

WORLD TRADE ORGANIZATION

RESTRICTED

IP/C/M/6

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Council for Trade-Related Aspects of Intellectual Property Rights

MINUTES OF MEETING

Held in the Centre William Rappard
on 22 February 1996

Chairman: Mr. S. Harbinson (Hong Kong)

Subjects discussed:

- A. Notifications under Articles 1.3 and 3.1
- B. Notifications under Article 63.2
- C. Notifications under Article 69
- D. Notifications under Article 4(d)
- E. Notifications under other provisions of the Agreement
- F. Derestriction of documents
- G. Implementation of Article 70.8
- H. Technical cooperation
- I. Other business
- J. Election of the Chairperson for the Council for TRIPS

1. In accordance with the interim procedures on observer status for intergovernmental organizations, the Council agreed to invite WIPO, the IMF, the FAO, the OECD, United Nations, UNCTAD, UPOV, the WCO and the World Bank to its next meeting.

A. Notifications under Articles 1.3 and 3.1

2. The Chairman informed the Council that, since this matter had last been considered by the Council at its meeting of 21 November 1995, additional notifications had been received from Poland and Zimbabwe and had been circulated in the IP/N/2/- series.

3. The Council took note of this information.

B. Notifications under Article 63.2

4. The Chairman said that, at its meeting of 21 November 1995, the Council had adopted a series of decisions relating to procedures for giving effect to the requirement to notify national laws and regulations under Article 63.2 and to the consideration that it would subsequently give to notifications made under this requirement (documents IP/C/2-5). Subsequently, the Secretariat had issued an airgram (WTO/AIR/240) drawing attention to the time-frame for the submission of these notifications. As regards the status of notifications actually received so far under Article 63.2, he said that, excluding the notifications already made relevant to Article 70.8, 21 Members had notified their laws and regulations pertaining to the subject matter of the TRIPS Agreement so far. In a few cases, the notification had, as yet, been partial only. Most Members had attempted to follow the guidelines in the above-mentioned procedures. The basic notification for some of these Members had already been circulated and for others was being processed. In some cases, the texts of the main laws and regulations had also been circulated; in some others, the texts were presently being processed and should be available fairly soon; and in a few cases the processing was being held up pending clarification of some points with the notifying delegation. Most notifications had not, as yet, included responses to the checklist of issues on enforcement (document IP/C/5). None of the notifications received so far had related only to those parts of national legislation which gave effect to the national treatment and MFN obligations of Articles 3, 4 and 5 of the TRIPS Agreement, which obligations had entered into force for all Members with effect from 1 January 1996.

5. Continuing, the Chairman recalled that the Council had adopted a schedule for the consideration of national implementing legislation starting in July 1996 (document IP/C/3). This schedule already included procedures for the posing of questions and for discussion in the Council. However, he suspected that it might be helpful for the Council to provide to delegations in advance somewhat clearer guidelines as to how the review would be undertaken. Therefore, he proposed that the Council ask his successor as Chairperson to hold informal consultations, taking into account any comments delegations would have and experience in other WTO bodies which had undertaken reviews of national implementing legislation, and come forward with suggestions at the Council's next meeting.

6. The representative of Poland, introducing document IP/N/1/POL/1, said that the Polish notification of main laws and regulations pertaining to the subject matter of the TRIPS Agreement, reproduced in that document, was a partial notification and an advance one. The Polish authorities had availed themselves of the right, under Article 65.3 of the TRIPS Agreement, to delay the date of application of the provisions of the Agreement other than Articles 3, 4 and 5 beyond the date of 1 January 1996. Poland was undergoing the process of transformation from a centrally-planned into a market, free-enterprise economy. One element of this process of transformation was a structural reform of the intellectual property system. His delegation had, however, been encouraged by the decision of the Council of 21 November 1995, as set forth in paragraph 3 of document IP/C/2, which invited WTO Members to notify in advance laws and regulations that were in compliance with the TRIPS Agreement. Poland had decided, thus, to submit its notification of the eight laws and regulations that were already in line with the provisions of the TRIPS Agreement. The intention was, furthermore, to submit soon the text of two other regulations pertaining to rules governing fair competition. Turning to the laws that had not yet been brought into conformity with the provisions of the Agreement, he said that laws in the area of copyright were currently in an advanced stage of drafting. As to other laws dedicated to the protection of intellectual property, he was not in a position to state when the Polish authorities would complete their work but he expected that this would be the case before the end of the transitional period as set forth in Article 65.3 of the TRIPS Agreement.

7. The representative of the Slovak Republic said that his delegation was preparing its notification under Article 63.2. This notification would comprise all main laws and regulations except in the area

of copyright. The copyright law was in the final stage of drafting and would be the subject of an additional notification after final approval which he expected within a period of months.

8. The representative of the United States said that his delegation had not yet submitted its notification due to a Government shutdown of a period of one month up to mid-January 1996, but would do so shortly. In preparing the listing of "other laws and regulations" as required by the relevant decisions of the Council of 21 November 1995 (documents IP/C/2 and 4), his delegation had taken very much to heart the obligation in these decisions to indicate the connection between the provisions of the national laws and regulations notified and the corresponding provisions of the TRIPS Agreement. In the near future, such a listing with cross-references would be submitted in respect of all their notified laws and regulations, not only "other laws and regulations". Also his delegation's responses to the checklist of issues on enforcement (document IP/C/5) were being prepared and could be expected soon. He expressed the hope that a large number of Members would submit notifications and was pleased with the notifications made and/or announced by Poland and the Slovak Republic. He wished to encourage, in particular, those Members which, in his delegation's view, were "recently developed countries" to make notifications at the time required for developed country Members. As regards the preparation of the review of notified legislation in July 1996, he supported the proposal that the Chairman hold informal consultations.

9. The representative of Norway informed the Council that her delegation would submit its notification to the Secretariat in the course of the day.

10. The representative of Japan, addressing the Chairman's proposal for holding informal consultations concerning the review of national legislation, recalled his delegation's suggestion at the meeting of the Council in November 1995 that each Member prepare a road map indicating cross-references between the provisions of its national law and the provisions of the TRIPS Agreement. Given the huge volume of texts notified to the Council, his delegation wished to stress and recommend the usefulness of such cross-references in preparation of the review of these texts by the Council. Models for a road map had been prepared by his delegation concerning the areas of trademarks and industrial designs, copies of which could be obtained from the Secretariat.

11. The representative of Canada said that, in the processes of legislative review conducted under other bodies of the WTO, his delegation had notified its laws, and amendments to those laws, existing at the time that the notification was required. However, in order to facilitate the transparency of the notification, subsequently a consolidated text of the appropriate Canadian law had been submitted. His delegation intended to follow the same procedure in relation to its notification under Article 63.2. He expected consolidated texts to be available shortly. However, his delegation did not wish to interfere with the time-table set forth for the review of legislation and would submit the copyright legislation in its current form if a consolidated text would not be available in time.

12. The representative of the European Communities said that his delegation was in a somewhat similar situation as the United States. The Community itself had notified its laws and regulations but a number of its Member States had not yet done so. These outstanding notifications would, however, be submitted soon. As regards the Japanese suggestion for a road map, he wished to re-state his delegation's position that the review process would be very much facilitated by having available cross-references between the provisions of a Member's law and the provisions of the Agreement, but that there was no obligation in the TRIPS Agreement to provide such a road map.

13. In conclusion, the Chairman said that there appeared to be support for the idea that informal consultations be held by his successor on guidelines for the procedures for the review of national laws and regulations. He also drew attention to document IP/C/3, according to which advance notice of

questions in regard to notified laws and regulations in the area of copyright and related rights was to be given by the end of April 1996.

14. The Council took note of the statements made and agreed that the Chairman hold informal consultations as proposed.

C. Notifications under Article 69

15. The Chairman said that the Secretariat had issued in document IP/N/3 a list of the contact points notified under Article 69 of the TRIPS Agreement. Since that document had been prepared, notifications had been received from the United States and Zimbabwe. It was the Secretariat's intention to prepare a revision of document IP/N/3, taking into account these additional notifications and those that would be received prior to 22 March 1996, for circulation end March. He therefore urged those Members which had yet to notify contact points to do so as soon as possible.

D. Notifications under Article 4(d)

16. The Chairman said that, so far, notifications under Article 4(d) had been received from 18 Members. While most of these had already been circulated, in the IP/N/4/- series of documents, a few were still being processed.

17. The representative of the United States said that the TRIPS Agreement did not seem to give much guidance as to what notifications under Article 4(d) should contain. This could be one explanation for the differences in the extent of the notifications. His delegation had been somewhat dismayed to see that some Members appeared to have sought MFN exemptions on the basis of international instruments that contained fundamental components of the TRIPS Agreement itself, such as the Berne Convention, the Paris Convention, the Madrid Agreement and its Protocol and the Rome Convention. Such MFN exemptions did not make sense and were, in any case, unacceptable to his delegation. Other Members had a right to know what in the instruments notified under Article 4(d) was viewed as being discriminatory and was the subject of the notification under Article 4(d). If this was not clear from the notification, the notifying Member would, in his delegation's view, not be entitled to rely on the exemption in question if a dispute were to arise over it.

18. The representative of the European Communities said that intensive discussions had taken place between the Community and its Member States before a decision could be taken on which international agreements the European Communities as such would notify under Article 4(d). These discussions had revealed a wide difference of view ranging from one extreme, which was to notify all that existed on the bilateral and multilateral level, to the other, namely not to notify anything. He wished to note that, in the intellectual property area, little experience existed with MFN. Clarification of its functioning in relation to intellectual property was needed, so that Members would be able to indicate more precisely the exemption notified under Article 4(d).

19. The representative of Australia shared the concerns expressed by the United States and welcomed the statement made by the European Communities. She looked forward to further discussions on the issue of notifications under Article 4(d) in order to clarify the notifications to be made under that provision. Her delegation would not make a notification under Article 4(d).

20. The representative of Switzerland suggested that the matter be taken up by the Chairman in informal consultations.

21. In conclusion, the Chairman said that there appeared to be a degree of dissatisfaction with the lack of guidelines for notifications under Article 4(d). He proposed that the Council follow the suggestion

made by Switzerland and ask his successor to consult informally with a view to finding a mutually satisfactory way of handling this matter and report to the next meeting of the Council.

22. The Council so agreed.

E. Notifications Under Other Provisions of the Agreement

(i) Notification provisions of the Berne Convention and the Rome Convention incorporated by reference into the TRIPS Agreement but not explicitly referred to in it

23. The Chairman said that, as agreed at the Council's meeting of 21 September 1995, the Secretariat had prepared a background note aimed at explaining the nature of the various notification provisions in question, which had been circulated as document IP/C/W/15. This document had been briefly discussed at the Council's meeting of 21 November 1995, but since it had, at that time, only just been made available, the Council had agreed to revert to the matter at its first meeting in 1996. The annex to the document showed that there were very few countries who had availed themselves of the options in the corresponding provisions of the Berne Convention or the Rome Convention themselves.

24. The Chairman drew attention to paragraph 15 of the document, in which it was pointed out that the Council had already dealt with similar notification procedures under certain provisions of the Berne Convention and the Rome Convention incorporated into the TRIPS Agreement by reference, when it had taken the decision concerning notifications under Articles 1.3 and 3.1 of the TRIPS Agreement.¹ He suggested that the Council handle questions relating to notifications addressed in document IP/C/W/15 in a similar low-key way, and would simply invite each Member wishing to make such notifications to make them to the Council for TRIPS, even if the Member in question had already made a notification under the Berne or Rome Convention in regard to the same issue, and draw Members' attention to the discussion in paragraphs 16 through 21 of the document of questions relating to the timing of these notifications.

25. The Council so agreed.

(ii) Notifications under Article 6ter of the Paris Convention as incorporated by reference into the TRIPS Agreement

26. The Chairman drew the attention of Members to the procedures that the Council had adopted regarding the communication of national emblems under Article 6ter of the Paris Convention. He recalled that the Agreement that had been concluded with WIPO (document IP/C/6) and the decision adopted by the Council giving legal effect under the TRIPS Agreement to the provisions of that Agreement relating to Article 6ter of the Paris Convention (document IP/C/7) provided that such emblems and any objections to them would be communicated between WTO Members through the intermediary of the International Bureau of WIPO. Most WTO Members who were members of the Paris Convention would already have communicated emblems to WIPO and these would automatically be communicated by the International Bureau to all WTO Members that were not members of the Paris Convention. The particular point that he wished to draw to the Council's attention was that it was now open to those WTO Members who were not members of the Paris Convention to make notifications, through the International Bureau, of their national emblems that they would wish to see protected in other WTO Members in accordance with the provisions of Article 6ter of the Paris Convention as they applied under the TRIPS Agreement.

¹IP/C/M/2, paragraphs 11-12

(iii) **Other**

27. The Chairman drew the Council's attention to document IP/C/W/19 which contained a communication from Chile concerning the question of whether any formal notification was required by a developing country Member in order to invoke the transitional period under Article 65.2 of the Agreement. Given that this was a matter of possible wider interest, he informed the Council that the Secretariat, to which the letter from Chile had been addressed, had responded confirming that there was no requirement in the TRIPS Agreement on developing country Members to provide any formal notification of their invocation of the transitional period for which they were eligible under Article 65.2. Of course, once more in the interest of transparency, he believed that the Council would appreciate any information that such Members were willing to share regarding their intentions.

28. While not disputing the response given by the Secretariat, the representative of the European Communities welcomed the communication from Chile and the question that Chile had put. In his delegation's opinion, it would be useful, for purposes of transparency, if Members that claimed developing country status would inform other Members of the Council of their intentions regarding the transitional arrangements laid down in Article 65.

29. The representative of the United States expressed his support for the statement made by the delegation of the European Communities.

30. The representative of India said that he would report to his Government that, although there was no obligation to notify under Article 65.2, the European Communities and the United States would encourage Members concerned, for the purposes of transparency, to provide information regarding their invocation of the provisions in question, in any form they liked.

31. The Council took note of the statements made.

F. Derestriction of Documents

32. The Chairman recalled that the General Council had noted at its meeting in December 1995² that, pending the agreement on a long-term policy of the WTO on derestriction of documents, the procedures and customary practices regarding document derestriction followed under the GATT would be applied. Pursuant to this, the Chairman proposed that the Council decide to derestrict notifications of national legislation under Article 63.2 as well as notifications made under Articles 1.3 and 3.1 that had already been issued, and that, in future, such notifications would be circulated as unrestricted documents.

33. The Council so agreed.

G. Implementation of Article 70.8

34. The Chairman informed the Council that, since this matter had last been discussed, at the Council's meeting of 21 November 1995, no further notifications had been received of national legislation giving effect to the requirements of Article 70.8 and the related requirements of Article 70.9. To date, nine Members had made notifications related to Article 70.8.

35. The representative of the United States recalled that all Members that did not provide product patent protection for pharmaceutical and agricultural chemical products as of 1 January 1995 were

²WT/GC/M/9, page 4

obliged to implement the provisions of Articles 70.8 and 70.9 and to start receiving patent applications under the implementing legislation concerned as of that date. They were also obliged to notify this implementing legislation promptly to the Council. In his delegation's view, in implementing these provisions, the Members in question had to establish, first, a legal right of priority to allow patent applications to claim the benefit of the filing date of applications filed under the "mailbox" even though examination of the patent applications would not occur until some future date. He emphasized in particular the importance of Article 70.9 which obliged Members concerned to provide the possibility of marketing exclusivity for inventions which were the subject of applications under Article 70.8. In bilateral consultations, his delegation had noticed that some countries had not appreciated this. In due course, inventors that had filed patent applications under Article 70.8 would receive marketing approval in their home country and should, once marketing approval had been obtained in countries where they had filed these applications, be entitled to claim exclusive marketing rights under Article 70.9. This should not be regarded as only something for the distant future but might happen quite soon. He referred to the statement by his delegation during the meeting of the General Council of 6 February 1996. Although he did not have a complete picture as to which WTO Members did not provide patent protection for pharmaceutical and agricultural chemical products, according to the information available to his delegation Pakistan, Kuwait, Nicaragua, Myanmar, Qatar and Tanzania were such Members that had not notified that they had established the necessary means under Articles 70.8 and 70.9. He called upon these countries to inform the Council that, in fact, they did provide patent protection for these forms of technology, or to end their violation of the TRIPS Agreement and make the necessary notification to the Council.

36. The representative of the European Communities said that his delegation fully supported the statement made by the United States. Obligations under Articles 70.8 and 70.9 had started applying more than a year ago and still some Members had not come forward with information on what they had done to implement these provisions. He informed the Council that his delegation had unsuccessfully pursued this matter with a number of countries on a bilateral basis. As regards Article 70.9, he agreed with the United States that it could not be entirely excluded that, in individual cases, exclusive marketing rights would have to be granted in the near future.

37. The Council took note of the statements made and agreed to revert to the issue at its next meeting.

H. Technical Cooperation

38. The Chairman recalled that the Council had requested, at its meeting on 21 November 1995, that he prepare, with the help of the Secretariat, for the first meeting of the Council in 1996, a short informal discussion note outlining and structuring the issues which had been raised in its various discussions on the subject of technical cooperation and identifying possible options for carrying forward the Council's work in this area. Accordingly, he had circulated an informal discussion note, dated 7 February 1996 (subsequently distributed as document IP/C/W/21), in which he had suggested four types of issues that the Council might wish to consider further in carrying forward its work in this area:

- the systematic provision of information on technical cooperation activities;
- how the Council could contribute to ensuring that needs for technical cooperation were adequately met;
- the technical cooperation activities of intergovernmental organizations, in particular WIPO and the WTO itself, especially in the light of the recently concluded agreement between the two Organizations; and

- whether, in the framework of the TRIPS Council, there would be an interest in more in-depth discussion of particular themes in regard to technical cooperation.

As mentioned in the document, the list was not intended to be exhaustive; Members were free to raise any other aspects for discussion if they so wished.

39. In commenting generally on the subject, the representative of Egypt stressed the importance her delegation attached to Article 67 of the Agreement and to the clear commitments contained therein on the part of developed country Members to facilitate the implementation by developing country Members of their obligations under the Agreement. While it was true that the Article envisaged bilateral cooperation, as it stipulated clearly that technical and financial cooperation should be provided on request and on mutually agreed terms, no one could undermine or deny the TRIPS Council's role in monitoring the operation of the Article. The representatives of Paraguay, the Philippines, Uruguay, the European Communities, Canada and Cuba also emphasized the importance of technical cooperation. The representatives of Switzerland, Uruguay, New Zealand and Cuba said that the Council should remain practical in its approach to technical cooperation. The representatives of Switzerland, Norway and New Zealand underlined the need to stay focused on the needs of the developing countries and the implementation of the TRIPS Agreement.

40. Some Members provided information on their own technical cooperation programmes. The representative of the European Communities explained that the European Communities had pursued technical assistance on intellectual property matters for many years and that they were one of the biggest providers of such assistance. The funds made available for such assistance had increased more than their budgets in general, and further increases might be possible given the importance they attached to intellectual property. The representative of Japan explained that Japan was one of the most active countries in providing technical assistance and that it was going to expand its cooperation programmes so as to meet the increasing demand from those developing countries which were implementing or preparing to implement the TRIPS Agreement. He believed that it was important for the WTO Secretariat to survey and provide information on technical cooperation activities, in order to facilitate carrying out cooperation programmes in the most adequate and effective manner. The representative of Norway explained that her country was interested in establishing a sound and balanced cooperation with developing countries under the TRIPS Agreement. Her Government was aware of the commitment of the WTO to provide special attention to the least-developed countries in establishing a detailed work programme tailored to their needs and requirements, and of the pressing needs of the least-developed countries, including the need for technical assistance in helping to build up their human and institutional resources and expertise. This was necessary if these countries were to be better integrated in the international trading system and, in particular, to draw full benefits from it and to be in position to meet their obligations under the WTO Agreements. She said that Norway had made a contribution of US\$2.5 million to create a WTO technical assistance fund for the benefit of the least-developed countries in the said areas. These funds were to cover activities to be conducted within a three-year implementation period. Under the project proposal, the TRIPS Agreement was identified as one relevant area in the following way: one seminar to be held in Geneva on TRIPS matters for intellectual property officials from least-developed countries to get these countries acquainted with the basic concepts, principles and obligations laid down in the Agreement. In view of the transition periods foreseen in the TRIPS Agreement for least developed countries, the opportunity for holding such a seminar should be seized at the earliest stage possible, so as to provide sufficient time to adapt or introduce appropriate legislation. The representative of Australia recognized the need to promote technical assistance in the area of intellectual property and the TRIPS Agreement, in particular on mutually agreed terms. She explained that Australia's activities had been recently documented in document IP/C/W/12/Add.7 and that Australia would continue to be active in this area.

41. In regard to the question of the systematic provision of information (document IP/C/W/21, paragraphs 5-7), the representatives of Egypt, Paraguay, India, the Philippines, the European Communities, Norway, New Zealand, Australia, Canada and Cuba were in favour of seeking periodic updating of information from developed country Members on their technical cooperation activities, as mentioned in paragraph 7 of document IP/C/W/21. Most of these delegations were of the view that such updating should be done annually. The representative of Japan said that his delegation was willing to update periodically its information if so required. The representative of Norway wished that also developing country Members would provide information on their needs in order to allow the donors of assistance to evaluate what kind of projects would be useful.

42. The representative of Egypt was of the view that the updating should be done in time for the Council's September 1996 meeting, which should be devoted to technical cooperation, without excluding the possibility of taking up the issue whenever the need arose. The representatives of Japan and the United States believed that the meeting in September should not be dedicated exclusively to technical cooperation, and that at every Council meeting there should be an opportunity to address all necessary topics.

43. The representatives of the Philippines and Paraguay were interested also in the future plans that the developed country Members had concerning technical cooperation. The representative of the United States said that the Secretariat might wish to consider producing a calendar of future activities planned by the WTO, WIPO, other international organizations and by Members, which could be useful in terms of providing information so that everyone that could benefit from these activities would be able to take advantage of them. This idea was supported by the representatives of the European Communities, Norway and Canada.

44. The representatives of Egypt, Paraguay, India, Peru, the Philippines, Norway, New Zealand and Cuba were in favour of requesting the Secretariat to prepare an analytical summary of the information already presented, as mentioned in indent 3 of paragraph 7 of document IP/C/W/21. The representative of the United States was hesitant about the desirability of such analytical reports, as analysing the relative degree of assistance would be very difficult, at least in part because assistance was generally provided on a contractual basis and targeted to the specific needs of a specific country. The representatives of the European Communities, Australia and Canada wondered what the notion of "analytical" meant. The representative of the European Communities explained that, to the extent this notion referred to the evaluation of the success of a programme, such evaluation should be done bilaterally.

45. In regard to the second indent of paragraph 7 of document IP/C/W/21, the idea of a list of basic headings which delegations might use for presenting an overview of their technical cooperation activities was supported by the representatives of Egypt and Cuba. The representative of Egypt explained that, in her delegation's opinion, information on the various activities which were clearly indicated in Article 67 should not be lost in generalities, and might include, in addition to its more structured presentation, an assessment of what had been achieved by such targeted assistance. The representative of India was in favour of considering the possibility of having a format for the provision of information, perhaps along the lines suggested in the document as a list of basic headings. Expressing their wish to avoid rigid formats, the representatives of Japan, Peru, the Philippines and Norway believed that a list of basic headings would be sufficient in this regard.

46. The representatives of Paraguay, Uruguay, the European Communities, New Zealand, Australia and Canada believed that it was not necessary or desirable for reports on technical cooperation activities to be submitted on the basis of a format. Rather those providing information should be free to describe their cooperation activities as widely and clearly as possible. The representative of the European Communities believed that those providing assistance did not need any incitation to provide detailed

information on their activities. However, the representative of Australia said that her delegation was flexible if there was a widespread view that some kind of general format should be followed.

47. In regard to the question of how to ensure that the needs for technical cooperation were adequately met (document IP/C/W/21, paragraphs 8-9), the representatives of Paraguay, Japan, Peru, the United States, Uruguay, the European Communities, Norway, New Zealand and Australia were not in favour of the Secretariat acting as an intermediary between those providing and those requesting technical cooperation. Delegations were of the view that cooperation should be administered bilaterally between the Members concerned; or, as added by the representative of Paraguay, between a developing country Member concerned and WIPO, in accordance with Article 4 of the Agreement between WIPO and the WTO, the WTO Secretariat or other intergovernmental organization. Some delegations supported the concerns expressed in document IP/C/W/21: the need to avoid unnecessary bureaucratic burdens and to use the Secretariat's limited resources as efficiently as possible. The representatives of Japan and Uruguay believed that it was sufficient for the Secretariat to provide information on technical cooperation in order to facilitate bilateral cooperation between the parties concerned. The representative of the European Communities added that, as far as multilateral technical cooperation was concerned, the main discussions should probably take place in WIPO.

48. Commenting on the possibility for Members to raise in the Council the question of gaps of a more general nature in the technical and financial cooperation available, the representatives of Japan, Switzerland and Australia were of the view that technical cooperation should be put on the agenda whenever a need for that arose and it was considered appropriate. The representative of the United States had no objections to periodic discussions on technical cooperation, and the representatives of the Philippines, Peru and Cuba supported regular inclusion of it on the agenda. The representative of Uruguay believed that it would be useful to put it on the agenda once a year for a meeting which should preferably be dedicated to this subject. The representative of Canada agreed, except that he believed that the agenda should be open for other items as well.

49. In regard to the technical cooperation activities of intergovernmental organizations including WIPO/WTO cooperation, the representative of Egypt, commenting on paragraph 3 of document IP/C/W/21, said that the Council's main objective should remain how to render Article 67 operational at the multilateral level; other technical cooperation activities, in particular those of intergovernmental organizations and technical cooperation in favour of countries in transition from a centrally-planned to a market, free-enterprise economy, should be addressed in a context different from Article 67, which was very clear in this respect. These concerns were shared by the representative of India.

50. The representative of Paraguay expressed his satisfaction with the decisions adopted in the framework of WIPO to carry forward technical cooperation in favour of developing countries, as well as with the cooperation agreement recently signed between the WTO and WIPO, which *inter alia* provided for complementary action between the two Organizations in technical cooperation. He believed that the Council should take these matters into consideration in its work and avoid overlapping activities with WIPO. The representative of the United States noted the usefulness of the recently concluded agreement between the WTO and WIPO, which ensured close cooperation between the WTO and WIPO in the area of technical assistance, which was very valuable given the limited resources of the WTO. He also drew attention to the decision by the General Assembly of WIPO to allocate additional financing of SwF 6 million to TRIPS implementation issues for developing countries. The representative of Cuba expressed his satisfaction over the agreement, which would no doubt strengthen the cooperation between the Organizations in the field of technical cooperation.

51. According to the representatives of Switzerland and Australia, duplication should be avoided of the work done by other organizations, in particular WIPO. The representative of New Zealand said that the Council should consider how to make best use of cooperation with other intergovernmental

organizations, especially with WIPO, in this regard. The representatives of the European Communities, Norway and Australia drew attention to the usefulness of the resources of WIPO for technical cooperation. The representatives of the European Communities and Norway said that these resources were indirectly financed mostly from developed countries.

52. The representative of Japan expressed his gratitude to the WTO Secretariat for having participated in a symposium in Manila, organized by the Government of the Philippines, the International Bureau of WIPO and the Government of Japan, which had manifested the close cooperation between the International Bureau of WIPO and the WTO Secretariat.

53. In regard to the question raised in paragraph 12 of document IP/C/W/21 on the desirability of occasional discussions on specific aspects of technical cooperation with a view to a more in-depth exploration of the possibilities available and the experience of Members, interest in organizing such thematic discussions was shown by the representatives of Egypt, India, Japan, Peru, the United States, the Philippines, Switzerland, Uruguay, the European Communities, New Zealand and Australia. The representatives of India and Switzerland believed that it might be useful to have such discussions immediately prior to a Council meeting. Agreeing with this, the representatives of Peru and the United States added that perhaps the first discussion could be organized already before the Council's meeting scheduled for September 1996. The representative of Japan said that, to the extent that discussions might entail political decisions by Members, they should take place in the Council; discussions for the purposes of information and education could be organized as workshops open to all Members.

54. As regards possible topics, the representative of Egypt mentioned establishment and reinforcement of industrial property offices, establishment and operation of border enforcement, other topics related to enforcement, and topics such as the preparation of laws and regulations and establishment of plant variety protection systems, which were essential to developing countries. She believed that such workshops, the objective of which should be to trigger free and open discussion on various specific topics, would help in identifying the needs of developing countries and help target technical assistance to meet those needs. The representative of Switzerland said that a light consultation process open to Members and involving at a later stage also relevant intergovernmental organizations such as WIPO and the WCO would help to appreciate the needs and the availability of technical assistance. He did not want to exclude more theme-oriented workshops, which could focus on the themes mentioned in document IP/C/W/21, as well as some other relevant themes, such as geographical indications. The representative of the European Communities said that it was important to find appropriate topics, as discussing technical cooperation in general would be of little help. The representative of Japan said that the Council should avoid additional financial contributions in this connection, and suggested that the WTO should look into the possibility of making use of existing cooperation schemes, such as the WIPO development cooperation programme, which could be extended to cover topics relevant to TRIPS. The WTO Secretariat could cooperate with the International Bureau of WIPO in organizing workshops for the purposes of education and information. The representative of Australia mentioned the possibility of requesting papers from developed or developing countries on particular areas as inputs into such workshops.

55. The representative of Paraguay believed that the idea of holding workshops was premature and that it might be preferable to consider workshops later on in the light of experience gained on technical cooperation.

56. In summarizing the discussion, the Chairman expressed satisfaction with the comprehensive and substantive discussion the Council had had on the issue of technical cooperation. He noted that there seemed to be general agreement that the Council should seek the annual updating by developed country Members of information on their technical cooperation activities, and that this year the updating should be sought in time for the Council's meeting scheduled for September 1996. There seemed to

be widespread support for giving a special, but not exclusive, focus at that meeting to the issue of technical cooperation. It had also been mentioned that information relating to any future plans would be useful, and there was a suggestion that the Secretariat might compile a calendar of coming events. Furthermore, the point had been made that any input from developing countries on their needs would also be very helpful to the future deliberations of the Council.

57. He had sensed a generally favourable disposition to the idea that the Secretariat might be asked to prepare an analytical summary of the information on technical cooperation activities already presented, although some concerns had been expressed as to what such an analytical summary would entail. The suggestion in document IP/C/W/21 had been that the Secretariat prepare a structured summary of the information already presented, not a comparative or evaluative study. As regards the idea of a list of basic headings that Members should use while presenting an overview of their technical cooperation activities, some delegations had been rather hesitant. He suggested, therefore, that the Secretariat explore whether it would be possible, on the basis of the structured summary, to draw up such a list of basic headings that would leave sufficient flexibility to delegations in presenting their information. If necessary, this issue could be added to the items on which his successor would hold informal consultations, before a possible list would be presented to the Council for further consideration.

58. The Chairman noted that delegations were, generally, not in favour of the idea that the Secretariat might act as an intermediary between those providing and those requesting technical cooperation, mainly for the reasons that had been mentioned in document IP/C/W/21. Of course, the Secretariat would remain available to any developing countries that sought advice on the possibilities for obtaining technical assistance. It also remained open to developing country Members to identify at any time in the Council areas where they felt there were gaps in the provision of technical and financial cooperation.

59. The Chairman noted that there was widespread interest in the possibility of organizing some in-depth thematic discussions, perhaps in the margins of a Council meeting. The desirability of possible cooperation with WIPO in this respect had also been mentioned. He believed that one way to carry this idea forward was to request the Secretariat to come forward with a suggestion for a specific pilot project in terms of a seminar or a workshop in the margins of a Council meeting. If necessary, such a suggestion could also, first, be taken up in informal consultations. He also noted with appreciation the technical cooperation activities of WIPO and the Norwegian fund in favour of least-developed countries.

I. Other Business

(i) Compliance with Article 70.2

60. The representative of the United States informed the Council that his delegation was consulting with another Member on that Member's application of the provisions of Article 70.2 of the Agreement in relation to existing patents. One feature of Article 70.2 was that it required a Member to apply the provisions of the TRIPS Agreement to existing intellectual property that was still under protection at the time that these provisions came into effect in that Member. Consequently, existing patents should benefit from protection in accordance with the patent provisions of the Agreement. If a patent had been granted before the application of TRIPS implementing legislation under a law that provided for a patent term of ten years, and that patent would still be under protection at the time that TRIPS obligations became effective, the patent should, under Article 70.2, benefit from the patent term stipulated in Article 33 of the TRIPS Agreement, i.e. 20 years from the filing date of the patent application on which the patent in question had been granted.

61. He also wished to address another issue related to Article 70.2. His delegation had started a dispute settlement procedure with the Government of Japan concerning the application of Article 70.2

in respect of rights in sound recordings.³ Article 70.2 referred, in this regard, to Article 14.6 of the Agreement which laid down that protection of rights in sound recordings under the Agreement should extend to existing sound recordings in accordance with the provisions of Article 18 of the Berne Convention. Given that the Agreement laid down a term of protection of 50 years in respect of rights in sound recordings, this meant, in his delegation's view, that TRIPS-consistent legislation in this area that applied as of 1 January 1996 should extend protection to all sound recordings that existed since 1946.

62. The representative of the European Communities informed the Council that the Community and its Member States had requested to be joined in the consultations that the United States was holding with Japan, under Article 4 of the Dispute Settlement Understanding.

63. The representative of Japan said that his delegation, after thorough analysis of this issue including examination of the negotiating history of the provisions of the TRIPS Agreement concerned, believed that its interpretation of the relevant provisions, including those of the Berne Convention, was valid and Japan's current copyright law was consistent with the provisions of the TRIPS Agreement.

64. The Council took note of the statements made.

J. Election of the Chairperson for 1996

65. The Chairman recalled that the Chairman of the General Council had carried out informal consultations on a slate of names for appointment as chairpersons to the different WTO standing bodies in accordance with the established guidelines for appointment of officers. These proposed nominations had been approved by the General Council at its meeting in December 1995. He proposed, on the basis of the understandings reached, that the Council for TRIPS elect H.E. Ambassador Wade Armstrong of New Zealand as Chairman of this body by acclamation.

66. The Council so agreed.

67. The Council expressed its appreciation to Mr. Stuart Harbinson for his important, successful and high-quality work as its first Chairperson.

³IP/D/1