance of considering whether they wished to make notifications under the provisions in question by 1 July 1995.

8. The representative of Poland referred to the last sentence of paragraph 5 of document IP/C/W/5, according to which a Member that did not make any notification had to protect each phonogram producer which met any one of the three criteria in Article 5(3) of the Rome Convention as incorporated into the TRIPS Agreement. He was not convinced whether this sentence related also to developing countries and countries in transition since, under Article 65 of the TRIPS Agreement, they were entitled to delay the application of the whole Agreement, except for three Articles, for a further four years counted from 1 January 1996, which was the general date of application according to paragraph 1 of Article 65. Countries in these categories, therefore, in his view had no obligation to make the notifications in question by 1 January 1996. While recognizing the usefulness of Article 1 which defined which persons were eligible for protection under Article 3, in his view, these countries were free not to notify until the transitional period of a further four years had expired. He also had doubts about the reference to "WTO Members" in the document. While the TRIPS Agreement normally referred to "Members", this notion seemed to have been extended in the document to "WTO Members". A question he had in relation to this was, given the additional transitional period in Article 65 applicable to developing countries and countries in transition, what was the legal status for those countries which availed

themselves of an additional transitional period under Article 65, notably whether they were Members of the Agreement or some kind of observers until the time of full application of the Agreement to them.

9. The representative of the Secretariat said that the document attempted to set out what were the consequences of making notifications or not in respect of the obligations in question. In the part of the document referred to by the representative of Poland, the question of when the obligations entered into force was not addressed; the aspect of timing had been dealt with in another section of the document. Of course, for some Members of the WTO the obligations in respect of, e.g., copyright and related rights would enter into force generally speaking after five years. Nevertheless, as set out in paragraphs 17 through 20 of the document on the timing of notifications, it might be useful for *all* Members of the WTO to consider whether they wished to make any notifications by 1 July 1995. The point that was made there was that the notifications in question would be relevant to the scope of the obligations on national treatment and m.f.n. treatment under the Agreement, which entered into force for all Members of the WTO as of 1 January 1996. After that date, each producer of phonograms that met any one of the relevant criteria would have to benefit from national treatment and m.f.n. treatment, but the substantive standards of protection would only have to be met by some Members of the WTO at the end of a transitional period of five years to which they were entitled.

10. The representative of Switzerland reserved the right to come back to the issue after his delegation had analysed the issue bearing in mind the provisions of Article 65, in particular the references to Articles 3, 4 and 5 in paragraphs 2 and 3 thereof.

11. The Chairman proposed that the Council take note of the statements made and draw the attention of Members to the desirability of considering whether they wished to make notifications under the provisions of Articles 1.3 and 3.1 by 1 July 1995, while recognizing that it would remain open for Members to make notifications at a later stage if they so wished.

12. The Council so agreed.

(2) **Notifications under Article 63.2 concerning national laws and regulations**

(i) **Procedures for giving effect to the obligation to notify implementing legislation under Article 63.2**

13. The Chairman recalled that, at its meeting of 9 March 1995, the Council for TRIPS had requested the Secretariat to make a compilation of how similar requirements regarding the notification of implementing legislation were being handled under other agreements in the WTO system and that informal consultations should be held on the matter of the implementation of Article 63.2 prior to today's meeting of the Council. The note prepared by the Secretariat had been circulated in document IP/C/W/4. The Chairman said that, as a result of the informal consultations, he had circulated an informal paper dated 24 May 1995 (subsequently distributed as document IP/C/W/6) which was described as a working hypothesis for procedures for notification of, and possible establishment of a common register of, national laws and regulations under Article 63.2. The term "working hypothesis" had been used in order to reflect as accurately as possible the status that he believed, as a result of his informal consultations, Members would be prepared to give the text at this stage, in particular in the context of consultations with WIPO. He had sensed that, whereas most Members were happy with the basic approach and many of its details, they would not want to be, at this stage, on record as being wedded to it in every respect. Moreover, there had also been a view that it would be inappropriate to initiate consultations with WIPO on the basis of a text which represented a final view of the WTO. He believed that this was sensible not only from the point of view of relations with WIPO, but also because additional information and insights might be obtained in the course of the consultations which would lead to improvements to the proposed procedures. He also believed that it was important to initiate discussions with WIPO without too much delay and that the text represented the best basis for doing so.

14. Continuing, the Chairman said that one point that had arisen in his consultations was whether the Council for TRIPS should waive the obligation for notifications to be made directly to the Council, if consultations on a common register were successful, which possibility was an option available to the Council under Article 63.2. His consultations on this matter had indicated that the view of most delegations was that they would not, at least at this stage, envisage using this option. There appeared to be two main reasons for this. First, the point had been made that notifications of implementing legislation under GATT/WTO practice constituted more than the mere communication of information to the Secretariat; in fact, they constituted a statement by each Member to the other Members, through the Council, that this was the way in which the Member was giving effect to its obligations under the agreement in question. The second reason was that the notification requirements under the TRIPS Agreement were broader than those under the conventions in the WIPO context. Whereas a country which met its TRIPS notification obligations would also have communicated the information necessary to meet its WIPO obligations, the reverse would not be true. The Chairman said that concerns had been expressed in the informal consultations about the translation burdens that might be put on governments whose national language was not an official language of the WTO, especially at the outset when a large volume of legislation might have to be notified at the same time, for example after the beginning of next year when the bulk of obligations would come into force for developed countries. The last sentence of paragraph 11 and the penultimate sentence of paragraph 14 were intended to help respond to this concern. In his consultations, he had also detected a fairly general view that it would be sensible, from the point of view both of helping delegations cope with translation burdens and of helping the Council to organize its work most effectively, to draw up a schedule for the examination of the national implementing legislation of developed countries in 1996, and that this might most sensibly be structured on a subject-by-subject basis following essentially the main headings of Parts II and III of the TRIPS Agreement. If this type of approach would be acceptable, he was willing to submit at the next meeting a proposed draft schedule. Turning to the suggestion in paragraph 10 according to which each Member might provide a listing of its "other laws and regulations" together with a brief description of the relevance of each law and regulation to the provisions of the TRIPS Agreement, he said that a fairly simple two-column type of presentation, with the title of the law or regulation in question in one column and a brief description of the subject of the law or regulation and of its relevance to the TRIPS Agreement in the other column, might be envisaged. He suggested that the Secretariat might be asked to produce a format for this purpose. There was also a suggestion in paragraph 11 that a checklist of issues indicating how national legislation responded to the enforcement requirements of the TRIPS Agreement might be prepared. If the Council would agree, the Secretariat might be asked to prepare a first draft of what such a checklist might look like.

15. The representative of Japan expressed his appreciation of the work undertaken to prepare the "working hypothesis" which attempted to minimize the burden on Members in translating their laws and regulations. In his view, the paper represented a good basis for further discussions, both in capitals and in the Council. As far as the main laws and regulations were concerned, he hoped that his delegation would be able to notify them in the relevant WTO language, although such notifications should not be considered as authentic texts. He wished to stress, however, a few points that were important to his delegation. At this stage, his delegation was still thinking along the lines of considering the preparation of a comprehensive list which would include the titles of all national laws and regulations and of a format of cross references to the specific provisions of the TRIPS Agreement. Each Member should notify such a list to the Council for TRIPS for circulation to other Members. At the same time, each Member should also notify the laws and regulations concerned in its national language. On the basis of the cross references, Members could be requested to translate any relevant part of a national law at any time. He believed that such a procedure would balance the need to minimize burdens and to monitor the operation of the Agreement.

16. The representative of Switzerland agreed that the document formed a good basis for further work. As far as the common register and the obligation to notify directly to the Council for TRIPS were concerned, he referred to his intervention at the previous meeting of the Council. His delegation

favoured a pragmatic and flexible approach in order to simplify the procedure as much as possible. While he appreciated the concerns expressed with regard to translations, it should be clear that notification in one of the WTO languages should be required in respect of amendments of laws implementing provisions of the TRIPS Agreement as well as in respect of main laws on intellectual property. Only in other cases should texts be translated on request. The proposals in paragraph 10 of the working hypothesis concerning listings and descriptions of laws and regulations needed some further study.

17. The representative of the Philippines, speaking on behalf of the ASEAN countries, expressed his appreciation for the initiative that the Chairman had taken to develop a notification system that would minimize the enormous burden on Members and the Council. He supported the basic approach in the working hypothesis and believed it to be the best possible. As the ASEAN countries were members of both the WTO and WIPO, it was important in their view to fully explore the idea of a common register in order to avoid onerous and needless duplication of efforts in the area of notifications. There appeared to be no clear and single notion of what a common register would be. Consultations in this regard should continue and, at an appropriate stage, perhaps an options paper could be drawn up for the Council to consider and decide upon. With regard to languages, he expressed his full support for a system according to which each Member should notify laws and regulations in a national language and provide a listing of these laws and regulations together with a brief description of the relevance of each law and regulation to the provisions of the TRIPS Agreement.

18. The representative of Uruguay thanked the Chairman for submitting the working hypothesis. While his delegation needed some time to analyse it and wished to revert to it at a later stage, his first impression was that the approach taken was correct. He had no objection to it being used as a working hypothesis and as a basis for contacts with the International Bureau of WIPO or between the two Secretariats. The possibility of a common register or some similar mechanism for cooperation in the area of notifications between the two Organizations should be looked into rapidly. He emphasized that it was necessary to avoid duplication and not to overburden Members. He expressed his delegation's support for a schedule for dealing with the notifications, taking into account the difficulties of those Members whose national language was not one of the WTO languages and the large volume of notifications due next year. He also drew attention to the burden for the Secretariat in this context and the immediate budgetary implications that this might have which, in his delegation's view, were an additional reason to speed up the work and contacts with the WIPO with a view to seeking a common mechanism for notifications. This would be beneficial not only for the Members of the WTO but also for the operation of the Secretariat and the Council. There should also be an option to use laws included in the WIPO collections in complying with the notification requirements.

19. The representative of Korea expressed his delegation's sympathy for the position of the delegation of Japan.

20. The representative of Paraguay was grateful for the submission of the working hypothesis. However, his delegation needed more time to analyse it. It should also be considered in the context of arrangements for cooperation with WIPO. As the issue of notifications was becoming a serious and critical problem within the WTO, he insisted on attempting to rationalize notifications in this area as far as possible, in which context a common register seemed to be essential. The working hypothesis and other documentation prepared by the Secretariat would be very useful to move forward in the search for a rational and practical system for notifications of laws and regulations.

21. The representative of the European Communities supported the suggestions made by the Chairman. However, he wished to flag one substantive issue. As suggested in paragraph 2.2 of the paper, any subsequent amendments of a Member's laws and regulations should be notified without delay after their promulgation, while in paragraph 2.1 the general principle had been reflected that the obligation to notify would only start when the corresponding substantive obligation kicked in. This

meant that for those countries which would avail themselves of the additional transitional period of four years there would only be a notification obligation after the expiration of that period. Paragraph 2.2 could therefore imply, as it was drafted, that future changes in legislation in those countries would only have to be notified after the lapse of this additional period of four years, with the obvious exception of notifications relating to obligations on national and m.f.n. treatment which would enter into effect on 1 January 1996. He did not consider that satisfactory, since there was an obligation that had already entered into force, Article 65.5, which laid down the general rule that changes in legislation should not result in a lesser degree of consistency with the provisions of the Agreement. Common sense should lead to the conclusion that this implied that any changes in legislation after 1 January 1995 by any Member of the WTO should be notified. Otherwise it would be very difficult for other Members to examine whether others had acted in conformity with their obligations under Article 65.5.

22. The representative of the United States said that the paper contained a good approach for proceeding on the issue. One should keep in mind the primary objective, which was to have a notification system that would work so that Members could ensure that all Members were implementing the Agreement as they were obligated to do. There was a number of subsidiary issues that related to minimizing the burden on countries in terms of meeting this obligation. While he agreed that work had to be done on these issues, none of them should supersede the primary objective. Therefore, if things such as checklists were turned to, it should be ensured that these lists were sufficient to meet the primary objective.

23. The Chairman noted that there was general support for the overall approach of the working hypothesis, while recognizing that certain issues needed further exploration and that some delegations wanted more time to study the paper. He suggested that the Council continue to work on the paper and use it as a basis for consultations with WIPO. He also reiterated his suggestions for carrying forward the work in other respects in this area and that the Secretariat be asked to prepare a draft schedule for consideration of national legislation in 1996 on a subject-by-subject basis, a format for the listing of "other laws and regulations", and a first draft of a checklist on enforcement.

24. The Council so agreed.

(ii) **Notifications of legislation already received under Article 63.2**

25. The Chairman recalled that it had been agreed that national laws and regulations should be notified as of the time that the corresponding substantive obligation started applying under the provisions of the Agreement. However, at the previous meeting of the Council, it had also been agreed that, where a country amended its legislation to bring its laws and regulations into conformity with the TRIPS Agreement in advance of its obligation to do so, such legislation should be submitted to the Council for TRIPS in advance of the date of application of the corresponding provisions of the Agreement on a best-endeavours basis. In pursuance of this, the Council had received in document IP/N/1/EEC/1 a notification from the European Communities of amendments to pre-existing Community legislation aimed at giving effect to TRIPS obligations. He noted that, while the Community had only notified the amendments at this stage, it had indicated that it would notify the complete texts of the legislation in question in due course, in accordance with the procedures to be adopted by the Council for TRIPS for giving effect to Article 63.2 of the TRIPS Agreement. The Secretariat had also received notifications from Australia of its copyright legislation, which were being processed and would be made available to Members shortly.

26. The Council took note of this information.

(3) **Article 69: Notifications of contact points**

27. The Chairman recalled that Article 69 required Members to establish and notify contact points in their administrations for the purposes of cooperation with each other aimed at the elimination of international trade in infringing goods. These contact points were essentially a vehicle for the cooperation in combating trade in infringing goods that Article 69 called for. Therefore, the starting-point could be to discuss what type of cooperation Members wished to see. He suggested that, in the discussion, delegations might make a distinction between two elements: first, the exchange of information and cooperation between customs authorities with regard to trade in counterfeit and pirated goods, which was highlighted in the last sentence of Article 69, and, second, the other aspects of cooperation aimed at eliminating international trade in infringing goods that Members felt should be taken up.

28. The representative of the World Customs Organization (WCO) said that the WCO had had for a number of years an international enforcement database on all enforcement issues relating to customs. Within that context, the WCO had recently built a separate database for intellectual property rights infringements which contained information that the WCO had obtained both from members and from the trade about violations, non-violations, patterns of operation, trafficking patterns and violators. In addition, as part of this database, the WCO had a list of contact points that customs administrations had provided of persons responsible within their administrations for the enforcement of intellectual property rights. This list included a list of people in the trade who could provide information, if needed by customs, about the specifics of products. This database was in the course of being built up. There was separately a contact point list for all information on enforcement matters with customs. The experience of the WCO was that customs contacted each other and cooperated on these matters and that they communicated to each other the difficulties they had had in this context and which their counterparts might come across as well.

29. The Chairman proposed that the Council take note of the information provided by the representative of the WCO and revert to the matter at the next meeting and that in the meantime he would hold informal consultations on how the provisions of Article 69 might be implemented.

30. The Council so agreed.

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

31. The Chairman recalled that Article 4(d) allowed a Member to justify not extending an advantage accorded to the nationals of a country to the nationals of all other Members, as normally required by the m.f.n. clause, where that advantage derived from an international agreement related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement. The conditions for invoking this m.f.n. exemption were that the agreement in question was notified to the Council for TRIPS and did not constitute an arbitrary or unjustifiable discrimination against nationals of other Members. In his consultations he had obtained some feedback as to the nature of notifications that might be envisaged and as to their timing, but further discussion was clearly necessary. He proposed to pursue his informal consultations on the matter and report to the Council in due course.

32. The Council so agreed.

(5) **Notifications related to Article 6ter of the Paris Convention**

33. The Chairman recalled that Article 63.2 required the Council for TRIPS to consider, in connection with the consultations with WIPO on the notification of national laws and regulations, any action required regarding notifications pursuant to obligations under the TRIPS Agreement stemming from the provisions of Article 6ter of the Paris Convention. Article 6ter concerned protection against the use or registration as trademarks without authorization of state emblems, official hallmarks and

the emblems of intergovernmental organizations. In this regard, he drew attention to the discussion of this matter contained in paragraphs 18-21 of document PC/IPL/7/Add.2. As suggested in that document, there would appear to be much sense in exploring the possibility of requesting WIPO to handle these notification functions under the system that it had already established for dealing with such notifications under the Paris Convention. Given that all the substantive provisions of the Paris Convention in its latest version had to be complied with by WTO Members, it could be expected that the large majority of Members would in any event be members of the Paris Convention and therefore making notifications to the International Bureau. A single comprehensive system for the administration of notifications relating to the provisions of Article 6ter would not only avoid wasteful duplication but also facilitate the life of governments and business. Some ideas as to the elements of such a system that might be explored with WIPO were contained in paragraph 21 of document PC/IPL/7/Add.2.

34. The Chairman said that this was a matter on which he had sensed, in his consultations, a great deal of commonality of thinking, namely support for the general thrust of the ideas put forward in document PC/IPL/7/Add.2 and for the initiation of consultations with WIPO as soon as possible on that basis.

35. The Council agreed to the approach suggested by the Chairman.

C. Implementation of Article 70.8

36. The Chairman recalled that, at the previous meeting of the Council, India and Brazil had introduced the legislation which they had put in place to implement the provisions of Article 70.8 and which they had notified to the Council under Article 63.2. On the basis of the discussion that had followed, the Council had agreed that other Members to whom Article 70.8 also applied be urged to notify their relevant legislation prior to today's meeting. The Secretariat had circulated an airgram, WTO/AIR/71, reminding delegations of the need to notify the legislation in question. Since the previous Council meeting, three more notifications had been received concerning legislation to implement Article 70.8. Notifications from Uruguay and Turkey had been circulated as documents IP/N/1/URY/1 and IP/N/1/TUR/1. A notification from Argentina had also been received and would be circulated as document IP/N/1/ARG/1 in due course.

37. In introducing document IP/N/1/TUR/1, the representative of Turkey said that the Turkish Patent Institute was the responsible agency for the processing of patent applications for pharmaceutical products and processes. The present Turkish patent law excluded patent protection of pharmaceutical processes and products. Since agricultural chemical products and processes were protectable under the current law, there was no need to subject these to the provisions enacted in pursuance of Article 70.8 of the TRIPS Agreement; those provisions would only be applied in respect of pharmaceutical processes and products for animal and human health. Turkey had started receiving patent applications under these provisions as of 1 January 1995 and, as of today, more than 50 applications had been received.

38. The representative of Uruguay introduced document IP/N/1/URY/1 and said that, since 1 January 1995, patent applications under Article 70.8 had been received for pharmaceutical and agricultural chemical products; only process inventions in these areas were patentable under the current Uruguayan patent law. Under Uruguayan law, the provisions of Article 70.8 were directly included in domestic legislation and the obligation under this provision had been met on 30 December 1994 by the issuance of a resolution of the National Directorate of Industrial Property, under which applications under Article 70.8 could be filed with the authority responsible for patents, the National Directorate of Industrial Property under the Ministry of Industry, Energy and Mining, as of 1 January 1995. The requirements for these applications were exactly the same as those which applied in respect of patent applications for any other types of products. In accordance with Article 70.8, the applications in question

could be filed in order to determine priority of filing but would obviously not be granted until the law would stipulate the types of products concerned as patentable subject matter in Uruguay.

39. The representative of Argentina said that applications under Article 70.8 were handled in his country by the same authority which was responsible for the processing of patent applications relating to other areas. The requirements for these applications were similar to those for other patent applications.

40. While thanking the delegations that had made notifications to date for doing so, the representative of the United States wished to remind them, and any other delegation that was utilizing Article 70.8, of the provisions of Article 70.9, the benefits of which also had to be made available to patent applicants. He also wished to urge all such countries to consider seriously implementing full patent protection more rapidly and as soon as possible. Recalling that at the previous meeting of the Council delegations had been urged to make notifications by today's meeting, he noted that not all the delegations concerned had done so. Although it was not entirely clear which were all the countries to which the provisions in question applied, his delegation believed on the basis of some research it had done that there were still at least some ten countries which did not currently provide full patent protection and had not made the required notifications. He wondered when the notifications from these countries could be expected and expressed the hope that all of them would check without delay whether the required protection was available and would make the necessary submissions.

41. The Council took note of the statements made and agreed to revert to the matter at the next meeting.

D. Implementation of Article 65.5

42. The representative of Egypt said that Article 65 of the Agreement contained transitional arrangements for developing countries and countries in transition and, in its paragraph 5, also stipulated that a Member benefiting from a transitional period should ensure that any changes during that period did not result in a lesser degree of consistency with the provisions of the Agreement. As her delegation read the Article, it did not put any obligation on a Member to notify such changes; it simply requested the Members to ensure that such changes were consistent with the provisions of the Agreement. The Article required neither the Council nor the Secretariat to monitor such changes. Her delegation did not see the point of any additional notification burdens at this point, if this was not required by the Agreement itself. It was clear that Article 65.5 was merely oriented towards the Members themselves and that it was up to each of them to ensure consistency. Her delegation believed that nothing else could be deduced from Article 65.5 and that its views on the matter coincided with paragraphs 2.1 and 2.2 of the working hypothesis in relation to notifications under Article 63.2, to which the representative of the European Communities had referred earlier today.

43. The representative of Canada said that further consultations were required on this matter. She wished to note at this time that, pursuant to Article 68 of the Agreement, the Council for TRIPS was charged with monitoring the operation of the Agreement and, in particular, Members' compliance with their obligations thereunder. Clearly, all Members of the WTO faced obligations as of the day that the TRIPS Agreement had come into force with respect to the requirements of Article 65.5. There was need for a means to enable the Council for TRIPS to fulfil its rôle in monitoring compliance with obligations under the TRIPS Agreement. How that might be accomplished, and with reference to which particular provisions of the Agreement, was something that probably required further consideration and discussion. She did not think that any delegation would wish to suggest notification burdens if these were not necessary; as a practical matter, all had acknowledged in the various consultations that had taken place to date on the question of notification that quite a large volume of work would be faced simply dealing with the basic requirements of Article 63.2 with respect to laws and regulations in developed country Members. However, she believed that the representative of the European

Communities had raised an important and valid point which needed to be pursued in order to find reasonable means for the Council to carry out its rôle as expressed in Article 68.

44. The representative of the European Communities said that in his delegation's view there could not be any doubt that Article 65.5 laid down a substantive obligation. As his delegation saw it, to the extent that Article 65.5 laid down a substantive obligation relating to the contents of domestic law, the provision concerned an obligation which referred to the subject matter covered by Article 63.1, i.e. laws, regulations, etc. made effective by a Member pertaining to the subject matter of the Agreement; Article 63.2 said that Members should notify such laws and regulations to the Council for TRIPS. Consequently, it seemed to his delegation that there was a straightforward logical link between the application of Article 65.5 and the notification requirement in Article 63.

45. The representative of the United States said that Article 65.5 was a provision which his delegation took very seriously and which it considered very important for the successful operation of the Council for TRIPS. Some monitoring and notification process seemed to be required and should be established by the Council, so that the Council could fulfil its obligations and its mandate under Article 68 to ensure that all Members were implementing the Agreement in line with their obligations. This did not have to be such an onerous burden on individual Members, since it could be presumed that no delegation had the intention of enacting legislation that would lessen the degree of consistency of their intellectual property policies and laws with regard to the TRIPS Agreement. However, in any case, some more consultations were required on the question of how to give effect to the provision of Article 65.5. It seemed to his delegation that one thought that might be explored in this context was that, at a minimum, whenever any Member made a change in its laws after 1 January 1995, that fact should be notified together with an indication of what the law had been and had become, so that other Members could satisfy themselves that Article 65.5 had been honoured. The legislation would, thus, not have to be notified in its entirety; it would suffice to notify the modifications.

46. The representative of Paraguay agreed with the United States that the presumption should be that no delegation had the intention of diminishing protection of intellectual property at this time. Article 65.5 neither explicitly nor implicitly imposed an obligation to notify changes in legislation. Additional notification requirements should not be sought. He informed the Council of the fact that his country had already started, with the cooperation of WIPO, the preparation of legislation in line with the obligations under the TRIPS Agreement. Once legislation would have been enacted, a copy of it would of course be communicated to WIPO. His country did not wish to relinquish any of the rights it enjoyed under the TRIPS Agreement and would use the transitional period to which it was entitled under that Agreement.

47. The representative of Poland said that the full obligation to notify laws and regulations as laid down in Article 63 would not apply for developing countries and countries in transition until 1 January 2000 and that there was no obligation on them to notify amendments during the transitional period. Of course, it could be useful to have such notifications as well if a Member was in a position to make them but, from a legal perspective, there was no obligation to do so. This had been reflected in point 2.1 of the working hypothesis discussed earlier today, which said that as of the time that a Member was obliged to start applying a provision of the TRIPS Agreement the corresponding laws and regulations must be notified without delay. Consequently, all developing countries and countries in transition must notify laws and regulations pertaining to Articles 3, 4 and 5 as of 1 January 1996 and four years later laws and regulations relating to other Articles. While agreeing with Canada that the Council for TRIPS had the obligation to monitor the operation of the Agreement, he thought that the Council would also be in a position to do so without Members having to notify laws and regulations, for example through consultations or by using other sources of information.

48. The representative of Japan said that in some cases laws had been amended after 1 January 1995 and that, therefore, monitoring was very important. In this context, he shared the view expressed by

the United States. He wished to note that any Member had the right to raise any issue, if necessary, at any meeting of the Council for TRIPS, even in the absence of a formal mechanism for monitoring.

49. The representative of Indonesia said that his delegation had looked at Article 65.5 very carefully and, if it was not mistaken about the discussion that had taken place on the draft of the provision, it was very clear that the provision did not lay down an obligation to notify. In that respect, he shared the view expressed by Egypt. Furthermore, in his delegation's view, the issue under discussion should not be addressed under Article 65.5 but rather under Article 63, in particular paragraph 1 thereof, as indicated by the European Communities. He agreed with Canada that it was crucial to have some kind of rules and procedures on how the Council for TRIPS should undertake its monitoring work.

50. The representative of Switzerland supported the analysis of the representative of the European Communities. He said that the views expressed by the representative of the United States were also most interesting; a system along the lines indicated by that delegation would enable Members to develop reasonable measures for ensuring transparency. The ideas, however, needed to be examined in greater depth, in particular to ensure at the same time that the burdens on Members were kept to a minimum.

51. In concluding the agenda item, the Chairman, noting the different views, proposed to follow the suggestion made by many speakers, namely to hold informal consultations on the issue of the implementation of Article 65.5 and to revert to the matter at the next meeting of the Council.

52. The Council so agreed.

E. Technical Cooperation

53. The Chairman recalled that, at the meeting of the Council on 9 March 1995, he had been asked to consult on the items that should be taken up by the Council in its work programme this year. One of the items on which there had appeared to be a general view that it was important to initiate work at an early stage was that of technical cooperation. He had sensed a good deal of interest in putting together as complete a picture as possible of the technical cooperation possibilities available to developing countries to assist them implement their TRIPS obligations. The point had been made that this matter was also relevant to the cooperation that was being envisaged between the WTO and WIPO. In addition, it had been said that it would be helpful for the Council to reflect on the type of technical cooperation activities that it would wish to see the WTO Secretariat undertake. Bearing all this in mind, he suggested therefore that the Council for TRIPS have an in-depth consideration of the various aspects of this issue at its first meeting in the autumn and that a certain amount of documentation might be prepared to provide a basis for discussion. He suggested that, first, each developed country be invited to provide, in writing and well in advance of the meeting, a description of its technical and financial cooperation programmes in the area of intellectual property relevant to the implementation of the TRIPS Agreement. Second, the Council might ask each of the intergovernmental organizations which were observers to the Council for TRIPS to do the same. The Council might also seek information from UPOV in relation to its activities in the area of plant variety protection. And third, the WTO Secretariat could provide information on its technical cooperation activities and also make suggestions about what might be the future policy in this area.

54. The Council so agreed.

F. Assistance of the Council in the Context of Dispute Settlement

55. The Chairman recalled that the question had been raised at the meeting of the Council for TRIPS on 9 March 1995 of the assistance that the Council might provide in the context of dispute settlement,

in particular whether there was any need for action on the part of the Council to help ensure that the central indicative list or roster of panelists included persons with suitable knowledge of intellectual property matters. In the contacts that he had had, he had not sensed enthusiasm for establishing a separate roster in the TRIPS area, similar to that already foreseen in the services area, which would be folded into the central roster. He suggested, therefore, that the Council for TRIPS might simply draw to the attention of Members the desirability of ensuring that the nominations they made of potential panelists to be placed on the central roster include persons with experience of intellectual property matters viewed from a trade or commercial perspective.

56. The Council so agreed.

G. Arrangements for Cooperation with WIPO

57. The Chairman invited Ambassador Mohamed Ennaceur of Tunisia to take the floor in order to inform the Council about the deliberations that had taken place at the recent meeting of the Ad Hoc WIPO Working Group on Cooperation Between WIPO and the WTO chaired by the Ambassador.

58. Ambassador Mohamed Ennaceur of Tunisia said that the meeting of the WIPO Working Group that he had chaired on 12 May 1995 had been attended by the Chairman of the Council for TRIPS and representatives of the WTO Secretariat. In summarizing the discussion that had taken place at the meeting, he said that a consensus had emerged from the debate that members of WIPO shared the view of WTO Members regarding the need for cooperation between the two Organizations. However, as to the contents and modalities for such cooperation, no consensus had been reached yet in the Working Group. In respect of the contents of such cooperation, reference should be made to the possible establishment of a common register for laws and regulations under Article 63.2 of the TRIPS Agreement, which had been addressed in a document that had been submitted to the Working Group by the Director General of WIPO. Further, several delegations at the meeting had referred to the area of technical cooperation. WIPO already had a programme for technical cooperation and, as announced by the Director General of WIPO at the meeting, the studies regarding the implications of the TRIPS Agreement for the conventions administered by WIPO, as called for by the General Assembly of WIPO at its 1994 Session, were about to be accomplished and would be presented to the General Assembly in the context of its next Session in the autumn of 1995. Furthermore, a programme for technical assistance in the area of intellectual property for African countries was well under way in WIPO. WIPO was thus continuing its technical assistance programmes. It was possible to have cooperation between WIPO and the WTO in the context of technical assistance, but the WTO had to specify first in what areas such cooperation was desirable. Regarding the modalities of cooperation between the two Organizations, mention had been made at both the first and the second meeting of the Working Group, on 8 February and 12 May 1995 respectively, of the possibility of setting up an informal Consultation Group on all matters concerning possible cooperation between WIPO and the WTO. This possibility remained open in the context of both WIPO and the WTO. Several delegations had supported the idea for such a Consultation Group at the meeting on 12 May. Other delegations had indicated, however, that they were not yet ready to take a decision on this and did not consider the matter, at this stage, as an urgent issue. Furthermore, contacts between the Secretariats of the two Organizations had been encouraged by all. According to certain member States of WIPO, such contacts should take place with the assistance of representatives of member States of WIPO, without the presence of these delegations implying a mandate to negotiate; contacts between WIPO and the WTO had to remain informal. Member States of WIPO would consult on who should accompany the International Bureau in its future contacts with the WTO.

59. The Chairman informed the Council of the consultations he had held, as agreed by the Council at its meeting on 9 March 1995, on the issue of cooperation with WIPO. One question concerned the areas in which the cooperation of WIPO might be sought by the Council for TRIPS. The feedback

he had received had confirmed that the Members of the Council wished to be clear as to the areas and nature of cooperation to be sought from WIPO before entering into consultations. The focus should be on the specific possible areas of cooperation. In this regard, his consultations had confirmed that there were two areas where, at least at this stage, there was a wide belief that cooperation might be desirable. One was the question of notification procedures, in particular in relation to national laws and regulations and TRIPS obligations stemming from Article 6ter of the Paris Convention. The other area was that of technical cooperation. In this regard, he hoped to have more detailed advice from delegations as to the sort of cooperation between the two Organizations which might need to be taken up in the consultations with WIPO. As agreed, a general discussion of the question of technical cooperation would be held in the autumn in this regard. Another aspect of the issue of cooperation with WIPO concerned the way in which the consultations between the two Organizations might be organized. In this regard, the feedback that he had been receiving suggested that there was a general view that it would be a good idea to approach WIPO sooner rather than later, although he had also sensed that it would be premature to set up a formal process for this purpose. He suggested, in the light of his consultations on this issue, that the Council might authorize him as its Chairman and with the assistance of the Secretariat to enter into informal contacts with WIPO, to inform them of the state of thinking in the Council, in particular with regard to the types of cooperation it might suggest. He would of course keep Members informed of any reaction from WIPO.

60. The representative of Canada said that her delegation endorsed the suggestion that the Chairman begin informal consultations with representatives of WIPO. It was important and timely to begin a process of consultations, which should be informal at this stage, so that views could be exchanged with the International Bureau and reactions could be obtained to some of the options that had been developed in the context of the Council for TRIPS, in particular with respect to the working hypothesis on notification procedures for laws and regulations. Indeed, a number of the delegations present today had participated also in the meeting of the WIPO Working Group on 12 May 1995, which had just been summarized for the Council by the Ambassador of Tunisia, and had anticipated at that meeting that the possibility of informal consultations by the Chairman of the Council for TRIPS would be discussed and supported at today's meeting. Many delegations, including the Canadian delegation, while continuing to express serious reservations about the proposal for the establishment of a Joint Consultative Group between WIPO and the WTO, had stated a strong preference for the pursuit at this stage of just the type of informal contacts as suggested by the Chairman. She also wished to clarify that the suggestion had been made at the meeting of the WIPO Working Group that the Chairperson of that Working Group might participate in such informal consultations and many delegations had expressed support for the idea that this could be considered in informal consultations that would be undertaken with respect to who the Chairperson would be for future meetings of the Working Group and the rôle that the Chairperson might possibly play. However, many delegations had not supported at the time the idea that member States of WIPO might also participate in the informal consultations, as suggested by the Director General of WIPO.

61. The representative of Uruguay supported the idea of authorizing the Chairman to enter into consultations with WIPO, with the assistance of the WTO Secretariat, to enable progress on many of the issues, in particular in relation to notification procedures and technical cooperation. His delegation wished to highlight that it agreed to the idea of making progress informally without involving directly representatives of governments; it had supported the same idea in the context of the WIPO Working Group by suggesting participation on the same basis in informal consultations of the International Bureau and the Chairman of the WIPO Working Group or the Chairman of another competent WIPO body. The final goal had, in any case, to be borne in mind, which was to achieve satisfactory cooperation between the two Organizations to the benefit of the member States of both of them. With regard to technical cooperation, his delegation believed that it was a good idea to explore the areas which were being dealt with by WIPO at present and that information on this could be useful for the purposes of the Council for TRIPS. Complementarity should be looked for to the extent possible as well as the strengthening of the technical cooperation programmes of both Organizations.

62. The representative of Paraguay expressed his support for the suggestions made by the Chairman.
63. The Council agreed to proceed as suggested by the Chairman.

H. Draft Model Legislation of the WCO

64. The Chairman recalled that the Council had agreed, at its previous meeting, to revert to the question of the draft model legislation being drawn up by the WCO with a view to assisting countries in giving effect to their TRIPS border enforcement obligations. A copy of this draft had been made available in document IP/C/W/1. He expressed appreciation for the presence of a representative of the World Customs Organization and offered her the floor to introduce it and explain its present status within the WCO.

65. The representative of the World Customs Organization said that the draft model legislation on intellectual property rights, of which the WCO had provided a copy to the WTO Secretariat and which was contained in the document referred to, had been prepared with the active participation of customs administrations, WIPO, the WTO and the trade. A few slight modifications had been adopted last week by the Permanent Technical Committee of the WCO and the WCO Secretariat was at this time in the process of printing the final draft of the model legislation in preparation of the annual WCO Council meeting which would begin on 19 June 1995 in Brussels for the Directors General of Customs; at that meeting the draft was likely to be accepted and become a final document for the use of the members of the WCO. In addition, she also said that, in anticipation of the adoption of the model legislation, the WCO Secretariat had started the preparation of a videotape and brochure to explain the model legislation and the issues relating to intellectual property rights in general to the members of the WCO. Moreover, a series of training seminars had been organized, one of which was to be held next week in Brussels for the Benelux countries.

66. The Chairman suggested that the Council, first, welcome the interest and the activity of the WCO in regard to the customs enforcement of intellectual property rights and also its concern to take into account the provisions of the TRIPS Agreement; second, express the importance that it attached to a mutually supportive relationship between the WTO and the WCO in this regard; and, third, take note of the draft model legislation being developed by the WCO. He noted that it was not the job of the Council for TRIPS of the WTO to approve or disapprove such a text, which did not constitute an official interpretation of the TRIPS Agreement, this being a task that only the WTO could undertake.

67. The Council so agreed.

I. Other Business

68. In light of the progress made at the meeting and given the work programme drawn up, the Chairman suggested holding the next meeting of the Council on 21 and 22 September 1995.

69. The Council so agreed.