

# WORLD TRADE ORGANIZATION

RESTRICTED

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

## **MINUTES OF MEETING**

Held in the Centre William Rappard  
on 21 and 22 April 1999

*Chairperson: Ambassador Carlos Pérez del Castillo (Uruguay)*

### Subjects discussed:

- A. NOTIFICATIONS UNDER PROVISIONS OF THE AGREEMENT
- B. REVIEW OF LEGISLATION:
- C. SECTION 211 OF THE UNITED STATES OMNIBUS CONSOLIDATED AND EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT
- D. IMPLEMENTATION OF ARTICLE 70.8 AND 70.9
- E. IMPLEMENTATION OF ARTICLE 66.2
- F. TECHNICAL COOPERATION
- G. REVIEW OF THE APPLICATION OF THE PROVISIONS OF THE SECTION ON GEOGRAPHICAL INDICATIONS UNDER ARTICLE 24.2
- H. IMPLEMENTATION OF ARTICLE 23.4
- I. ELECTRONIC COMMERCE
- J. REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B)
- K. ARTICLE 64.3
- L. INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO
- M. OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS
- N. OTHER BUSINESS

A. NOTIFICATIONS UNDER PROVISIONS OF THE AGREEMENT

(i) Notifications under Article 63.2

1. The Chairperson informed the Council that new notifications of legislation had been received from Australia, Austria, Qatar, Romania, Slovenia and Spain. The notification from Qatar concerned the provisions of Articles 3, 4 and 5 of the Agreement. All these notifications would be available in the IP/N/1/- document series as soon as possible.

2. The representative of the European Communities said that his delegation had taken note of the notification that had been made by Slovenia (document IP/N/1/SVN/G/1 of 10 March 1999) concerning the Slovenian decree on Lipizzaner horses, and of the Slovenian application under Article 6ter of the Paris Convention for the protection of the two branding marks used on Slovenian Lipizzaner horses. His delegation was examining the notification, in particular with regard to the decree's compatibility or incompatibility with Article 22 of the TRIPS Agreement, and reserved the right to address this issue again at the next meeting after a full and thorough legal examination of this notification.

3. The representative of Slovenia said that his Government had notified the decree on the protection of the name "Lipizzaner" for horses as a geographical indication in accordance with Article 63.2 of the TRIPS Agreement, which required that Members should notify their laws and regulations to the Council. He understood that the European Communities were examining whether the subject-matter of the decree was in compliance with Article 22.

4. The Council took note of these statements.

(ii) Notifications under Article 69

5. The Chairperson informed the Council that Guatemala had notified its contact point under Article 69 which brought the number of Members that had notified contact points under this provision to 90. Information on contact points was available in the IP/N/3/- series of documents.

B. REVIEW OF LEGISLATION

(i) Follow-up to the reviews already undertaken

6. The Chairperson said that the Secretariat had informed him that responses to all outstanding questions and follow-up questions posed in the Council's reviews of legislation in 1996, 1997 and 1998 had been received by the Secretariat. Consequently, the records of these reviews could be completed and he suggested that the item concerning the follow-up to these reviews be deleted from the agenda, it being understood, of course, that any delegation could revert to any matter stemming from these reviews at any time.

7. The Council so agreed.

(ii) Arrangements for future reviews

- Kyrgyz Republic and Latvia

8. The Chairperson recalled that, at the last meeting, the Council had agreed that the review of the TRIPS-implementing legislation of the Kyrgyz Republic and Latvia should be taken up at the end of 1999. In accordance with the basic procedures that the Council had employed thus far for the

reviews of legislation, he said that a time path should be established for the submission of questions and of responses to questions. Questions should normally be submitted some ten weeks prior to the review meeting and responses some four weeks prior to that meeting. Dates had been pencilled in for Council meetings on 15 and 16 September and on 23 and 24 November, but the Council would consider its autumn schedule of meetings further at its meeting in July. In the light of this, he suggested that questions for the review of the legislation of the Kyrgyz Republic and Latvia be submitted by the end of July and the Council agree on a target date for the submission of responses at its meeting in July.

9. The representative of Morocco referred to the tentative dates for Council meetings in September and November which would be discussed at the Council's meeting in July. At the Council's meeting in December 1998, there had been a long discussion of the calendar of meetings for 1999, and no agreement had been reached on the convening of five meetings. His delegation had suggested that four meetings be held in 1999.

10. The Council took note of the statement made and agreed to proceed as suggested by the Chair.

- Arrangements for reviews after 1 January 2000

11. The Chairperson, reporting on his informal consultations on the matter, said that he had held consultations in the weeks preceding the Council meeting with a considerable number of developing countries and progress had been achieved. Nine Members had volunteered to have their legislation reviewed in the first half of the year 2000, and six in the second half of the year. He was awaiting responses in the following weeks from 14 Members and was optimistic that the Council would be able to have a schedule ready for the reviews of legislation of developing country Members to be held in 2000. He suggested that the Chair should expedite his consultations, emphasizing that, for these review meetings to be efficient, considerable preparation time was needed, both on the part of the Member whose legislation was being reviewed and on the part of other Members who might wish to pose questions. With the Council's permission, he would therefore continue his consultations with a view to presenting a concrete proposal at the next meeting and thereby facilitating a Council decision at that meeting.

12. The Council agreed to proceed as suggested by the Chair.

C. SECTION 211 OF THE UNITED STATES OMNIBUS CONSOLIDATED AND EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT

13. The Chairperson recalled that, at the Council's meetings of December 1998 and February 1999, the delegation of Cuba had informed the Council of a request it had sent to the delegation of the United States, in accordance with Article 63.3 of the TRIPS Agreement, for detailed information concerning Section 211 of the United States Omnibus Consolidated and Emergency Supplemental Appropriations Act 1998. At the Council's meeting in February 1999, the delegation of Cuba had reiterated this request on the floor of the Council, while the delegation of the European Communities had informed the Council that it had also approached the United States with a request for information on this matter. A response from the United States to the request from Cuba had been circulated in document IP/C/W/139 and additional information on this matter, that had recently been received from the United States, would be circulated shortly.<sup>1</sup>

14. The representative of the United States referred to the document that had been circulated for the content of its response to the request from Cuba.

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<sup>1</sup> Subsequently distributed in document IP/C/W/139/Add.1.

15. The representative of Cuba referred to the answer that his delegation had received, on 15 April 1999, from the United States concerning Section 211 of the United States Omnibus Consolidated and Emergency Supplemental Appropriations Act 1998 for the fiscal year 1999 (pp.105-277), which included some provisions concerning the boycott against Cuba. Unfortunately, the information contained therein did not meet Cuba's expectations, since it did not illustrate or comment on the compatibility of Section 211 with the TRIPS Agreement. He regretted that, even though almost five months had passed since Cuba's first formal request before the Council, made on 2 December 1998, and having reiterated the request at the Council's meeting of 17 February 1999, the United States could only put forward the legal texts which, as the accompanying note said, were available on the Internet. In the light of the communication of 15 April 1999 and six months after the enactment of Section 211, the delegation of Cuba wished to express its total disagreement with the evident breach of the obligations undertaken by the United States as a Member of the World Trade Organization and, in particular, its infringement of the rules applicable under the TRIPS Agreement as a result of the enactment, on 21 October 1998, of Section 211 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for the fiscal year of 1999. Whereas the TRIPS Agreement did not admit any reservation without the consent of all Members, the exceptions established in Article 73 did not apply to Section 211, and the Agreement generated obligations in respect of all subject-matter existing at the date of its application, the delegation of Cuba concluded that the above-mentioned law presumably violated, among others, Articles 2, 3, 41 and 62 of the Agreement. Section 211 unjustifiably impeded access to the protection, in the territory of the United States, of rights that legitimately pertained to foreign and Cuban applicants and holders. In addition, it nullified the benefits under international or multilateral agreements or treaties, accruing to nationals or Cuban firms or any other person who acted on behalf of the Cuban authorities. This result affected the application of the TRIPS Agreement in particular.

16. Given that the documentation submitted by the United States did not satisfy Cuba's request, he formally reiterated the request that the United States provide detailed information about the compatibility of Section 211 with the TRIPS Agreement, by virtue of its obligations pursuant to Article 63, in particular its paragraph 3. The delegation of Cuba demanded the strict and unconditional respect of the principles of the multilateral system, which should be applicable without discrimination and arbitrary considerations or acts in deviation from the rules of international trade that had been multilaterally agreed. Section 211 was a unilateral coercive measure contrary to international law, which represented an unprecedented extension and reinforcement of the economic, commercial and financial boycott imposed against Cuba, which had implications for foreign investment and Cuban trade with third countries and which had been rejected on several occasions by the General Assembly of the United Nations as well as by other regional and international organizations. The most recent condemnation of the economic boycott had been made during the second summit of the Heads of State and Governments of the Caribbean Countries, of 17 April 1999, in Santo Domingo, whereby all the governments of that area had stated their rejection of all unilateral coercive measures, as well as the extraterritorial application of national laws, by any State. In view of the above, Cuba reserved its right to undertake other actions in the context of the WTO. He requested that his statement be recorded in the minutes of the meeting and distributed to all Members.<sup>2</sup>

17. The representative of the European Communities said that he wished to reiterate his delegation's concerns about the impact of Section 211 of the United States Omnibus Consolidated and Emergency Supplemental Appropriations Act enacted in October 1998. This section, in his view, reduced the availability of the protection of trademarks and trade names in the United States of Cuban right holders or companies that established partnerships with Cuban right holders. Section 211 raised serious doubts with respect to its compatibility with the provisions of the TRIPS Agreement. His concerns related to the denial of national treatment and most-favoured-nation treatment, as well as the denial of adequate protection of trademarks and of available enforcement procedures. His delegation was even more worried since, recently, the section had been applied retroactively by a United States

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<sup>2</sup> Distributed in document IP/C/W/142.

District Court in litigation between private parties and in spite of the fact that no implementing rules and regulations had been promulgated by the United States Government as required by Section 211. For these reasons, his delegation would like to state its disappointment with the information provided by the United States and invited the United States to explain how Section 211 could be justified under the provisions of the TRIPS Agreement. His delegation would, of course, expect the United States to remove any inconsistencies between Section 211 and the TRIPS Agreement and to fully comply with the obligations of the Agreement.

18. The representative of the Dominican Republic, expressing her delegation's concern with the enactment of Section 211, echoed the reference made by the delegation of Cuba to the statement by the Heads of State and Government of the Countries of the Association of Caribbean States at its recent meeting held in Santo Domingo, categorically rejecting all unilateral coercive measures and any extraterritorial application of national laws by any State, because those were contrary to international law, to the sovereignty of States and their international coexistence. In this context, these States had again urged the Government of the United States to revoke the Helms-Burton Act, in accordance with the Resolutions approved by the General Assembly of the United Nations. The representatives of Honduras and Venezuela supported the statement made by the Dominican Republic. The representative of Venezuela reaffirmed the position of his authorities against any unilateral measure that conflicted with the multilateral trade agreements.

19. The representative of the United States said that her delegation disagreed with the statements made regarding Section 211. Her delegation had recently voluntarily supplemented its response to the written question it had received<sup>3</sup> and remained willing to respond to any follow-up questions that might be submitted in writing.

20. The representative of Malaysia said that Section 211 had the appearance of a unilateral measure against Cuba, which was intolerable, and wished to express his delegation's serious concern with this matter.

21. The representatives of India and Indonesia also expressed their concerns and said that their respective authorities were still examining this matter.

22. The representative of Cuba said that the answer to his question about the compatibility of Section 211 with the TRIPS Agreement was still outstanding. He wished to reiterate that the delegation of the United States had yet to reply to that question.

23. The representatives of Argentina, Brazil and Ecuador said that their delegations would study the matter carefully and that their respective authorities would give due attention to the information provided by the United States and Cuba.

24. The representative of Haiti shared the concerns of Cuba with respect to Section 211, which appeared to prevent any transaction regarding a trademark or a licence or a trade name bearing an identical or a similar sign to a trademark or a licence or a trade name which was used by any firm confiscated by the Government of Cuba after 1959. In his delegation's view, Section 211 conflicted not only with the WTO Agreements, and in particular some provisions of the TRIPS Agreement, but also impaired the intellectual property rights of the Cuban people as a whole. In addition, Section 211 appeared to be an extension of the Helms-Burton Act. At a recent meeting of the Association of Caribbean States held in Santo Domingo, 25 heads of state and government of the Caribbean region, including Mexico, Colombia and Venezuela, had urged the Government of the United States to revoke the Helms-Burton Act which was enacted against Cuba in 1995. It was unfortunate that Section 211 had been enacted exactly when the members of the ACS had renewed their commitment to work on the reinforcement of an economic area based on the rules of the WTO. That measure was

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<sup>3</sup> Distributed as document IP/C/W/139/Add.1.

particularly unacceptable having in view that, with respect to globalization, the leaders of the Association of Caribbean States had stated that multilateral action was the indispensable answer which permitted to meet the challenges and take advantage of new economic trends. His delegation understood that it would be preferable for the Governments of the United States and Cuba to reach, by means of negotiations, an accepted solution to the problems arising from the confiscation, in Cuba, of certain assets belonging to United States citizens.

25. The representative of Egypt said that his authorities would also examine the information provided in this context. His delegation wished to note that the United States was one of the most important partners in the international system and, as such, had a particular responsibility with regard to preserving its rules so as to avoid that unilateralism or extraterritoriality became the base for that system. His delegation urged the United States to reconsider its position in the event it was in conflict with the TRIPS Agreement.

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

#### D. IMPLEMENTATION OF ARTICLE 70.8 AND 70.9

27. The Chairperson informed the Council that answers to questions posed by the United States to four other delegations and circulated in document IP/C/W/113 had been received from Uruguay, Argentina and Egypt, and circulated in documents IP/C/W/121, 135 and 136. Since the last meeting, follow-up questions to the responses that Uruguay had given to the United States' questions had been received from the European Communities and their member States and circulated in document IP/C/W/137.

28. The representative of Paraguay said that his delegation would, in the coming days, present written responses to the questions posed by the United States concerning the implementation of Article 70.8 and 70.9. The responses had already been drafted by the office responsible for these matters but unfortunately, due to force majeure, his delegation was not yet able to present them.

29. The representative of Uruguay said that, with respect to the follow-up questions posed by the European Communities and their member States, and those which had already been posed by the United States, seeking information on aspects related to the implementation of Article 70.9, his delegation had asked its capital for additional information to the responses already circulated in document IP/C/W/121. This supplementary information would shortly be available to the Secretariat for distribution. His delegation was prepared to continue any consultations which Members might wish to hold on these matters.

30. The representative of the United States said that her delegation had reviewed the responses it had received to its questions from Argentina, Egypt and Uruguay. It also appreciated the statements made by the representatives of Paraguay and Uruguay concerning additional information. Her delegation recommended that all Members who were obligated to provide exclusive marketing rights under Article 70.9 refer to the relevant paragraphs of the Appellate Body Report in India - Patent Protection for Pharmaceutical and Agricultural Chemical Products (document WT/DS50/AB/R) for a thorough discussion of the exclusive marketing rights obligation. As pointed out at the last meeting, whilst that report dealt with a dispute between two Members, the Appellate Body's discussion of the obligation contained in Article 70.9 could certainly be helpful to any Member for whom this obligation was not clear. The report also clarified that the mere fact that a Member had not received any applications for exclusive marketing rights did not excuse a failure to have a system in place for granting such rights.

31. The Council took note of the statements made.

E. IMPLEMENTATION OF ARTICLE 66.2

32. The Chairperson recalled that, at the Council's meeting of 1 and 2 December 1998, the delegation of Haiti had requested information from developed country Members on how Article 66.2 of the TRIPS Agreement was being implemented. The Council had agreed that this question be circulated in an informal document of the TRIPS Council to all Members and that developed country Members be invited to supply information in response to this question.<sup>4</sup> At the meeting of 17 February 1999, New Zealand had made available information on its implementation of Article 66.2, which had subsequently been circulated in document IP/C/W/132. Since the meeting, information received from the United States, Japan and Australia, had been circulated in documents IP/C/W/132/Add.1-3.

33. The representative of Australia, summarizing her delegation's written submission, said that several Australian government agencies were involved in the provision of incentives, either directly or indirectly, for Australian enterprises and institutions to engage in activities involved in technology transfer to least-developed countries. Australia provided such incentives at the bilateral, regional and multilateral levels to contribute to the development of human capital, infrastructure and private sector enterprise in least-developed countries. Due to its geography, many Australian activities relevant to Article 66.2 were focused on countries in the Asia-Pacific region. The agency most actively involved in these activities was the Australian International Aid Agency ("AUSAID"). AUSAID's extensive range of programmes, many of which contained large technology transfer components, was delivered by the provision of monetary incentives to various Australian business enterprises, educational institutions and other organizations. Australia considered that the provision of money to enterprises and institutions not only qualified as an incentive to encourage and promote technology transfer to least-developed countries for the purposes of Article 66.2, but was possibly one of the most effective means of meeting its objectives. As indicated in the table and details of specific programmes in the written submission, a large proportion of AUSAID's activities were directed to education and training. Australia considered that the education of least-developed country nationals at Australian universities and their training in the use and management of technological equipment comprised two of the most effective means of transferring technology and know-how to which Australia had access. There were a range of other Australian agencies which ran programmes and projects that provided incentives, either directly or indirectly, to Australian businesses and other institutions to transfer technology to least-developed countries. These included the Department of Industry, Science and Resources, the Department of Defence, AUSTRADE and various State government departments. More details would be provided on the relevant activities of those organizations in due course.

34. The representative of the European Communities said that his delegation was still collecting information but, due to the nature of the European Communities, this was a cumbersome exercise which was taking more time than foreseen. He hoped to be able to provide that information prior to the next meeting.

35. The Council took note of the statements made. It agreed to urge those developed country Members that had not yet submitted information to do so, and to revert to the matter at its next meeting.

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<sup>4</sup> No. 7093 of 23 December 1998.

## F. TECHNICAL COOPERATION

(i) Updated information on technical cooperation activities

36. The Chairperson informed the Council that, since the last meeting, updated information on technical and financial cooperation activities relevant to the implementation of the TRIPS Agreement had been received from the Food and Agriculture Organization (FAO) (document IP/C/W/108/Add.6). As mentioned at the meeting in February, the Council had received, for the year 1998, updated information on technical and financial cooperation activities from 16 developed country Members. If one also took into account information provided in the previous years, the Council had received information altogether from 18 different Members. There were still some developed country Members that had not provided information on their technical and financial cooperation activities. As agreed at the Council's meeting in December 1998, the Secretariat had contacted those Members.

37. The representative of Korea said that APEC member economies had agreed to exchange information on the current status of implementation of the TRIPS Agreement and, based on the information exchanged, Korea would hold in June 1999 a technical cooperation symposium to assist in implementation of the Agreement. The budget for this symposium would be funded from the APEC Trade and Investment Liberalization and Facilitation Special Account. Since the symposium would be held only six months before the end of the transition period for developing country Members, Korea had attempted to select themes and programme details relating to specific issues where particular problems lay or which merited a focused discussion, rather than carry out a comprehensive review on the basis of the whole of the TRIPS Agreement. In consultation with the member economies that were expected to participate, Korea had finalized the main themes of the session and arranged a more open-ended question and answer session. As the programme aimed at a successful implementation of the TRIPS Agreement among APEC economies by 2000, it called for the cooperation and understanding of specialists with authority in government as well as businesses. In this context, the symposium was extending invitations to 42 governmental officials from 14 member economies, such as Brunei Darussalam; Chile; China; Hong Kong, China; Indonesia; Malaysia; Mexico; Papua New Guinea; Peru; the Philippines; the Russian Federation; Chinese Taipei; Thailand; and Vietnam. Twelve professionals would take charge of instruction at the symposium: seven experts from member economies that had implemented the TRIPS Agreement and five experts from the private sector or international organizations.

38. The representative of the European Communities recalled that, at the last meeting, the representative of India had posed a question to his delegation concerning a technical assistance programme on intellectual property rights between the European Communities and India. He had looked into this matter. In January 1998, the European Commission and Indian authorities had agreed on the terms of reference for a programme of cooperation. Unfortunately, due to technical reasons, there had been a delay, but these problems had since been overcome and his delegation expected that implementation would begin shortly.

39. The Council took note of the statements made.

(ii) WIPO-WTO Joint Initiative on Technical Cooperation

40. The Chairperson recalled that the WIPO and WTO Secretariats had launched, in July 1998, a Joint Initiative on Technical Cooperation to assist developing countries to meet their commitments under the TRIPS Agreement by the year 2000, and that the Council had agreed, at its meeting in December 1998, to request the WTO Secretariat to report on a regular basis on this matter.

41. The representative of the Secretariat said that, at the previous meeting, he had indicated that more than 30 developing country Members had expressed interest in taking advantage of the Joint



Initiative. Since then, some of those Members had provided more information on their needs or submitted further requests to the two Organizations. One additional Member had expressed interest in receiving assistance under the Joint Initiative and the Secretariat was consulting with the International Bureau of WIPO on the best way in which to respond to it. Recalling the general approach that had been agreed with the International Bureau on the way to respond to these requests, he said that in most cases the International Bureau was taking the lead in providing the assistance requested by integrating the requests into its 1999 programmes of assistance for each of the countries concerned. The WTO Secretariat had been contributing to these activities of WIPO to the extent that its human resources permitted. In the past two months, since the last meeting, the WTO Secretariat had provided speakers to four regional seminars organized by WIPO: those held in Oman for Arab countries, in Zimbabwe for the English-speaking Sub-Saharan African developing countries, in Cameroon for the French-speaking Sub-Saharan African developing countries, and in Dominica for the CARICOM countries. Another mode of follow-up agreed with WIPO and Members concerned was the organization of joint events. In this regard, plans had been developed for joint national TRIPS seminars in a number of Members. Two such events would take place in June and a further one was scheduled for September. The Joint UPOV-WIPO-WTO Symposium on the protection of plant varieties held on 15 February in Geneva was also relevant to the WIPO-WTO Joint Initiative. This Symposium had been followed by a joint regional workshop held in Bangkok in March for countries from the Asia-Pacific region. Two more regional seminars on plant variety protection would be held in May: one in Cairo for countries from the Middle East and North Africa and the other in Nairobi for English-speaking African countries. Further, in March 1999, a joint WIPO-WTO symposium on the implementation of the TRIPS Agreement was held in the Central African Republic for the French-speaking Sub-Saharan African countries. In certain instances, the WTO Secretariat had taken the lead in providing assistance, in particular when it came to matters relating to WTO mechanisms. Some of these activities had been undertaken in response to specific requests under the Joint Initiative, but many of the Secretariat's ongoing activities also benefited countries that were in the process of implementing the TRIPS Agreement. For example, the WTO Secretariat had organized regional and national trade policy seminars that had focused on, among other areas of the WTO, the TRIPS Agreement. In the recent past, such seminars had been held in Singapore and Ghana, in March, and in Pakistan, in April. To help Members with notification procedures and documentation, the Secretariat had continued to establish WTO reference centres in many developing countries, the number of which was now 47. Further, the WTO Secretariat had responded to requests under the Joint Initiative by providing information and advice through its regular contacts with delegations in Geneva and experts in capitals.

42. The representative of the WIPO added that 20 developing and least-developed countries had participated in the seminar in the Central African Republic which had been jointly organized by WIPO and the WTO. In addition, in the regions of Africa, the Arab countries, Asia and the Pacific, Latin America and the Caribbean, there had been an increase in the nationally-focused activities specifically designed to assist countries to comply with the TRIPS Agreement by the year 2000. She referred specifically to three joint WIPO-WTO national seminars to be held in Latin America shortly and to numerous WIPO national training programmes that had taken place in the first part of 1999 and would continue throughout the year. In the area of legislation, during the first three months of 1999, 18 countries had received assistance from WIPO in the form of draft laws, comments or legislative advice. As announced at the last meeting, a full report of WIPO's activities on TRIPS implementation from January 1996 to January 1999 would be made available later in the year.

43. The representative of Brazil asked whether a regional workshop on plant variety protection was also envisaged in Latin America and the Caribbean.

44. The representative of the Secretariat said that the regional workshops he had referred to, which had been jointly organized by UPOV, WIPO and the WTO, did not include one for Latin America, largely because of the belief that Latin American countries were relatively well advanced in that area. If there were an interest, the Secretariat would of course look into the matter with its colleagues in UPOV and WIPO.

45. The Council took note of the statements made.

G. REVIEW OF THE APPLICATION OF THE PROVISIONS OF THE SECTION ON GEOGRAPHICAL INDICATIONS UNDER ARTICLE 24.2

46. The Chairperson said that, by the time of the last meeting, the Council had received responses to the Council's Checklist of Questions on Article 24.2<sup>5</sup> from 29 Members, namely Bulgaria, Canada, the Czech Republic, Ecuador, the European Communities and eleven of their member States, Hungary, Iceland, Japan, Liechtenstein, Mexico, New Zealand, Norway, Peru, Romania, the Slovak Republic, Switzerland, Turkey and the United States. Several other Members had indicated at the last meeting that they were still preparing their responses. Since that meeting, Venezuela had submitted its responses while revised responses had been received from Liechtenstein. These had been circulated in documents IP/C/W/117/Add.18 and IP/C/W/117/Add.11/Rev.1. At its last meeting, the Council had requested the Secretariat to prepare an outline of a possible summary paper of the responses provided by Members, which would have as its aim the facilitation of Members' understanding of the information provided to the Council in response to the Checklist. In response to this request, the Secretariat had circulated such an outline in an informal document, No. 2104 of 13 April 1999. In light of the informal consultations that he had held prior to the meeting, it was his appraisal that delegations had generally expressed support for the proposed outline, which presented the structure that a summary document could have, in that the outline represented an appropriate and useful format that would enable the Secretariat to prepare the summary document allowing it to take into account the diversity of national approaches reflected in the responses to the Checklist. However, he believed that delegations needed more time to study the proposed outline in detail.

47. He suggested that the Council revert to the matter at its next meeting.

48. The Council so agreed.

H. IMPLEMENTATION OF ARTICLE 23.4

49. The Chairperson recalled that the discussion on this matter, after the information-gathering exercise in 1997, had focused on the question of what the next step should be for carrying forward work concerning negotiations for the establishment of an international system for the notification and registration of geographical indications under Article 23.4. A proposal on the matter received from the European Communities and their member States had been discussed at the meetings of the Council in September and December 1998 (document IP/C/W/107). At the previous meeting, a joint proposal had been received from the United States and Japan (document IP/C/W/133), on which many delegations had made preliminary comments, as well as a separate paper from the United States (document IP/C/W/134). India had informed the Council that an earlier informal paper that it had submitted to Members in the context of Article 24.2 was also relevant to the discussions on Article 23.4 (informal document No. 5023 of 18 September 1997). As a result of the Council's discussions at the previous meeting, the Secretariat had been asked to see what additional information it could provide on national and international systems for the protection of geographical indications relating to products other than wines and spirits. At informal consultations prior to the meeting, the Secretariat had explained that it was still in the process of assembling information concerning the two international systems it had been able to find in addition to those already dealt with in document IP/C/W/85, one relating to cheese and the other to olive oil.

50. The representative of the United States, responding to questions put to it at the previous meeting, recalled that the purpose of negotiations under Article 23.4 was to facilitate protection. In fulfilling that purpose, new obligations or burdens were not to be created for WTO Members. The proposal put forward by Japan and the United States did not create new obligations or impose undue

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<sup>5</sup> Documents IP/C/13 and IP/C/13/Add.1.

burdens. This proposal called for notifications to the WTO Secretariat, by Members choosing to participate, of the domestic geographical indications eligible for protection in their territories. Any challenges to notified geographical indications would take place at the national level through Members' domestic legislation and procedures for opposition and cancellation. A participating Member would have to withdraw any geographical indication that it had notified and which had been successfully challenged in its territory. In order to facilitate the protection of geographical indications for wines and spirits, participating Members would undertake to consider the information provided by the WTO registration database in making decisions related to the protection of geographical indications. Her delegation believed that the proposal satisfied each of the criteria that it and others had identified during the last three meetings of the Council as appropriate for any system of notification and registration for geographical indications that might be established under Article 23.4. Specifically, she noted that the proposed system would facilitate protection of geographical indications for participating Members. It would not impose substantive obligations regarding the protection of geographical indications beyond those currently set out in Section 3 of Part II of the Agreement. The proposed system would allow voluntary participation as reflected by the wording of Article 23.4 "in those Members participating in the system". A WTO Member was not required to participate in this system in order to obtain full protection for its geographical indications for wines and spirits. The proposed system would recognize and accommodate the variety of regimes in WTO Members for the protection of geographical indications. It would be simple and not be costly for those choosing to participate. It would not impose undue administrative burdens and costs on the WTO Secretariat.

51. She, then, responded to a number of points raised by the European Communities during the previous meeting. The European Communities had expressed the view that the US/Japanese proposal appeared not to fulfil the objective of Article 23.4, since the element of registration was missing. Her delegation noted again that the clearly stated objective of Article 23.4 was simply to facilitate the protection of geographical indications. The system proposed by Japan and the United States would achieve that objective by creating a source of information not currently available regarding geographical indications for wines and spirits eligible for protection in those WTO Members that wanted to participate in the system. The fact that a particular geographical indication was registered would not automatically obligate a Member to protect that geographical indication if it were not entitled to such protection under that Member's TRIPS-consistent national law. To do otherwise would be to create additional obligations under the TRIPS Agreement. The European Communities had also expressed the view that the system proposed by the United States and Japan did not contain a means for resolving disputes. Her delegation disagreed. The system would resolve disputes in the same way that disputes regarding protection of, say, copyright, or the patentability of a particular invention, were now resolved. Rather than creating an extensive opposition procedure within the WTO, the US/Japanese proposal specified that disputes were to be resolved under the national laws of Members. Finally, the European Communities had expressed the view that transparency alone did not justify the additional cost of the system proposed by Japan and the United States. Firstly, this was not simply an exercise in transparency and, secondly, the cost to WTO Members and to the WTO of the US/Japanese proposal would be minimal. No additional resources would be needed by the WTO to compile the notifications submitted, particularly if that information were submitted electronically. Participating WTO Members would only need to submit the lists of geographical indications for wines and spirits eligible for protection in their territories and keep that list up-to-date. Therefore, the cost would be very slight.

52. The representative of Chile said that his delegation liked the proposal presented by the United States and Japan. Its nature as a voluntary system was indeed one of the requisites stipulated in Article 23.4. Other plusses of the proposed system were that it was not mandatory, that it was simple, that it provided for an administrative register of geographical indications and that it was cheap. He reiterated that his delegation's reading of Article 23.4 was that the register to be negotiated was limited to wines.

53. The representative of Japan, reacting to comments on the legal effect of the system proposed by his delegation and the United States, said that his delegation believed that the legal effect of entry in a database satisfied the requirements of Article 23.4 in regard to registration of geographical indications. Protection of registered geographical indications should be in accordance with domestic laws which were compliant with the TRIPS Agreement.

54. The representative of Canada reiterated his delegation's support for the joint proposal of the United States and Japan. His delegation considered voluntariness to be a fundamental characteristic of any system established under Article 23.4. As well, this proposal would not be as burdensome or costly for Members as the EC proposal. Further, Canada considered that any consideration of extending the coverage of a multilateral register of geographical indications to other products should be left to the planning of a possible next round of negotiations.

55. The representative of the European Communities did not agree that the US/Japanese proposal met the criteria identified during the previous meetings of the Council. He did not believe that the Council had reached any agreement on which would be the essential criteria for a future multilateral register. The Council had discussed a number of characteristics of such a possible multilateral register but there were clearly different views on these. After having listened to the explanations provided by the United States and Japan, he remained of the opinion that there were strong divergences between the approaches of different Members. He would reflect carefully on the interventions made during the present meeting. His delegation believed that the US/Japanese proposal did not provide for a system with a real multilateral character. It seemed to be no more than an information system where national geographical indications were notified and automatically listed on a future database to be established by the WTO. Therefore, his delegation did not understand what would be the added value of the system proposed by the United States and Japan. Several delegations had indicated that the burden on the WTO would be limited but, in his delegation's view, it would still entail some costs which would not be compensated by any benefits other than those already existing at the national level and partially under notifications made on the basis of Article 63.2. For these reasons, his delegation believed that the US/Japanese proposal did not meet the objectives of the TRIPS Agreement. For his delegation, a multilateral register clearly implied multilateral protection and this was the key word and key element in the approach to such a register. The US/Japanese proposal was limited to creating a record rather than a real registration, as it only referred to legal effects under national legislation, as clearly stated in its section 3. This proposal was silent on the need for elements of proof, for a mechanism for the assessment of eligibility or for an opposition procedure - elements which his delegation considered to be indispensable and important to a future multilateral register. A listing in a database fell far short of the objectives of Article 23.4 and was not consistent with the purpose of a real registration. As to the voluntary nature of the system on which both the United States and Japan had insisted, his delegation had also underlined the voluntary character of its proposed system. However, the Council should be careful not to establish an overly flexible system. What would be the status of a geographical indication listed on the database when a Member decided to withdraw from the system, as the US/Japanese system would allow? Would such registrations become invalid? Although based on a voluntary system, the system proposed by the EC would provide that, once a geographical indication was registered, it would be binding on all WTO Members. This would be counterbalanced by rights to oppose registration. It should not be understood as creating new obligations, as indeed any Member would have the opportunity to oppose a registration under the EC proposal.

56. Continuing, he repeated his delegation's concern about the possible confusion between trademark and geographical indication systems. The specific nature of the protection of geographical indications was embodied in the reference made to the quality and particular characteristics of a product coming from a specific area; a link with production in a specific area was alien to the trademark system. In addition, a trademark was limited in time, although renewable, while no such disposition existed for geographical indications. His delegation believed that giving priority to the trademark system would simply deny the specificity and the interests of having an ad hoc regime,

such as that embodied in Section 3 of Part II of the TRIPS Agreement. His delegation would examine carefully what the representative of the United States had said earlier with regard to some of the specific components of her delegation's proposal.

57. Lastly, he wished to return to a point raised by a number of delegations, concerning the possible extension of the system to products other than wines and spirits. His delegation had indicated at previous meetings that this question did not need to be decided yet, but the EC proposal would certainly allow for such an extension at the appropriate time. However, in his delegation's view, it was fairly clear that the present negotiating mandate was limited to wines and spirits and, therefore, did not include other products. The extension to other products would require prior adoption of a clear mandate which the Council did not yet have. The European Communities and their member States were prepared to work in a positive spirit in the Council on both issues in parallel, but work on the built-in agenda should not be unnecessarily delayed by discussions of the mandate.

58. The representative of the Czech Republic thanked the United States and Japan for having presented their proposal for a multilateral system for the notification and registration of geographical indications for wines and spirits. Her delegation had been pleased to find some similarities with the EC proposal, especially that both proposed systems were voluntary, quite simple, did not impose undue administrative burdens and costs and facilitated the protection of geographical indications. However, her delegation continued to be of the opinion that the additional protection for geographical indications envisaged under Article 23 required a more complex and legally ambitious multilateral system, as set out in the EC proposal. When comparing the two proposals, her delegation had found the EC proposal more effective and truly multilateral. Furthermore, her delegation appreciated that it allowed for the extension of the scope of protection to products other than wines and spirits, which permitted Members to avoid duplication of efforts later during the review provided for under Article 24.2. Creating a database of geographical indications for wines and spirits protected under national legislation and by multilateral agreements could be a first useful step towards a multilateral registration system, but it did not meet the objective under Article 23.4. An opposition procedure and legal effects at the international level were missing in the US/Japanese proposal. In addition, her delegation was not attracted by the suggestion to use collective or certification marks to provide protection for geographical indications. In her delegation's opinion, geographical indications and collective and certification marks – having other attributes – belonged to different systems of protection. The conditions applied to their use were basically different. Her delegation did not think it was possible to integrate the protection of geographical indications into a trademark system, nor could it agree with a methodology which allowed the protection of geographical indications as collective and certification marks in the multilateral system of registration of geographical indications as a rule.

59. The representative of Australia said that her delegation continued to favour the approach outlined in the US/Japanese proposal for reasons similar to those already outlined by other delegations: it was voluntary, it was not burdensome, it genuinely facilitated the protection of geographical indications at the level that was currently required by the TRIPS Agreement. Her delegation saw a real benefit in the kind of proposal that Japan and the United States had put forward and considered the information that geographical indications conveyed, as well as anything else that could be put on a label, especially for industry, to be genuinely trade-facilitating. There seemed to be some confusion in the Council between two issues which, like the European Communities and their member States, her delegation saw as quite separate: on the one hand there was the question of the type of register to be agreed upon, and on the other hand there was the question of the product coverage of that register. The question of coverage could best be dealt with separately. There were a number of issues involved: there was clearly a mandate for wines, differing views existed regarding a mandate for spirits, and there was clearly no mandate for other products, as the representative of the European Communities had acknowledged. In her delegation's view, extending the product coverage would require a change to the TRIPS Agreement and could, if delegations so wished, be put on the

table for consideration in future negotiations. However, at present, the main task of the Council was the consideration of the type of register to be agreed upon. Her delegation believed that any such register should be based on the current mandate, should be workable and inexpensive for all Members, and it should be in line with current obligations, without creating any new obligations or undermining existing obligations. Her delegation remained concerned that the EC proposal altered existing obligations in a number of ways. Firstly, current TRIPS obligations required Members to provide the legal means to protect geographical indications, but did not specify any specific terms that had to be protected. This was a matter currently decided in Members' domestic jurisdictions. Members currently had differing views on whether specific terms qualified as geographical indications, were semi-generic or were generic. It seemed that the possible effect of the EC proposal would be to take the choice of treatment of specific terms out of the domestic jurisdiction of Members and place it in a system where the onus was reversed, so that, once on the register, a term must be protected by Members unless an objection were made in a certain period of time. Bearing in mind the very large number of terms involved, her delegation had some concerns about how exactly Members would be able to cope with lodging what could be very labour-intensive objections, within the set period of time. One effect of this model would be that those Members who had the least resources to lodge appeals against numerous individual terms would be those most likely to end up having to protect them, and that those same Members were likely to be those who were also least well-equipped to protect a large number of specific terms. Secondly, she noted a certain tension in the EC proposal between the voluntary nature of the register, clearly stipulated, and the meaning it attached to the notion "multilateral". Further, the proposal lacked some clarity as to what objections should be based upon. For example, the current provisions in Section 3 of Part II of the Agreement relating to trademarks were not reflected in the current EC proposal. She expressed her delegation's interest in knowing how, in practice or in detail, objections could be compared given the different systems that Members had. Thirdly, her delegation also had a concern regarding possible disputes. Members were currently open to challenge, or dispute settlement proceedings, if they were not providing the legal means required by the TRIPS Agreement. Would the effect of the system proposed by the EC be that specific terms would be "codified", making Member governments open to challenges for failing to protect a specific term. There were two related issues. First, it would presumably not be a permissible defence for a Member to argue that a particular term was not a geographical indication if an objection had not been lodged within the one year time-frame. Second, there was a difference between systems where geographical indications were protected or asserted more as an individual right and those where they were protected by the state. Her delegation shared the concerns raised by other Members at previous meetings regarding the relationship between the proposed system and the existing dispute settlement requirements and also wished to flag concerns relating to the TRIPS obligations to grant national treatment and most-favoured-nation treatment. In conclusion, her delegation remained concerned that the EC had proposed a system that would seem to add considerably to the work of both Members and the Secretariat and that, despite being burdensome, labour-intensive and potentially expensive, was still imprecise. For those reasons, her delegation was inclined to follow a model which it believed achieved the aims of being genuinely facilitative of protection, but did not raise problematic issues of additional burdens on Members in terms of the kind of protection that they must provide to specific geographical indications or terms.

60. The representative of New Zealand said that his delegation believed that the joint proposal put forward by Japan and the United States accorded with the system of registration and notification envisaged by Article 23.4 of the TRIPS Agreement. His delegation's support for this proposal was based on a number of factors. Firstly, the proposal did not introduce a further layer of obligations for Members. It was primarily an information register for Members. It would require participating Members to agree to refer to WTO lists of notified geographical indications when making decisions to register or otherwise protect geographical indications through their national legislation, a process which was consistent with the objectives of Article 23.4. Second, the proposal fully recognized Article 23.1 of the TRIPS Agreement, in which Members were entitled to implement, and had implemented, the obligations contained in the Agreement in relation to geographical indications in a variety of ways, all of which were entirely consistent with the TRIPS Agreement. Third, the proposal

was entirely voluntary with no implications for those Members who decided not to participate in the system. Fourth, the proposal did not appear to impose any undue burdens, in terms of finances and resources, on the Secretariat or Members. Finally, it recognized that, if a participating Member had an objection to the listing of a geographical indication, any such objection would need to be pursued via the domestic jurisdiction of the Member which had listed the purported geographical indication. With regard to the EC view that the system to be established under Article 23.4 must, by necessity, be a multilateral register, he noted that the final line of Article 23.4 referred to "those Members participating in the system". He understood this to mean that the system did not by necessity have to apply across the board. The EC representative had insisted that the system had to add value and yet the first line of Article 23.4 read "In order to facilitate the protection of geographical indications for wines ...". The word "facilitate" did not indicate that there was a necessity to add value or add extra obligations and rights to Members. He queried the EC representative's comment that its system was voluntary in nature and, in particular, he drew attention to Part V of the EC proposal entitled "Legal Implications". Whilst a Member's right to lodge a geographical indication in the proposed scheme was possibly voluntary, the voluntary nature ceased after one year, because one year after its notification, a geographical indication would become "fully and indefinitely protected in all WTO Members". That seemed to go beyond the voluntary nature of the scheme and beyond what Article 23.4 envisaged. He echoed the concerns of the representative of Australia about the resource implications of the EC proposal, given the fact that not only would Members have to be prepared to look at all notifications in the first year period and lodge objections, but also there would be resource implications in relation to potential disputes between opposing Members regarding geographical indications. He noted that the EC proposal referred to an appropriate mechanism that needed to be devised in this regard, but did not provide guidance as to what such a mechanism might entail.

61. The representative of Hungary, while thanking the delegations of the United States and Japan for their written proposal, said that his delegation was strongly attracted by the EC proposal which, in its view, could constitute the foundation for the Council's work on Article 23.4. Nevertheless, his delegation had found the US/Japanese proposal interesting and could endorse some of its elements. As a general remark, Article 23.4 called for more ambitious action than the US/Japanese proposal envisaged. It provided for negotiations on the establishment of a multilateral system of notification and registration for wines. It seemed that the US/Japanese proposal concentrated on the first part of the job, namely the establishment of a notification system, and the registry would simply compile information provided by Members who wished to participate in the system. In industrial property jargon, a system of registration was by definition something that was expected to produce some sort of legal effect. The word "registration" was used in this sense in other parts of the TRIPS Agreement, most notably in Section 2 of Part II. A database to which national authorities might or might not be required to refer might not necessarily constitute a registration system in the industrial property context. His delegation believed that the US/Japanese proposal stopped short of providing for a system that would settle potential disputes either through an opposition or a consultation procedure. This mechanism would be the heart of the system and would provide its major contribution to the facilitation of the protection of geographical indications. As far as the opposition procedure was concerned, the EC proposal could be a solid basis and a starting-point for the Council's discussions. The inclusion of an opposition or consultation procedure in the system would not in any way question national systems currently in place that were consistent with the obligations of Members under the TRIPS Agreement with respect to geographical indications. The costs of the establishment and operation of such a system should be measured not in absolute terms but in relation to the benefit offered by the system. He tended to agree with those who had said that transparency alone, if this was the only advantage offered by the system, might not be sufficient to justify the costs apparently involved. His delegation, at this stage, had no problem with a system covering spirits, as well as wines, and would find it useful if the system left open the possibility of extending the scope of the product coverage.

62. The representative of Korea said that his delegation wished to endorse the joint proposal from Japan and the United States, as it contained many elements with which his delegation could agree. He wished to put on record his delegation's preliminary opposition to extension of the product coverage.

63. The representative of Switzerland referred to the comments she had made at the previous meeting concerning the fundamental principles of the Council's approach, which did not allow the replacement of the system for the protection of geographical indications with a system for the protection of collective or certification marks. She agreed with the representative of the Czech Republic that the functions of these systems were different. Her delegation had difficulty understanding the problems expressed by some delegations with the EC proposal. Article 23.4 required specification of the commitments already accepted under Articles 23.1, 23.2 and 23.3; this was how her delegation understood the term "facilitate". She would revert to the EC proposal at the next meeting to clarify her comments further. As to the US/Japanese proposal, at this stage, besides the general comments which she had already made, she wished to pose some questions. She referred to the last paragraph under point 2 where it was stated that WTO Members might decide to participate in, and withdraw from, the system at any time. What would be the legal effect of such withdrawal for those Members who withdrew and for other Members? Would other Members be free no longer to protect any geographical indication of a Member which had withdrawn from the system? Referring to point 2 headed "Registration", she said that this system basically concerned a database. However, it did require recognition of similar systems by other Members, as well as administrative steps for recognition of certain geographical indications including administrative work such as exchanges of communications, arguments and objections. The apparent simplicity of the proposed system was misleading. She would revert to this point at the next meeting. Referring to point 3 headed "Legal effects under national legislation", she sought clarification of the meaning of the obligation that Members would agree to refer to lists of notified geographical indications. For example, what would happen if an examiner did not take into account these geographical indications?

64. The representative of Morocco, while noting that the French version of the US/Japanese proposal was not yet available, sought clarification on two points. First, he recalled that, at the previous meeting, the representative of the United States had stated that the proposed system could include products other than wines and spirits and that his delegation was ready to discuss a possible list of products. Had the United States' delegation made a final decision on the extension of the system to other products, and was it in favour of a closed list of products or a system open to all products likely to be identified by their geographical origin? These questions were important for his delegation, which would not be in favour of a system which excluded its extension to other products which could be identified by their geographical origin. Second, his delegation wondered whether there would be a difference in the level of protection between a geographical indication notified/registered under the system proposed by Japan and the United States and another not so notified/registered and, if so, what would be that difference. If there was no difference, what would be the added value of the proposed system that might encourage Members to participate in the system.

65. The representative of Mexico said that her delegation continued to plan to submit a proposal to the Council.

66. The representative of Argentina said that, as her delegation understood it, the register of notifications should aim at facilitating the protection of geographical indications without generating new obligations. In achieving this objective, which was fundamental for her country, the register should be voluntary and should be based on the definition of geographical indications under the TRIPS Agreement. Her delegation had no problem with a notification system/register located in the WTO Secretariat which would be automatic and simple. Her delegation did not agree that the register should include spirits and believed that the fact that spirits were part of the preliminary work of the Council did not mean that there was consensus to create an international system of registering geographical indications for spirits. She agreed with others that the inclusion of other products was



not part of the mandate of the Council. Her delegation believed that it was not an item of the built-in agenda either.

67. The representative of the United States, responding to some of the questions raised and comments made during the meeting, agreed with the European Communities and Australia that it might be wise to separate the Council's discussions on issues relating to the type of registration system from those on the scope of the product coverage. Although both concerned important issues, they were not necessarily linked and could be discussed independently. The US/Japanese proposal circulated at the previous meeting was currently limited to wines and spirits. As regards the suggestion by the representative of the European Communities that there was no value-added in this proposal, she expressed her delegation's concern, since the concept of additional value, as used by the representative of the European Communities, seemed synonymous with additional obligations to protect geographical indications. For example, obligations to protect specific geographical indications or to take certain actions within certain time periods were not found in the TRIPS Agreement. There were no additional obligations under the US/Japanese proposal, but there was added value. Currently, there was no single list of geographical indications protected by WTO Members. National authorities had no single place to turn for this information. With respect to the legal effect of ending participation in the system in the US/Japanese proposal, withdrawal from participation in the system certainly would not lead to a lapse of protection for geographical indications. This proposal neither added to, nor detracted from, the TRIPS obligations to protect geographical indications. The system was entirely voluntary; Members did not have to participate, nor to continue to participate in it, and their decision to do or not to do so would not affect their rights or obligations under the TRIPS Agreement. With respect to the concern expressed arising from the additional United States paper circulated at the previous meeting (document IP/C/W/134), on the protection of geographical indications through collective or certification marks, she said that in her delegation's view such a system was certainly consistent with the TRIPS Agreement and was already in use in some Members, representing one way in which they met their obligations under Section 3 of Part II of the Agreement. She certainly did not suggest that such a system was the only one acceptable under the Agreement. The paper on this matter had only been put forward as a suggestion to be considered, particularly by Members that might not currently protect geographical indications but had a trademark system in place and were considering non-burdensome methods to implement their obligation to protect geographical indications.

68. The representative of the European Communities recalled that many of the issues raised concerning the EC proposal had already been raised at previous meetings. His delegation was working on responses to clarify those issues and, given that some Members had requested further clarification, his delegation would further reflect on these questions and revert to them at the next meeting.

69. The Chairperson said that the matters raised deserved further thought and study. Perhaps, swifter progress could be made if the Council separated in its discussions the matter of the nature of the system to be established from the matter of the product coverage. Different models could be discussed without prejudging whether the system would be extended to products other than wines and, possibly, spirits.

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

## I. ELECTRONIC COMMERCE

71. The Chairperson said that, as agreed by the Council at its meeting in February, he had conveyed to the Chairman of the General Council, information on the steps taken by the TRIPS Council to carry out that part of the Work Programme on Electronic Commerce that concerned it, so as to facilitate the interim review that the General Council was to conduct on the implementation

of the Work Programme as a whole. This letter had subsequently been circulated as General Council document WT/GC/21. At the Council's meeting in February, the issue of electronic commerce had been discussed on the basis of a factual background note that the Secretariat had prepared as requested by the Council (document IP/C/W/128). Delegations which had spoken had generally indicated that their views were preliminary in nature and that they needed more time to study the matter before providing comments on which aspects, if any, should be the subject of further work in the WTO context, having regard to the work under way in other international fora. The Council had agreed that it would reserve enough time for a detailed discussion of the issue at the present meeting. Finally, he drew attention to a submission concerning the Work Programme by the European Communities and their member States that had just been received.<sup>6</sup>

72. The representative of the European Communities said that, since the Council's previous meeting, his delegation had reflected on those questions concerning electronic commerce that might be relevant to the work of the TRIPS Council. The submission that his delegation had just tabled contained some general observations, including the fact that the technology neutral language of the TRIPS Agreement was suitable to cover both on-line and off-line transmissions. The document also attempted to identify a number of specific issues. The first was linked to the fact that intellectual property rights, and the exceptions thereto, were territorially based. It was appropriate to reflect on possible implications, in particular in the area of industrial property, notably trademarks. The question of choice of law and proper forum to grant relief for infringements was a key issue, already under discussion in WIPO. The document also raised the question of whether or not there was a need for additional protection, which might result from the current shortcomings of national and international rules. Another important question concerned whether or not there was a need to clarify certain basic concepts, such as the definition of publication, the country of origin, the right holder and the treatment of transient copies. He noted that the Secretariat background note had helped the reflections of his delegation in this regard. With regard to all these matters, the Council should be aware of the results of the work done or underway in other fora. He also referred to the issue of Internet domain names, which was being discussed in WIPO, and to a document that the European Communities had recently tabled in that context. He concluded by noting that, while the submission of his delegation identified a number of relevant matters, it did not contain, at this stage, precise proposals as to whether or not it was indispensable or appropriate to look at these matters in the TRIPS Council. He would welcome questions, comments and submissions by other delegations.

73. The representative of Australia believed that, given the short time-frame left for discussion on these matters, it would be useful to focus on some substantive issues, and that the Work Programme provided an opportunity for Members to consider a general common position on the operation of TRIPS provisions in the digital environment. It might also create avenues by which to pursue, if necessary, clarification or amendment of, or addition to, specific existing provisions in order to create certainty regarding their application. Welcoming the Secretariat's factual background paper on TRIPS-related electronic commerce issues, she felt that the note's comprehensive outline of the issues, and detailed account of relevant existing provisions and their possible limitations in the digital environment, provided an excellent basis for Members to assess where the current rules applied, and where the gaps and limits to those rules arose. Her comments were intended to indicate some areas where Australia believed there was potential for the Work Programme to lead to outcomes which contributed to clarification of how TRIPS provisions applied in the digital environment. In addition to suggestions on general principles, her comments intended to highlight specific points of substance on which Australia placed priority, and where further discussion would be useful. Such discussion could focus first on Members' views on the substantive issues involved, in the context of national experience to date, and second on the options available to deal with them.

74. She supported the Secretariat's statements regarding the applicability to electronic commerce of the traditional objectives of the intellectual property system, and the relevance of TRIPS provisions

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<sup>6</sup> Subsequently circulated as document IP/C/W/140.

in the digital network environment. This was in line with the Work Programme's general premise that electronic commerce was simply another means of transacting commerce: it was not different in kind from other forms of international commerce. The corollary was that all WTO commitments relating to trade, including rights and obligations under the TRIPS Agreement, applied regardless of whether trade was conducted electronically or otherwise. In particular, her delegation emphasized the fundamental importance of the WTO principle of non-discrimination, and its role as a ready-made facilitator of electronic commerce. From the perspective of both intellectual property and other WTO disciplines, non-discrimination established the basic framework by which to ensure that borderless commercial exchanges were conducted fairly and freely. So too did the technology-neutral character of the rules. In addition to this general principle, it was also important to acknowledge that trade conducted electronically generally had a high intellectual property content. The high level of engagement of intellectual property rules by electronic commerce, and the increasing magnitude of this means of conducting trade, placed greater emphasis on ensuring the effective implementation and enforcement of the existing TRIPS provisions. Developing effective enforcement measures for the digital environment in turn created significant challenges. Some of these had been addressed in the 1996 WIPO treaties on Copyright (WCT) and Performances and Phonograms (WPPT). There was, however, an ongoing need for Members further to explore available options, in the context of practical experience. In this regard, she submitted that the terms of Article 69 of the Agreement, relating to international cooperation to eliminate international trade in goods infringing intellectual property rights, should be interpreted to include infringements occurring in the electronic environment. Australia believed there was much to be gained from the exchange of information on electronic trade in infringing goods, and invited other delegations to come forward with national experiences in this regard. The creation of an informal database of the practical problems experienced by Members would be a useful basis for ongoing discussions on how best to tackle the issues. As electronic commerce would grow in magnitude, and if countries were fully to take advantage of the potential benefits of trade conducted electronically, there would be an increasing need to gain the benefits of moving towards technology convergence. This kind of environment had the potential to create more dilemmas over jurisdiction-based arguments, such as exhaustion of rights.

75. As regards new technologies and access to technology, she said that electronic commerce technologies had vastly improved global access to technological information in patent documentation. The whole fee structure with regard to access to patent documentation had been revolutionized by its availability on the Internet. Researchers and other interested parties in any part of the world were now able to access patent documentation free, 24 hours a day. The TRIPS-style system of facilitating the flow of technological information had been vastly enhanced by electronic commerce. The changes brought by electronic commerce were particularly beneficial to, for example, SMEs and developing countries. Further, the fact that the patent system might, under the TRIPS Agreement, extend to new technologies, for example computer software, had led to increased accessibility to state-of-the-art technologies in rapidly advancing areas. This quality of the patent system represented a considerable improvement over the now quite outdated trade secrets framework. It had shifted the balance between the protection of rights and disclosure of information in favour of the user.

76. On copyright, she said that her country was well advanced in the development of legislation to implement the provisions of the 1996 WIPO Copyright Treaty (WCT). She noted that the support for the new WIPO treaties, as measured by signature and ratification/accession, was not confined to any one economic or geographic group, suggesting that there could in time be broad support. This, and the need under the Work Programme to avoid duplication of work that was being or had been done in other bodies, provided compelling reasons seriously to consider how the provisions of the two treaties related to the TRIPS Agreement and how they might be used further to enhance the relevance of the Agreement in the digital environment. As regards the right of reproduction, the Secretariat's paper included a reference to the agreed statement concerning Article 1(4) of the WCT, which clarified that storage of a protected work in digital form in an electronic medium constituted a reproduction within the meaning of Article 9 of the Berne Convention. She submitted that this was a useful clarification, of relevance to the interpretation of the TRIPS Agreement in the digital environment. She urged

Members to consider options as to how the substance of this agreed statement might be extended to the Agreement. On collective management of copyright, she noted that electronic commerce technologies might provide more cost-effective means of organizing rights clearance. This was an area where Australia considered that further discussion could be particularly beneficial.

77. As regards trademarks, Australia considered that there was a need to clarify what constituted use of a trademark on the Internet. This was relevant in the context of both defining trademark infringement in the digital environment, and determining what would qualify as "use" for the purposes of the requirement that a trademark be used in order to preserve its rights. She also considered that there might be a trademark use issue related to the classification of goods and services in the digital environment, namely whether a trademark had been used (in the relevant sense) in respect of goods or services, or both. While the obligation to protect trademarks, especially well-known marks, applied in the digital environment, she submitted that the obligation should not be applied in a way that extended the effective scope of protection available in the conventional commercial sphere. An appropriate balance must be struck between the interests of the trademark owner and those of other traders. She noted the current WIPO international process on domain names. If the outcomes of this process, which had been both geographically inclusive and had canvassed the views of all interested parties, attracted widespread support, she would submit that this could serve as a useful basis for consideration of trademark/domain name issues by the Council.

78. The representative of Hong Kong, China broadly shared the assessment contained in the Secretariat background note that the traditional principles of copyright were sufficiently flexible to accommodate issues rising from electronic commerce. At the previous meeting of the Council, her delegation had highlighted three priority areas, namely the definition of publication, determination of the right holders eligible for protection, and enforcement of rights and remedies. She noted that some of these elements had been referred to in the submission by the EC, for example in the context of clarification of certain basic concepts. Her delegation would study that submission, and reserve further comments until the next meeting.

79. The representative of Uruguay said that it was important that the General Council should carry out its interim review, which it unfortunately had not been able to do at its meeting of 14 April 1999, and study the interim reports of the four bodies concerned. In the meantime, and without prejudice to the outcome of the interim review, the TRIPS Council should continue to work towards as complete a report as possible. While his delegation was still analysing the Secretariat's background note, he wished to make certain preliminary comments. This note, as well as the Secretariat's note submitted to the General Council on 14 July 1998 (document WT/GC/W/90), referred to a number of important issues that needed to be analysed. First, given the borderless nature of the Internet, it was difficult to determine how territorially based laws should be applied. Activities carried out on a worldwide net gave rise to problems as to applicable law. Secondly, as regards copyright and related rights, he said that, while the Internet and other electronic networks provided new means of distributing protected material, having secure conditions for the distribution was important for the full expansion and exploitation of this new medium. Thirdly, as regards trademarks, it should be asked, as was done in the Secretariat's background note (document IP/C/W/128), whether the present system of registering trademarks on a territorial basis sufficed for the new borderless electronic marketplace. Fourthly, as regards domain names, as had been indicated by several delegations, he felt that it was necessary to have the final report of the WIPO domain name process, which was expected to be published shortly and wondered whether the Council should consider the possibility of requesting WIPO to make a summary presentation of the report, once it was available. Lastly, he underlined the importance of the international conference WIPO was convening on electronic commerce and intellectual property that would take place from 14 to 16 September 1999.

80. The representative of the United States said that her delegation hoped to submit a paper on electronic commerce and intellectual property in the near future, and urged other Members also to submit their views in writing. Electronic commerce could play an enormous role in facilitating the

global creation, transmission and exchange of intellectual property. Given this potential, all Members had a great stake in the environment for the protection of intellectual property that could be transmitted electronically. Without such protection the potential that electronic commerce could provide in stimulating creativity worldwide would be greatly restricted.

81. The representative of Mexico reiterated that it was important to avoid duplication of efforts with respect to activities concerning electronic commerce and intellectual property that were carried out in other fora.

82. The representative of Argentina said that the Secretariat background note was the first comprehensive document on the intellectual property aspects of electronic commerce, and that the Council should continue its discussion and in-depth analysis of this issue.

83. The representatives of Canada, Egypt, Japan and India said that they would study the submission by the EC and wished to continue the discussion in the Council. The representatives of Egypt and Japan added that the Council should closely follow the developments in WIPO.

84. The representative of Brazil expressed his support for Uruguay's suggestion to invite a representative of WIPO to present the results of the report of the WIPO domain name process to the Council.

85. The representative of Korea referred to the work in WIPO by the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications and in the context of the domain name process, and supported the suggestion that the Council should keep itself informed as to how this work was progressing.

86. The representative of Turkey informed the Council that an Electronic Commerce Coordination Committee, formed in his country in early 1998, had been working in the framework of a pilot project. As regards electronic commerce and intellectual property, the Committee had underlined two basic objectives in its Executive Report, which had been officially adopted by the Government. These two objectives could be summarized as follows. First, instead of introducing new exclusive rights for the electronic environment, it was considered important to develop new technologies to prevent intellectual property infringements. Secondly, Turkey was in favour of becoming a party to the new WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty, and meeting the requirements in these treaties concerning rights management information.

87. The Chairperson proposed, as suggested by the representatives of Uruguay and Brazil, that the Council would invite the International Bureau of WIPO to present the results of the WIPO domain name process at its next meeting. The Council could take this opportunity to request the International Bureau to inform it also about other relevant developments in WIPO's work of relevance to issues of electronic commerce. He also proposed that the Council continue its substantive discussions of the matter at its next meeting, and at that meeting decide on its report to the General Council, which was due by 30 July 1999.

88. The Council took note of the statements made and agreed to proceed as proposed by the Chairperson.

#### J. REVIEW OF THE PROVISIONS OF ARTICLE 27.3(B)

89. The Chairperson recalled that, at its meeting in December 1998, the Council had had an initial exchange of views on how the review of the provisions of Article 27.3(b) of the Agreement should be carried out. In the light of informal consultations on the matter, it had been agreed to initiate the review process through an information-gathering exercise. First, those Members that were already under an obligation to apply Article 27.3(b) had been invited to provide, by 1 February 1999,

information on how the matters addressed in this provision were presently treated in their national law. Other Members had been invited to provide such information on a best endeavours basis. The FAO, the Secretariat of the Convention on Biological Diversity ("CBD") and UPOV had been invited to provide factual information on their activities of relevance. This information-gathering was understood to be without prejudice to the nature of the review provided for in Article 27.3(b) and, once information had been received, the Council would revert to the question of whether any further information might be requested from the Secretariat. By the time of the Council's meeting in February, information had been received from the following Members in response to the Council's request: Bulgaria, Canada, the Czech Republic, the European Communities and their member States, Hungary, Japan, Korea, New Zealand, Poland, Romania, Slovenia, the United States and Zambia. The contributions from these Members were available in documents IP/C/W/125 and addenda. Information had also been provided by UPOV and the CBD Secretariat; this information was available in documents IP/C/W/130 and Add.1. Since that meeting, contributions had been received from Australia, Morocco, Switzerland, South Africa and the FAO. These would also be available as addenda to documents IP/C/W/125 and IP/C/W/130 respectively.

90. He further recalled that the Council had agreed, at the last meeting, that the Secretariat be asked to compile, in an informal note, the information received from Members in the form of a structured summary overview. At the informal consultations held prior to the meeting, the Secretariat had indicated that it was finalizing its work on this paper and had informed Members that the paper would be available within two weeks. Many delegations had emphasized the need to pursue this element of the agenda with urgency and the importance of setting aside sufficient time for a thorough discussion of this matter at the Council's July session. Given that additional effort would be required so that the work on the review could be finalized by the end of the year, the Council should discuss at that time how it should be carried forward in an expedite manner.

91. The representative of India said that his delegation was looking forward to discussing the Secretariat's note. However, in his delegation's view, the urgency also related to something larger and more substantive, provided for in Article 27.3(b). Since the word employed by this provision was "shall", there was an obligation for the TRIPS Council to review the provisions of the subparagraph. His delegation was not opposed to the information-gathering exercise that the Council was engaged in, but wished to indicate to the TRIPS Council, formally, that there were much larger issues which needed to be addressed by the Council if Members were to remain faithful to the language of Article 27.3(b). The provisions themselves had to be reviewed and, in that context, the patenting of life forms and the implications thereof were, for instance, important issues to be addressed. The relationship with the Convention on Biological Diversity was another important issue. India hoped to present, at the July meeting, a proposal on this matter. His delegation would welcome comments on his statement.

92. The Chairperson clarified that the sense of urgency he had mentioned concerned all issues to be addressed in the review of the provisions of Article 27.3(b) by the end of the year. Therefore, at the July meeting, the Council should decide on the modalities, both formal and informal, to be adopted with a view to the completion of its task.

93. The representative of the Philippines agreed with India that the review of Article 27.3(b) should not be limited to how WTO Members had implemented Article 27.3(b). However useful that was, doing only that would not be in compliance with the mandate of this provision. Like India, his delegation reserved its right to submit proposals aiming at possible changes in the text of Article 27.3(b), which, in his view, were contemplated by the provision.

94. The representative of the European Communities said that, in his delegation's view, the exercise should be limited to the examination of the implementation of Article 27.3(b) through national laws. His delegation had accepted to have a broad discussion on the matter at the next Council's meeting, but the French version of Article 27.3(b) said very clearly that the exercise should

consist of *réexaminer*, and not *réviser* or *changer* the provisions in question. Therefore, it was not clear for his delegation that the Council, by the end of the year, should have received concrete proposals aiming at amending the provisions of Article 27.3(b). Nonetheless, he had an open mind with respect to the discussion to be entertained in July and he agreed that, based on that discussion, the Council should agree on how the work would be carried forward.

95. The representative of Turkey said that his delegation would provide information concerning legislation implementing Article 27.3(b) soon, in response to the questionnaire prepared under the review procedure. Regarding the protection of plant varieties, the Turkish Ministry of Agriculture had completed the preparation of a draft law called "Protection of Breeders' Rights on New Plant Varieties" in February 1999 and expected to introduce this draft, which would establish a *sui generis* system, to the new Parliament in 1999. He also informed the Council that Turkey had met all the criteria provided for by the UPOV Convention of 1991.

96. The representative of Pakistan, addressing the issue of the scope of the review exercise, said that, even though, in French, the text of Article 27.3(b) might call for a mere "revisiting" and not a "reviewing", the English text was fairly clear. Therefore, he supported the statements made by the delegates of India and the Philippines. For his delegation, the exercise consisted of a substantive review of the provisions. Secondly, he realized that there would be a need for further discussions at the July meeting, but it was premature for Members to commit themselves to entertain informal discussions after July. First, it would be necessary to take stock of how Members would wish to structure the discussions to be held after the July meeting.

97. The Chairperson said that it was his intention to keep this topic on the agenda of the informal and the formal meetings in July, so that the Council could decide then how future work would be organized.

98. The representative of India welcomed the statement by the delegation of the European Communities that it would keep an open mind, which he expected all delegations to have, at the very least. As regards the word "reexamine", this was, in his understanding, even stronger than the word "review". If the Council were to "reexamine" the provisions of Article 27.3(b), it should not just do information-gathering, it should also look at the whole provision again and see if its words had the same meaning as when the provisions were drafted.

99. The representative of the United States noted that the material contained in the submissions received to date from various Members was extremely complex, despite attempts to express it in relatively simple terms. In addition, each submission had to be referred to experts in capitals for their consideration and comment. She looked forward to receiving soon the final version of the structured summary in preparation by the Secretariat and believed it would be a very useful tool in simplifying the study and providing a point of comparison for the information received relevant to Article 27.3(b). Her delegation recommended that all TRIPS Council Members review the documents submitted to date on the basis of the structured summary and that the Council discuss the information presented by the submissions at its July meeting. She had listened with interest to the comments that other delegations had made, expressing their wish to discuss larger issues. She had heard the suggestion that additional meetings in the fall might be needed for that purpose. Her delegation would agree with the interpretation, expressed by the European Communities, that it was not obvious that this was required by Article 27.3(b), but it also had an open mind and certainly did not oppose discussions of issues that Members wished to raise. She agreed with the statement by Pakistan that Members first needed to take stock of how Members would wish to structure the discussions. It had been suggested in the past that perhaps the meetings previously scheduled for the TRIPS Council for the fall might not be necessary. Did the present discussions not show the opposite? She suggested that, at the July meeting, Members proceed with an in-depth examination of the structured summary to be received shortly from the Secretariat and also take stock of other issues that Members might wish to raise. If

the Council would consider such necessary, these issues could be pursued further at the meetings currently scheduled for September and November, if the Council deemed them necessary.

100. The representative of Brazil reconfirmed his delegation's view that the review of Article 27.3(b) entailed more than only an information-gathering exercise. His delegation reserved its right to submit specific proposals on this matter. He strongly supported the statements of India, Pakistan and the Philippines in this regard.

101. The representative of Malaysia said that his delegation, like other delegations, understood that what Article 27.3(b) essentially called for was a review of the provisions and not a review of their implementation. As far as his delegation was concerned, it would go by the English version of the TRIPS Agreement, even though he accepted that both the English and the French versions were equally genuine. He recalled that, at the meeting in December 1998, when the Council had agreed to the information-gathering exercise, several delegations had stated that the exercise would be without prejudice as to how the review would proceed. This would be just a first step in the review, because Members needed to know what had been done regarding the implementation of Article 27.3(b). As for the need for informal meetings to discuss this matter, a decision should not be made before the July meeting.

102. The representative of Egypt supported the views expressed by India and other delegations that Article 27.3(b) contained a larger issue than merely information-gathering. His delegation welcomed and appreciated the gathering of information, in order to help Members know how national experience had developed in this field. But it was looking forward to receiving further submissions and proposals from other Members in order to see how the Council could revise the provisions of Article 27.3(b) and see whether any amendments could be introduced.

103. The representative of the Philippines welcomed the open minds of those delegations who had believed that the review of Article 27.3(b) was limited to a review of its implementation. He wished to point out that there were differences in language between Article 71.1 and Article 27.3(b). Article 71.1 said that the Council for TRIPS shall review the implementation of the Agreement. Article 27.3(b) said that the provisions of this paragraph shall be reviewed after four years. Therefore, his delegation submitted that, if the intention had been just to review the implementation of Article 27.3(b), then Article 71.1 and Article 27.3(b) would have had the same language. Since their language was different, they could not have the same meaning.

104. The representative of Venezuela said that his delegation had the same view as India, Brazil, Malaysia and some other delegations as regards the interpretation of the last sentence of Article 27.3(b). Moreover, reviewing the provisions of subparagraph (b), which contained exceptions to patentability and exceptions to such exceptions, would necessarily entail a review of the whole of paragraph 3 of Article 27. Reviewing these provisions encompassed their possible amendment. Since this implied that Members were entitled to present proposals for amendment of these provisions, i.e. to add to the rights conferred under them, widen the exceptions or complement the provisions, he compared Article 27.3(b) and its review to Pandora's box.

105. The representative of Switzerland said that it was important that Members proceed first with the gathering of information. The material provided by Members that were already under an obligation to apply Article 27.3(b) was so rich and complex that some time would be required for Members to digest it. However, her delegation was open to discuss any proposals that might be submitted in the future.

106. The Chairperson said the document in preparation by the Secretariat would constitute a basis for future debates. He said that a considerable amount of time would be necessary for a substantive discussion at the July meeting. He noted that there was a debate over the mandate contained in Article 27.3(b), some Members understanding that the review called for in that provision should not



be limited to gathering information on its implementation, but also for a review of the provisions themselves. The difference seemed to relate to how the word "review" should be interpreted. He suggested that the Council have a substantive discussion on the matter in July, both in the informal and formal sessions, and also decide, at that time, on how to carry the work forward.

107. The Council took note of the statements made and agreed to proceed as suggested by the Chair.

K. ARTICLE 64.3

108. The Chairperson recalled that, under this provision, the Council was required to examine the scope and modalities for complaints of the type provided for under Article XXIII:1(b) and (c) of GATT 1994 ("non-violation" disputes) made pursuant to the TRIPS Agreement. Just prior to the Council's previous meeting, the Secretariat had circulated a factual background note (document IP/C/W/124) on experience with disputes so far under the TRIPS Agreement, including any references made to non-violation issues, the negotiating history of paragraphs 2 and 3 of Article 64, the experience with non-violation complaints under the GATT/WTO, and any information available on the use of the non-violation concept in disputes on intellectual property matters elsewhere. A paper on the matter from the delegation of Canada had been circulated in document IP/C/W/127. At the previous meeting, several delegations had indicated that they were still studying the matter and the Council had agreed to revert to the matter at the present meeting. He drew attention to a joint proposal that had just been received from Cuba, the Dominican Republic, Egypt, Indonesia, Malaysia and Pakistan.<sup>7</sup>

109. The representative of Egypt, speaking on behalf of the six delegations that had tabled a joint proposal,<sup>7</sup> introduced the proposal by summarizing the main elements of the paper. He first stressed that the TRIPS Agreement exempted the applicability of non-violation complaints for a period of five years (Article 64.2) and that the scope and modalities for such complaints were currently under consideration by the Council (Article 64.3). It was also a fact that the non-violation remedy was designed under GATT to protect agreed tariff reductions and reciprocal tariff concessions in the area of trade in goods. It was a complicated issue to assess the implications of the application of the non-violation remedy to obligations under the TRIPS Agreement; this required a careful and detailed consideration due to the limited experience in this field. In this context, he welcomed both the Secretariat's and Canada's contributions in this regard, sharing Canada's concern that the application of the non-violation remedy in the area of intellectual property might constrain Members' ability to introduce new and perhaps vital social, economic, developmental, health, environmental and cultural measures and might have an impact on existing policies in these areas. Taking into consideration that developing countries were currently enjoying transitional periods, most of them were not in a position to assess the implications of the application of the non-violation remedy in the area of intellectual property. Therefore, the six delegations on whose behalf he spoke proposed an extension of the time-period referred to in Article 64.2 for an adequate time until the implications of such a remedy in the area of intellectual property were better understood and the possible scope and modalities had been adequately addressed in accordance with Article 64.3 of the TRIPS Agreement.

110. The representative of Hungary, also speaking on behalf of Bulgaria, the Czech Republic, Romania, the Slovak Republic and Slovenia, thanked the Secretariat for its informative background document (document IP/C/W/124) and especially the delegation of Canada for its valuable written contribution (document IP/C/W/127). He welcomed that, in accordance with Article 64.3 of the TRIPS Agreement, the Council had started the examination of the scope and modalities of non-violation disputes in the TRIPS context. He believed that the issue at hand was a very complex one and deserved substantive and in-depth analysis and discussion. He thought that the work was at its preliminary stages and, since the Council was exploring uncharted waters, he believed that it should

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<sup>7</sup> Subsequently distributed as document IP/C/W/141.

start by trying to understand fully the concept of non-violation in the TRIPS context, and its applicability to intellectual property issues. The delegations on whose behalf he spoke were still examining the issue and the documents circulated with respect to it but, as a preliminary view, they were not convinced of the need for, and the applicability of, the non-violation remedy under the TRIPS Agreement. These delegations shared the view expressed in paragraph 41 of the Appellate Body Report on *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products* (document WT/DS50/AB/R) that "non-violation complaints are rooted in the GATT's origins as an agreement intended to protect the reciprocal tariff concessions negotiated among the contracting parties under Article II". Therefore, "the non-violation provision of Article XXIII:1(b) was aimed at preventing contracting parties from using non-tariff barriers or other policy measures to negate the benefits of negotiated tariff concessions". It was difficult to see the analogy between tariff concessions or specific concessions under the GATS, on the one hand, and the minimum rights of nationals to be provided for by a WTO Member on the basis of the TRIPS Agreement, on the other hand. The delegations on whose behalf he spoke collectively thought that the scope of the non-violation remedy in the TRIPS context was very unclear and uncertain (especially bearing in mind the different views as to the content of benefits/reasonable expectations). They also feared that the introduction of non-violation remedies in the TRIPS context, as elaborated eloquently in the Canadian paper, might take away government regulatory options with respect to the protection of life, health and the environment. While understanding that Article 26 of the DSU set out special procedures for non-violation complaints, these special safeguards did not convince them of the need for, or applicability of, the non-violation remedy in the TRIPS context. The CEFTA countries were beginning this exercise with an open mind and looked forward to the arguments and comments that would be made by other delegations.

111. The representative of India lent his delegation's strong support to the thrust of the joint proposal that had just been introduced by Egypt and said that India had not co-sponsored it because it did not go far enough: it proposed an extension of the moratorium, whilst his delegation believed that the non-violation remedy should never apply to disputes under the TRIPS Agreement. His delegation did not believe that the moratorium should be extended but, rather, the Council should recommend to the Ministerial Conference that non-violation should henceforth cease to apply in the context of the TRIPS Agreement. He did not believe that any additional arguments could be made besides those which had already been made by the representative of Hungary on behalf of the CEFTA countries, and in the paper which had been presented by Canada (document IP/C/W/127). Nevertheless, he wished to repeat some of their comments. First, the non-violation provision of the GATT was aimed at preventing contracting parties from using non-tariff barriers and other policy measures to negate the benefits of negotiated tariff concessions. In other words, it was intended to protect reciprocal tariff concessions and that was simply inapplicable in the context of the TRIPS Agreement. The fundamental objectives of the GATT or GATS were totally different from those of the TRIPS Agreement. On the one hand, the GATT, as his delegation saw it, was about regulating competitive relationships. On the other hand, the TRIPS Agreement, was not about competition. Indeed, it could be argued that the TRIPS Agreement was, in a sense, anti-competitive in nature where it sought to reward inventors. The TRIPS Agreement was about minimum standards of treatment, not about equal treatment of competitors. This was the fundamental difference between the GATT and GATS on the one hand, and the TRIPS Agreement on the other. He suggested that, if delegations wished to enter into this exercise with an open mind, he would be interested to hear those delegations which had a contrary view rebutting the legal arguments that had been put by others. Lastly, his delegation believed that, if the Council allowed non-violation to apply to the TRIPS Agreement, the balance of rights and obligations in the WTO would undergo a significant change and his delegation was not prepared for that.

112. The representative of Hong Kong, China also indicated his delegation's strong support for the proposal that had been introduced by Egypt, and thanked the representatives of Hungary and India for their comments, and the delegation of Canada for its paper. His delegation shared many of the views which these delegations had expressed. He also expressed his delegation's appreciation for the

detailed and thorough research by the Secretariat in producing the comprehensive background note (document IP/C/W/124), which his delegation had given careful consideration. He wished to highlight the following important points in the Secretariat note. First, he referred to paragraph 4, which quoted paragraph 41 of the Appellate Body Report on *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products* (document WT/DS50/AB/R), and emphasized that non-violation complaints were rooted in the GATT's origins as an agreement intended to protect reciprocal tariff concessions negotiated among the contracting parties under GATT Article II. Then, he referred to paragraph 14 and said that the relevant drafting history concerning Article 8 of the TRIPS Agreement showed that there had been a comprehensive debate during the Uruguay Round on issues relating to non-violation cases. Some Members had said before, in this and other fora, that the TRIPS Agreement represented a delicate balance of all Members' interests at the end of the Uruguay Round. The Council needed to tread carefully on Article 64.3, which was a built-in agenda item, that had the potential to affect the rights and obligations of Members under the TRIPS Agreement. His delegation's reading of Article XXIII:1(b) was that the term "benefit" in that context had traditionally been a negotiated reciprocal trade concession, which later proved to have been negated by non-tariff barriers or other policy measures adopted by another contracting party. On the other hand, the TRIPS Agreement protected the intellectual property rights of the nationals of all WTO Members. It was difficult to see the analogy between a tariff concession negotiated and accepted by all WTO Members with the multilateral recognition of rights of nationals under the TRIPS Agreement, where it could be said that nothing had been given away. Much had been said recently in another WTO body about the danger of individual Members resorting to unilateralism. There was a concern that non-violation complaints might belong to the same "generic variety". The Council needed to be further educated to allay that particular concern. His delegation therefore shared the serious concerns of many Members about the use of the non-violation remedy in the context of the TRIPS Agreement. That said, Article 64.3 was an important built-in agenda item *per se*. The Council needed to ask itself what were the possible systemic and practical implications of allowing such a remedy. Like other developing Members, Hong Kong, China did not yet have the benefit of having formally implemented the TRIPS Agreement. His delegation would therefore appreciate more education and understanding of this provision before the Council would come to any conclusion. Many of the points made by the representative of India needed to be answered.

113. The representative of Malaysia, speaking on behalf of the ASEAN countries Members of the WTO, recalled that Malaysia had co-sponsored the paper introduced by the representative of Egypt. Other ASEAN member countries had been unable to co-sponsor the paper due to logistical reasons but they fully supported the proposal it contained. He re-emphasized the fact that this subject was of extreme importance to the delegations on behalf of which he spoke for all the reasons that had been stated by several delegations in the meeting. The time-frame referred to in Article 64.2 should be extended for an adequate time until the complexity of the implications of not doing so were fully understood. Having heard the intervention by the representative of India, he was very tempted to recommend to his capital that his delegation should adopt the same position as India.

114. The representative of the United States commended the Secretariat for its excellent and thorough background note tracing the history of non-violation disputes in the GATT and the WTO. This scholarly work highlighted the high standards and limitations of this type of remedy and the safeguards associated with it and should eliminate many of the concerns that had been expressed regarding non-violation nullification and impairment disputes, particularly the concern that expiration of the moratorium would result in a large number of disputes claiming non-violation nullification and impairment. As stated at the previous meeting, the United States believed that it was appropriate for the moratorium provided by Article 64.2 of the TRIPS Agreement to expire on 1 January 2000. Prior to that time, her delegation welcomed a full discussion of the scope and modalities of non-violation complaints. The possibility of non-violation nullification and impairment disputes had been part of the GATT dispute settlement system since its beginning. Failure to allow the possibility in connection with the TRIPS Agreement would ultimately invite creative law- and regulation-writing by any Member that might be dissatisfied by particular provisions of the TRIPS Agreement and which

wished to avoid obligations. The TRIPS Agreement was part of the multilateral trading system and should provide Members with the same security and predictability that was available in relation to other WTO agreements. Her delegation believed that the benefits accruing to Members under the TRIPS Agreement could be determined as those deriving from the GATT were determined. These benefits would include national treatment and most-favoured-nation treatment accorded to each Member's nationals; the level of protection provided to each Member's nationals to each form of intellectual property covered by the TRIPS Agreement; the extension of the obligations to subject-matter existing on the date of application of the TRIPS Agreement; as well as other benefits. Some Members had expressed concern that the possibility of non-violation nullification and impairment cases had the potential to undermine Members' regulatory authority, in particular in relation to areas where governments exercised regulatory authority in support of policy objectives such as health and environmental protection. Her delegation believed that this concern was unfounded. The TRIPS Agreement was carefully negotiated to be sufficiently flexible to recognize different legal regimes and to accommodate Members' needs to achieve different policy objectives. The availability of non-violation nullification and impairment cases would merely provide security and predictability and help ensure that the TRIPS Agreement's flexibility was not misused in order to avoid legitimate obligations. The United States believed that Article 26 of the DSU provided all of the necessary assurances and safeguards for Members to handle any disputes that might arise alleging non-violation nullification and impairment under the TRIPS Agreement and to prevent any abuse of the dispute settlement process. She reiterated her delegation's strong view that the United States could not agree to the proposal that had been put forward, which would diminish the rights of Members under the TRIPS Agreement and weaken the obligations under it.

115. The representative of Mexico said that, on the basis of a preliminary consideration of the Secretariat note, her delegation had two observations. First, there was very little experience in the use of Article XXIII:1(b) and (c) under the GATT and the WTO. Second, in the GATS context, the scope of the remedy of non-violation nullification and impairment had been reduced. In view of the possible implications of Article XXIII:1(b) and (c) in the area of the TRIPS Agreement, her delegation considered it necessary for the Council to continue detailed study to define the scope and modalities of the application of these provisions in the sphere of the TRIPS Agreement, bearing in mind the specific characteristics of the provisions of this Agreement. Her delegation was grateful for the contribution made by Egypt and other Members, which she would send to her capital for study. Her capital was also analysing the paper by Canada.

116. The representative of Korea wished to put on record his delegation's strong support for those delegations that had expressed their concern about this issue. Experience from the past showed that very few non-violation complaints had been reported. In his delegation's view, this was proof of the complexity of its definition and concept, especially with regard to its scope and modalities. Moreover, under the present circumstances, where there was very limited experience, the unconditional introduction of the non-violation remedy would only cause uncertainty in the area of intellectual property. Therefore, his delegation believed that the transitional period should be extended or, preferably, the remedy should be excluded from application in the area of intellectual property.

117. The representative of Japan said that the lack of a common view on the essential elements of the remedy made the application of the non-violation clause unpredictable. In this sense, his delegation sympathized with the concern expressed by previous speakers and would be favourable to carrying out case studies on the kinds or types of possible non-violation claims. This sort of study would be practical and pragmatic. If WTO Members shared the view that certain types of governmental measures were covered by non-violation claims under the TRIPS Agreement, any Member could ascertain that such measures were to be avoided. On the other hand, if Members agreed that certain measures were not intended to be covered by non-violation claims, Members would be permitted to take such measures. Even if Members did not share the same view, each

Member could ascertain the views of other Members and could judge whether or not to implement such measures and run the risk of dispute settlement procedures being initiated against them.

118. The representative of New Zealand said that, whilst his delegation was still studying this issue, it had a number of preliminary comments, which largely echoed comments made by other delegations. He thanked the Secretariat for its background note and, in particular, its review of the jurisprudence in this area. When one looked at the Secretariat's background note and reviewed jurisprudence from the GATT and the WTO, one realized that a finding of nullification and impairment of a benefit pursuant to Article XXIII:1(b) of the GATT ultimately depended on whether the complainant party, at the time of tariff negotiations, could be assumed to have had a reasonable expectation that the other party would not introduce a measure upsetting a benefit invariably established by a tariff concession. In contrast, the notion of a benefit in the TRIPS context would appear to be quite different. The TRIPS Agreement did not provide for reciprocal tariff bindings or commitments in addition to the general rights and obligations under the Agreement itself; it was simply an agreement which sought to protect intellectual property rights at the multilateral level through minimum standards, whilst at the same time recognizing that there might well be differences in the forms of protection and in the nature of enforcement of intellectual property rights among Members. In some respects, one could say that such benefits were of a more intangible nature when they stood beside the benefits that flowed from tariff concessions. In such circumstances, his delegation believed that Canada's paper and the interventions of Egypt and Hungary, on behalf of a number of Members, and other interventions by Members, highlighted that there were differences between the GATT environment and the TRIPS environment. This was something with which Members needed to grapple as part of the review process under Article 64.

119. The representative of Sri Lanka said that most delegations which had made written submissions or oral interventions on this issue had favoured the view that the non-application of non-violation to disputes under the TRIPS Agreement for a period of only five years would not be to the benefit of developing countries. Her delegation agreed with the arguments put forward by these delegations. Even in situations where benefits had been nullified or impaired due to non-violating measures in the past, the development perspective of a country should be taken into consideration, especially in the context of the TRIPS Agreement. The limited number of non-violation cases to date showed that non-violation should apply only in a very limited way.

120. The representative of the Philippines first wished to address the textual implications of the provision under discussion. There was a proposal on the floor of the Council to extend the period of five years. Whilst Article 64.3 said that consensus was required to extend this period, it also said that the Council was supposed to discuss the scope and modalities, the outcome of which also required consensus. He submitted that, if ever the Council continued discussing this issue, and it could not achieve a consensus on extension or a consensus on scope and modalities, there was no way in which Article XXIII:1(b) and (c) would apply under the TRIPS Agreement. That was his delegation's reading of the provision. He had hoped to hear from the proponents of the application of Article XXIII:1(b) and (c) to disputes under the TRIPS Agreement, what arguments they had for the intrinsic legitimacy of those provisions as such and in relation to the TRIPS Agreement. So far, he had only heard arguments that these provisions should apply because they were already there. He would have preferred some exercise in apologetics to establish its legitimacy. Some had said that non-violation nullification and impairment was applicable in the GATT in respect of reciprocal tariff concessions, but this did not take account of the fact that in the GATT, prior to the establishment of the WTO, no panel recommendation was binding without the consent of the party that was the subject of the complaint. That safeguard no longer existed in the WTO, because a panel or Appellate Body report was inevitably adopted. This made it imperative that the Council analyse the legitimacy of the liability of Members for non-violation and situation nullification and impairment. Whilst it was true that the WTO was a contractual organization, it also had to subscribe to the general principles of law and, as far as his delegation was aware, international law had not evolved in such a way that states or Members could be penalized for acts or omissions for which they were not otherwise responsible. In

international law, the rule still was that one was liable for the consequences of breaches of contract or acts which constituted a tort. The concept of non-violation and situation complaints went further than this. It sought to render a Member liable for situations in which it had not violated any agreement and even for situations over which it had no control. When Members had entered into the WTO Agreement, they thought they had agreed to comply with certain obligations and to be responsible for compliance and to accept the consequences of any violation. They had never thought that, by entering into the WTO Agreement, they had placed themselves in the position of "insurers" of benefits *vis-à-vis* the nationals of other Members. This was essentially what non-violation and situation complaints sought to establish. He believed that Members had not intended and did not intend to assume such an obligation. In the discussions on electronic commerce, it had been said that one did not know the implications of technology for intellectual property. The advanced technology which disseminated information today was the same which subverted intellectual property over which Member governments had no control. In such a situation, he saw no wisdom or equity in establishing that Members should also be responsible in situations when intellectual property rights were subverted by technology over which Members, particularly developing country Members, had no control. He proposed that the Council attempt to discuss the scope and modalities and that, if a consensus could not be achieved, Article XXIII:1(b) and (c) would never be applicable to disputes under the TRIPS Agreement.

121. The representative of Argentina said that her delegation had followed with great interest the interventions on this agenda item. Her delegation was grateful for the new proposal which had been put forward, and hoped that it could be made available in Spanish soon, so as to facilitate its consideration by her authorities.

122. The representative of the European Communities said that it was the understanding of his delegation that, pursuant to Article 64.3 of the TRIPS Agreement, the provisions of Article XXIII:1(b) and (c) of GATT 1994 would automatically apply to disputes under the TRIPS Agreement as from 1 January 2000, unless a consensus was reached beforehand that established otherwise. However, Article 64.3 also invited the Council to determine the scope and modalities for such types of complaints by that date. He thanked the Secretariat for its background note, which provided relevant information on the history of Article 64.2 and 64.3 and gave examples of non-violation cases. It had to be underlined that these examples showed the specificity of these types of complaints, which did not require any violation of an obligation but, instead, could be based on nullification or impairment of a benefit afforded by an agreement to a Member of that agreement without a violation of that agreement. Although the TRIPS Agreement was set up as part of the results of the Uruguay Round, his delegation believed that it was not the result of negotiations on market access or tariffs on goods or services, but had established minimum standards of protection of intellectual property rights and procedures and remedies allowing right holders to enforce these rights in all Members. Everybody knew that the area of intellectual property rights was very different from other WTO areas, which was an important aspect to be taken into account during the Council's debates. One of the specific aspects of non-violation disputes was the applicable remedy; as there was no violation, there was no obligation to withdraw or modify the disputed measure. Any measure taken by a Member which was consistent with its TRIPS obligations did not need to be withdrawn. However, if the measure had the effect of nullifying or impairing benefits, a remedy should be found under the DSU rules through a mutually satisfactory adjustment. In its background note, the Secretariat had indicated that under a number of regional free trade agreements, that had similar non-violation dispute settlement provisions, not many cases had been reported of this type of dispute in respect of intellectual property. Therefore, the Council needed to look very carefully at the notion of benefits or objectives in this context. His delegation had taken note of the first comments on this concept in the debate at the present meeting and in the paper tabled by the delegations of Cuba, the Dominican Republic, Egypt, Indonesia, Malaysia and Pakistan. It had also studied carefully the paper submitted by Canada in which it was argued that the non-violation remedy was not suitable in the context of the TRIPS Agreement, as the Agreement was not principally concerned with questions of market access and did not include a commitment to a certain level of market access. However, in the view of his delegation,

he wished to make clear that well-developed intellectual property legislation, and strong protection of intellectual property rights, as provided by the TRIPS Agreement, was a means of ensuring market access. In the light of this remark, the introduction of non-violation to disputes under the TRIPS Agreement was a matter that deserved very careful consideration, because it would allow any Member to lodge a complaint against any other Member whom it considered as nullifying or impairing a benefit afforded by the TRIPS Agreement without actually violating the Agreement. However, it was important to avoid any abuse of such a possibility by Members using it in circumstances substantially different from those seen on the tariff side. His delegation had taken note of the concerns raised that the development of non-violation cases might be used to extend the law under the WTO regime. The Council should not allow this to happen. Although non-violation complaints had arisen in other areas of the WTO, careful consideration should be given to their applicability under the TRIPS Agreement, as long as it was not clear how the provisions of Article XXIII:1(b) and (c) would apply in this context. Therefore, the European Communities and their member States were ready to examine in the Council in much greater detail the scope and modalities of complaints of this type, as required by Article 64.3.

123. The representative of Canada expressed support for the proposal introduced by Egypt. For his delegation, the proposal had two parts. The first part recognized that there were many issues that had to be considered before Members could have a full understanding of what they were getting into by the lifting of the moratorium. Like the European Communities, he believed that careful consideration had to be given to these issues. His delegation's paper outlined some of its concerns in this respect, as had others at the present meeting. All these concerns required more work before one could be confident about the meaning of this type of complaint under the TRIPS Agreement. Whilst most Members were trying to work through these issues and understand the full impact of the removal of the moratorium, there were a few delegations which did not have an open mind, but had fixed positions with respect to these issues. He hoped that the Council could go through this review with an open mind, because Members had to work together. He did not believe that anyone was completely confident about what non-violation nullification and impairment meant in the TRIPS context. The second part of the proposal introduced by Egypt recognized that the Council would not get through this agenda item in time, and his delegation was coming to the conclusion that it would not be possible for it to do so. He did not want to prejudge the outcome of this review but had a good idea that it would take more than one or two meetings. On that basis, his delegation agreed with the proposal with respect to an extension of the moratorium. On the specific issues, it would be preferable to hear a defence of why Members should not be concerned. His delegation would provide more input into this process on the issues that had been raised already and any other issues that delegations might wish to raise in the coming months and would give very careful consideration to all of them. He appealed to all Members to maintain an open mind, so that the discussions could be fruitful and the result could be of benefit to all Members in the operation of the TRIPS Agreement.

124. The representative of Pakistan recalled that the proposal, which his delegation had co-sponsored and which was a moderate proposal, had already been introduced by Egypt, but the discussions held so far compelled him to make two points, both of them procedural. First, while his delegation believed that the application of non-violation complaints was not relevant to the TRIPS Agreement, it was aware of the fact that there was an opposing view. Therefore, the matter should be examined in an open-minded manner, which would require an extension of the moratorium. Second, if the moratorium was allowed to lapse, his delegation was unclear whether the Council would achieve consensus on the scope and modalities within the time-period available and, in the absence of a consensus on the scope and modalities, how would Members apply this provision? His delegation was puzzled by the effectiveness of such a provision in the absence of such a consensus on the scope and modalities. Hence, he urged the *demandeurs* of the expiry of the moratorium to be willing to consider seriously the proposal his and other delegations had made.

125. The representative of Egypt expressed his gratitude to those Members which had supported his delegation's proposal. Like Pakistan, his delegation would prefer the applicability of non-violation

complaints to be taken out of the TRIPS Agreement. However, it had tried to find a compromise so that the complexity of this issue could be seriously addressed. He urged Members who did not support this proposal to reconsider their positions, in order for a consensus on this issue to be achieved in the near future.

126. The representative of Venezuela referred to the work of the International Law Commission relating to the issue of the international liability of states for acts not contrary to law, in particular those resulting in transboundary damage. In his understanding, this work had not sufficiently developed to justify any conclusions as yet. In other words, even in fora established by the international community to deal specifically with these types of matters, it was not yet clear what responsibility or liability of a state for acts that were not contrary to international law should amount to. The TRIPS Agreement established minimum international standards to protect trade-related intellectual property rights. It was a particular element of the Agreement that it protected private rights in the national sphere, and these private rights could be ascertained under the enforcement provisions of the TRIPS Agreement. Non-violation nullification or impairment was a concept in international law relevant to economic and trade aspects. The minimum standards at the national level had sufficient guarantees under the TRIPS enforcement provisions. Should Members allow their nationals, as a result of losses suffered in their territories, to use the nullification and impairment remedy, which was intended to protect Members' trade and economic rights. In his authorities' perception, there was not sufficient GATT jurisprudence or knowledge under public international law as to how to manage this concept of non-violation nullification and impairment in the area of private rights. There was a considerable lack of information on the legal side and it could be a task that would take three or four meetings or even years to consider. Moreover, practical examples were lacking. His delegation fully supported the proposal introduced by Egypt and felt that the moratorium should be extended for at least another five years.

127. The Chairperson believed that the discussion under this agenda item had been extremely useful. Very interesting and valid points had been made that deserved the attention of all Members. Some proposals had been made by groups of Members pointing in a certain direction and there had been responses and considerable support from some delegations. Clearly, there was a need for a more in-depth analysis. There had been mention of a possible extension of the moratorium. Other Members had expressed a different opinion. There had been mention of a possible study to clarify legal and practical issues. Japan had suggested that case studies be conducted. The Council had the task to deal with the question of scope and modalities and this task would require considerable time. He suggested that the Council take note of the statements that had been made, including the specific proposals, and revert to the matter at its next meeting for a substantive debate on this subject.

128. The representative of the United States was interested in further discussion of the scope and modalities and in further analysis of this question. Her delegation would continue to study the issue and would have further substantive comments at the next meeting.

129. The Council took note of the statements made and agreed to proceed as suggested by the Chair.

#### L. INFORMATION ON RELEVANT DEVELOPMENTS ELSEWHERE IN THE WTO

##### Dispute Settlement

130. The Chairperson recalled that he had informed the Council at its previous meeting that, on 26 January 1999, the European Communities and their member States had requested consultations with the United States concerning Section 110(5) of the US Copyright Act and that Australia, Canada and Switzerland had expressed their interest to be joined in these consultations. On 15 April 1999, the EC had requested the establishment of a panel in this dispute.



M. OBSERVER STATUS FOR INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

131. The Chairperson said that a new request for observer status had been received from the International Vaccine Institute, based in Seoul.

132. The Chairperson, reporting on his informal consultations on the matter, said that the Council had now before it 12 requests for observer status from intergovernmental organizations, some of which had been pending for quite long already. Members had agreed on the importance of finding a solution to this problem as soon as possible. While it was clear from those informal discussions that it would not be possible to make a decision on the requests at the present meeting, there was a widely-shared view amongst those who had spoken that the Council should make every effort to take action on these requests at its next meeting. The point had been made that some of these organizations were specifically concerned with matters covered by the TRIPS Agreement and not only could they benefit from observer status, but they could also be of value to the TRIPS Council in its work and to Members in implementing their TRIPS obligations. He would therefore be consulting with delegations prior to the next meeting on this matter and would look to them to adopt at that time as flexible a position as possible, taking into account the specific needs of the TRIPS Council.

133. The representative of Hungary said that his delegation agreed with the view expressed by the Chairperson at the previous meeting that "While appreciating the existence of horizontal issues, it would be desirable to see if any of the requests for observer status could be dealt with in a way that would not impact on these issues". His delegation believed that there were at least a number of international organizations with pending requests for observer status whose participation and special knowledge could help the Council in its current work in the Council. For example, he believed that the participation of the *Office International de la Vigne et du Vin* ("OIV") could be beneficial and helpful in the work under Article 24.2 and especially the work under Article 23.4. His delegation could also support positive decisions on the requests of intergovernmental organizations devoting their activities mainly or exclusively to the protection of intellectual property rights, irrespective of whether those organizations were regional or had universal membership. His delegation believed that, taking into account the objective of non-interference in, or not prejudging, the debate of horizontal issues involved, the Council for TRIPS could take decisions on ad hoc observer status independently of consultations in other WTO bodies. This was becoming more and more the prevailing practice in the WTO, followed by other bodies, such as the Committee on Trade and Development and the Committee on Technical Barriers to Trade. He urged the Chairperson to continue his informal consultations along these lines.

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

N. OTHER BUSINESS

135. The representative of El Salvador said that his government, consistently with its tradition of strict implementation of its international obligations, especially those related to the WTO agreements, wished to reiterate to the Council, its firm commitment to put into practice all the obligations under the TRIPS Agreement as from 1 January 2000. He requested the Secretariat to record this statement in the minutes of the meeting.

136. The Council took note of this statement.

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