

**PREPARATORY COMMITTEE  
FOR THE  
WORLD TRADE ORGANIZATION**

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**SUB-COMMITTEE ON INSTITUTIONAL,  
PROCEDURAL AND LEGAL MATTERS**

INFORMAL CONTACT GROUP ON TRIPS

Report by the Chairman as approved by the Sub-Committee  
on 18 November

Addendum

This addendum reproduces as a single document the Secretariat note of 6 September 1994, prepared for the Informal Contact Group on TRIPS, entitled "Arrangements for Cooperation with WIPO: Checklist of Possible Areas of Cooperation", together with the Addendum to that note of 15 September 1994.

**ARRANGEMENTS FOR COOPERATION WITH WIPO:**  
**CHECKLIST OF POSSIBLE AREAS OF COOPERATION**

Note Prepared by the Secretariat

1. At its meeting of 19 July 1994, the Contact Group on TRIPS requested the Secretariat to prepare a checklist of possible areas of cooperation between WIPO and the WTO, specifying any relevant WTO provisions. In particular, the Secretariat was requested to provide information on the existing WIPO register of national legislation, including such matters as the nature of the obligation to notify in WIPO, the coverage of the WIPO notification system in relation to the TRIPS Agreement, the timing and distribution of notifications under it, and the languages in which notifications are made and circulated. The Secretariat was also requested to provide a checklist of other possible areas of cooperation between WIPO and the WTO, including in respect of other notification provisions of the TRIPS Agreement.

2. A checklist of possible areas of cooperation between WIPO and the WTO is contained in Part I of this note. Part II outlines the issues relating to the notification provisions of the TRIPS Agreement. Information on the question of possible cooperation with WIPO on the establishment of a "common register" containing laws and regulations is reproduced in Part III. Information about WIPO practices has been obtained as a result of helpful contacts with the International Bureau of WIPO.

3. The provisions of the TRIPS Agreement which refer to the general issue of the relationship with WIPO are to be found in the Preamble and in Article 68. The last indent of the Preamble reads as follows:

*"Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations."*

Article 68 states that: "In consultation with WIPO, the Council [for TRIPS] shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that organization."

4. In a document for discussion at the WIPO Governing Bodies (26 September - 4 October 1994) the Director General of WIPO proposed that the WIPO General Assembly declare that WIPO, too, desired the establishment of a mutually supportive relationship between WIPO and the WTO. He further indicated that he looked forward to the TRIPS Council's initiative for consultation with WIPO and that he would, in due course, report on these discussions to the General Assembly of WIPO and ask for the latter's agreement to the arrangements thus discussed.<sup>1</sup> The representative of WIPO also addressed the issue of cooperation between the two Organizations at the Marrakesh Ministerial meeting. A copy of his statement is at Annex 1 of this note.

**I. POSSIBLE AREAS OF COOPERATION**

5. Clearly an important precondition for cooperation between WIPO and the WTO is the adequate exchange of information between them about their respective activities, actual and planned. One basic way in which this could be secured would be arrangements providing for reciprocal observer status

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<sup>1</sup>For the outcome of the discussion in the WIPO General Assembly, see document PC/IPL/7, Annex 2.

for representatives of the two Organizations in each other's meetings. Of course, the fact that most Members of the WTO will also be members of WIPO will itself help ensure that each of the Organizations acts in the knowledge of on-going activities in the other. It would be for consideration whether any other systematic mechanism might need to be developed, in addition to the two factors mentioned above, for ensuring adequate information flows between the two Organizations.

6. In regard to more specific matters, the question of possible cooperation with WIPO would appear to arise in relation to three particular areas of work under the TRIPS Agreement. These concern notification procedures, technical cooperation and dispute settlement. These specific issues are discussed below.

(i) *Notification procedures*

The issues relating to notifications as required by the TRIPS Agreement are discussed in Parts II and III of this note.

(ii) *Technical cooperation*

The TRIPS Agreement does not refer specifically to technical cooperation to be provided by intergovernmental organizations.<sup>2</sup> However, it is a fact that WIPO has a very significant technical cooperation operation. Two questions relating to cooperation with WIPO would seem to arise:

- To what extent should the assistance of WIPO be sought in providing technical cooperation to assist countries in implementing their obligations under the TRIPS Agreement?
- If, as has been the practice in the GATT in the past, the WTO Secretariat would itself have a modest capacity to provide technical cooperation, what form of cooperation might be envisaged between the two Secretariats in the provision of technical cooperation?

It would appear that consideration of these matters will depend in part on the outcome of two questions under discussion in other contexts - outcomes which will not be known by the time of the Contact Group's September meeting:

- According to a proposal by the Director General of WIPO to the WIPO Governing Bodies (26 September - 4 October 1994) the International Bureau of WIPO should be at the disposal of any State that expressly asks for advice on questions of compatibility of their existing or planned national intellectual property legislation not only with treaties administered by WIPO, but also other international norms and trends, including the recently concluded GATT Agreement on TRIPS. The proposal also said that the

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<sup>2</sup>The only provision of the TRIPS Agreement referring to technical cooperation, Article 67, addresses technical cooperation to be provided by developed country Members. Article 67 reads as follows:

"In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel."

International Bureau should prepare studies on the implications of the TRIPS Agreement for the treaties administered by WIPO.<sup>3</sup>

- The future budgetary decisions to be taken on the resources to be made available to the WTO Secretariat and the general policy debate to be held on the question of WTO technical cooperation activities by the Preparatory Committee's Sub-Committee on Budget, Finance and Administration this autumn.

(iii) *Dispute Settlement*

Article 13.1 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes says that "each Panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate". Article 13.2 states that "Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter". Panels set up to consider complaints under the TRIPS Agreement may wish to seek information and technical advice from the International Bureau of WIPO, particularly where matters relating to provisions of Conventions administered by WIPO and incorporated by reference in the TRIPS Agreement are at issue.

7. Members of the Contact Group may have other suggestions about possible areas for cooperation with WIPO that should be explored. To assist in consideration of this, the list of the functions of the TRIPS Council as prescribed by the WTO and TRIPS Agreements that was circulated in document PC/IPL/W/1 is at Annex 2 of this note.

8. In regard to future areas of work that will be taken up by the TRIPS Council, it would be for consideration whether it is feasible to draw up as of today any advance arrangements for cooperation with WIPO or whether the question of cooperation should be considered on a case-by-case basis, on the basis of the general principles contained in the TRIPS Agreement and referred to in paragraph 3.

9. The Preamble to the TRIPS Agreement refers to a mutually supportive relationship between the WTO and WIPO. This suggests a two-way street in regard to cooperation. Therefore, the Contact Group might wish to consider not only the areas in which the cooperation of WIPO in the implementation of the TRIPS Agreement might be desirable but also what contribution the WTO could make to the activities of WIPO.

## **II. NOTIFICATION PROCEDURES**

10. This Part addresses in turn the notification provisions of the TRIPS Agreement listed in document PC/IPL/7/Add.1. That document also reproduces the texts of the relevant provisions of the Rome, Berne and Paris Conventions referred to in these provisions of the TRIPS Agreement.

**A. *TRIPS Notification Obligations not Referring to Provisions of Other IP Conventions***

**I. *Article 63.2: National laws and regulations pertaining to the availability, scope, acquisition, enforcement and prevention of the abuse of IPRs.***

11. Information on and issues relating to this notification provision are contained in Part III below.

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<sup>3</sup>For the outcome of the discussion in the WIPO General Assembly, see document PC/IPL/7, Annex 2.

2. Article 4(d): *International agreements relating to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, on the basis of which a Member seeks to justify an exception to MFN treatment.*
3. Article 69: *Contact points in the administrations of Members established with a view to cooperation in the elimination of trade in infringing goods.*

12. Neither of these provisions relate to cooperation with WIPO. The main issues that may appear to arise concern the timing of the notifications:

- Given that only agreements in force prior to the entry into force of the WTO would qualify for notification under Article 4(d), should Members be requested to notify such agreements within a certain period from entry into force of the TRIPS Agreement, for example within twelve months? A related point is what could be the situation in regard to a TRIPS Member that joined such an agreement after entry into force of the WTO Agreement?
- When should notifications be made under Article 69? On the one hand, this provision basically provides for joint action - as does Article 68 on the Council for TRIPS - and thus might be understood to be applicable for all Members from day one. On the other hand, the notification obligation is clearly an individual obligation on each Member. What then is its relation to the transition periods of Part VI?

**B. Notification Obligations Explicitly Mentioned in TRIPS and Referring to Provisions of Other IP Conventions**

4. Article 1.3: *Any Member making exceptions of the sort provided for in Articles 5(3) and 6(2) of the Rome Convention to the normal criteria for determining beneficiaries entitled to TRIPS treatment is required to make a notification as foreseen in those provisions to the TRIPS Council.*
5. Article 3.1: *Any Member making exceptions to the requirement to give national treatment of the sort provided for in Article 6 of the Berne Convention or Article 16(1)(b) of the Rome Convention is required to make a notification as foreseen in those provisions to the TRIPS Council.*

13. These two notification provisions raise similar issues. TRIPS Members who are also Members of the Berne or Rome Convention will already have had an opportunity to make notifications under the underlying provision in question of, respectively, the Berne or Rome Convention. However,

- such notifications would not have any automatic legal status under the TRIPS Agreement, which is part of a separate international treaty - the WTO Agreement;
- the TRIPS Agreement will have a different membership from that of both the Berne and Rome Conventions. A notification already made under the Berne or Rome Convention by a member of that Convention which is also a TRIPS Member cannot affect the legal relationship between that Member and another TRIPS Member not a member of the Convention in question. Moreover, TRIPS Members not members of the Rome or Berne Convention will not have had the opportunity to make such notifications. Indeed, such Members may not be aware of the notifications that have been made by those States that are members of the Rome and Berne Conventions.

14. It is for these reasons that Articles 1.3 and 3.1 of the TRIPS Agreement call for a separate notification to the TRIPS Council. The question then is: given that many of the notifications in question

have already been made under the Berne and Rome Conventions, what arrangements can be made to avoid unnecessary duplication of work and to forestall any unintended differences? One possibility would be to compile, with the assistance of WIPO and of the United Nations Legal Office<sup>4</sup>, a complete listing of the notifications already made under the relevant provisions of the Berne and Rome Conventions. This could be circulated to the TRIPS Council, with one of two procedures envisaged:

- Each notification made under those Conventions by a TRIPS Member would be taken as being also a notification to the TRIPS Council under the relevant provision of the TRIPS Agreement, unless the Member concerned indicated to the contrary within a certain period, say 60 days.
- Alternatively, Members could be given a period within which to send in writing confirmation of their earlier notification or to notify something different. If no communication were received from a Member, no notification would be valid under the TRIPS Agreement for that Member.

15. In either case, Members of the TRIPS Agreement who are not members of the Berne or Rome Convention would have to make *de novo* notifications to the TRIPS Council if they wish to benefit from the exception possibilities in question under Articles 1.3 and 3.1 of the TRIPS Agreement.

16. As for the timing of the notifications, the provisions in Article 3.1 relate to national treatment and thus come into effect for all TRIPS Members one year after entry into force of the WTO. Article 1.3 also has a relation to national treatment since it determines the foreign nationals eligible for such treatment - the persons, natural or legal, linked with other Members to whom the benefits of the Agreement must be accorded. It will thus be necessary for these notification procedures to be in place in time for the notification to be effective from the beginning of 1996 (assuming the WTO Agreement enters into force on 1 January 1995). In this regard, it should be noted that, under the provisions of the Rome Convention in question, the notifications can be made either at the time of "ratification, acceptance or accession" or at any time thereafter, but in the last case only become effective six months later. As regards the first group of possibilities, for notifications to be deposited at the time of "ratification, acceptance or accession", it would presumably be acceptable for a government to make the notifications along with its deposit of its instrument of acceptance to the WTO Agreement, if it so wished; this would then be regarded as a notification "to the Council for TRIPS" for the purposes of Articles 1.3 and 3.1 of the TRIPS Agreement. In regard to the last possibility under Articles 5(3), 6(2) and 16(1)(b) of the Rome Convention - that notifications can be made at any time after deposit of the instrument of acceptance but only become effective six months later - any procedures along the lines of those discussed in paragraphs 14 and 15 would need to be in place early next year so that they can be used before the middle of the year and so that the notifications could then be effective by 1 January 1996.

17. In regard to subsequent notifications, whether under the TRIPS Agreement or under the Berne and Rome Conventions, the normal exchange of information and documents between WIPO and the United Nations, on the one hand, and the WTO, on the other, will ensure that notifications made in one context become known to the Secretariats of the other Organizations. When, as a result, it becomes known to the WTO Secretariat that a notification has been made to WIPO or the United Nations by a TRIPS Member, the WTO Secretariat could check with the WTO Member concerned to establish whether that Member wished also to make the notification to the TRIPS Council.

6. *Article 63.2: The TRIPS Council is required to consider, in connection with the consultations with WIPO on the establishment of a common register of laws and*

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<sup>4</sup>The Secretary-General of the United Nations is the depositary of the Rome Convention.

*regulations, any action required regarding notifications pursuant to the obligations under the TRIPS Agreement stemming from the provisions of Article 6ter of the Paris Convention. Article 6ter concerns protection against the use or registration as trademarks without authorization of state emblems, official hallmarks and the emblems of intergovernmental organizations.*

18. The discussion in paragraph 13 about the applicability of notifications already made under provisions of the Berne and Rome Conventions to the legal rights and obligations under the TRIPS Agreement that flow from the incorporation in the TRIPS Agreement of the notification provisions of the Berne and Rome Conventions in question would also appear to be relevant to the issue of the incorporation in the TRIPS Agreement of the provisions of Article 6ter of the Paris Convention. However, any understanding that, where provisions of the Paris and other existing international conventions are incorporated in the TRIPS Agreement, references to the International Bureau, the Director General of WIPO, the Secretary-General of the United Nations etc. should be construed for TRIPS purposes, on a *mutadis mutandis* basis, as references to the WTO institutional machinery, would not preclude a TRIPS Council decision to request the International Bureau of WIPO to handle on its behalf any particular notification function.

19. Indeed, there would appear to be much sense in exploring such an approach in regard to the administration of TRIPS obligations stemming from the incorporation by reference of Article 6ter of the Paris Convention. Given that all the substantive provisions of the Paris Convention, in its latest version, have to be complied with by TRIPS Members, it can be expected that the large majority of TRIPS Members will be members of that version of the Paris Convention. Therefore, they will be making the notifications in question anyway to the International Bureau. Moreover, it would seem that there would be much merit in a single, comprehensive system for the administration of notifications relating to the provisions of Article 6ter of the Paris Convention, not only to avoid wasteful duplication but also for the convenience of governments and business. Of course, in any such single administration of these provisions, it would have to be made clear whether the notifications are being made pursuant to obligations under the Paris Convention, under the TRIPS Agreement, or under both, since some difference in membership and therefore of the scope of obligations may well remain.

20. A description of the procedure currently employed by the International Bureau for the implementation of Article 6ter of the Paris Convention, which has been kindly supplied by the International Bureau of the WIPO, can be found at Annex 3.

21. If it were thought desirable to explore with WIPO the possibility of the International Bureau undertaking, in conjunction with its existing administration of the notification provisions under Article 6ter of the Paris Convention, the administration of TRIPS obligations flowing from the incorporation by reference of the same provisions, the following elements might be considered as a basis for possible consultations with WIPO:

- The existing stock of notifications that have been communicated among members of the Paris Convention, through the intermediary of the International Bureau, could be understood as also constituting communications under the TRIPS Agreement by TRIPS Members which are also members of the Paris Convention.
- It would also be understood that this existing stock would be applicable to those Members of the TRIPS Agreement which are not members of the Paris Convention or to which certain provisions of Article 6ter of the Paris Convention (1967) do not apply since they are not members of the 1967 version of the Paris Convention. To the extent that, for reasons indicated in the previous sentence, such TRIPS Members have not already had the opportunity to make objections under the provisions of

Article 6ter(4) of the Paris Convention, a twelve-month period for such objections would be granted.

- A TRIPS Member which had not had the opportunity to make notifications under the Paris Convention would be able to make communications of the sort provided for in Article 6ter, through the International Bureau, to other TRIPS Members. These other TRIPS Members would have the possibility to make objections, again through the International Bureau, to such communications, as provided for in Article 6ter(4).
- Additional communications made by TRIPS Members or modifications by them of existing communications would be administered by the International Bureau, wherever possible, as being notifications both under TRIPS and under the Paris Convention. In addition, the International Bureau would administer any notifications which are only applicable under TRIPS.

Any arrangements worked out with WIPO would have to take account of the differing transition periods provided under the TRIPS Agreement for the application of the provisions of Article 6ter of the Paris Convention.

**C. Other Notification Provisions of IP Conventions Incorporated by Reference into the TRIPS Agreement, but not Explicitly Referred to in TRIPS**

22. A general issue that might be discussed is what, if any, difference in treatment of these notification provisions might be warranted by the fact that they have not been explicitly referred to in the TRIPS Agreement. As regards more specific matters, the Contact Group might find that its consideration of the notification provisions referred to earlier in this note might provide useful guidance for any procedures that might be considered desirable to give effect to these notification provisions. It might therefore be advisable not to burden the discussion at this stage by also going in detail into these notification provisions.

### **III. NOTIFICATION OF NATIONAL LAWS AND REGULATIONS**

23. The TRIPS obligation to notify national laws and regulations is contained in Article 63.2 of the TRIPS Agreement, the relevant part of which reads as follows:

"Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful."

The laws and regulations referred to in paragraph 1 of Article 63 are those "made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights)".

**A. The WIPO System**

24. The WIPO system for providing transparency in respect of national laws and regulations is based on the obligations in Article 15(2) of the Paris Convention and Article 24(2) of the Berne



Convention to communicate to the International Bureau all new laws and official texts. The WIPO system has two elements:

- Two extensive collections of national laws and regulations (one on industrial property and one on copyright and neighbouring rights) which are held in the International Bureau. Material from the collection is available for consultation by any interested person, whether from governments or the general public.
- A proportion of this material, consisting in particular of the main intellectual property laws of the member countries of WIPO, is published by the International Bureau in the WIPO journals (*Industrial Property* and *Copyright*) and since April 1994 also in CD-ROM format.

In what follows, the first element is referred to as the "**WIPO collections**" and the latter element the "**WIPO published laws**".

25. It might be noted that, even though the word "register" was employed in Article 63.2 in the apparent belief that it was a word used in the WIPO in connection with their collections of national laws and regulations, the word is not in fact used in WIPO in this connection. The point has been made in our contacts with the International Bureau that the use of the word "register" could be taken as suggestive of a process of authentication or approval. If this connotation is not intended, it might be preferable to avoid the use of the word "register".

26. The basic information about the WIPO system is presented in two synoptic tables. Table 1 provides information on the two aspects of the WIPO system - the WIPO collections and the WIPO published laws - in relation to the requirements of Article 63.2 of the TRIPS Agreement. It deals with the legal basis and source of notifications and their coverage. Table 2 provides information on the procedural or mechanical aspects of the WIPO system, in relation to such matters as languages of notification, scope of distribution, languages of distribution, responsibility for translation, form in which notifications are distributed, timing of notifications and timing of distribution. In this Table, information is also included on how such matters have generally been handled in the GATT framework in the past. This information has been included both because the notification provision of Article 63.2 was no doubt inspired by comparable provisions which appear in most agreements under the GATT system and also because Article XVI:1 of the Agreement Establishing the WTO provides that "Except as otherwise provided under this Agreement or the Multilateral Trade Agreements, the WTO shall be guided by the decisions, procedures and customary practices followed by the contracting parties to GATT 1947 and the bodies established in the framework of GATT 1947."

27. In regard to Table 1, a number of differences between the TRIPS requirements and the WIPO system may be noted.

- One difference concerns to whom the notifications are made. In the WIPO, texts are required to be communicated by governments to the International Bureau. Under the TRIPS Agreement, the obligation is to notify laws and regulations to the TRIPS Council, i.e. to the Members of the TRIPS Agreement.
- Some areas of law covered by the TRIPS notification obligation are not presently fully covered by the WIPO system.

It should also be recalled that the membership of WIPO and of WIPO Conventions will not be the same as that of the WTO. In particular, governments eligible to be WTO Members which are not States

**TABLE 1**

	<b>WIPO System</b>		<b>Article 63.2 of TRIPS</b>
	<b>Published Laws</b>	<b>Collection</b>	
<b>Source</b>	Notifications by member States.	Notifications by member States and other material obtained from reliable sources.	Notifications by Members.
<b>Legal basis for notifications</b>	Article 15(2) of the Paris Convention and Article 24(2) of the Berne Convention require members of those Conventions to communicate to the International Bureau "all new laws and official texts" concerning the protection of industrial property and copyright respectively. The Rome Convention does not contain such an obligation. However, Article 8 of the Phonograms Convention requires members to communicate to the International Bureau all new laws and official texts on the protection of phonograms.		Article 63.2 of the TRIPS Agreement requires Members to notify to the TRIPS Council laws and regulations pertaining to the subject matter of the TRIPS Agreement (subject to outcome of consultations with WIPO on the establishment of a common register).
<b>Coverage</b>			
<b>1. The type of legal instrument</b>	The more important laws. Regulations are rarely published.	Laws and regulations (not judicial decisions and administrative rulings).	Article 63.2 of the TRIPS Agreement requires the notification of "laws and regulations".
<b>2. Country coverage</b>	The obligations under Paris, Berne and the Phonograms Convention apply to the members of those Conventions. However, the periodic requests by the International Bureau to notify legislation is sent to all WIPO member countries.		The TRIPS notification obligation will apply to all WTO member countries.
	Focuses more on the laws of the more active countries in IP terms.	Includes legislation on a wide range of countries, including some not members of WIPO or of the relevant conventions.	
<b>3. Areas of law</b>	All main areas of intellectual property. But little on the protection of undisclosed information and those aspects of enforcement and the prevention of the abuse of IPRs not to be found in national laws specifically on intellectual property.		The TRIPS obligation is to notify laws and regulations pertaining to the availability, scope, acquisition, enforcement and prevention of the abuse of the seven categories of intellectual property covered by the TRIPS Agreement.

**TABLE 2**

	WIPO System		General GATT Practice
	Published Laws	Collection	
<b>Language(s) of notification</b>	Notifications are usually in the national language of the country concerned, but frequently translations, usually in English, are also provided.	As for published laws.	One or more of the official GATT languages. Under some agreements, members are also asked to make available a copy of the legislation in the original language.
<b>Language(s) of distribution/Responsibility for translation</b>	English and French texts are published simultaneously. WIPO's translation services undertake any translation necessary into English and French.	The languages of original notification or other source, together with the English and French texts where published in WIPO. No translation additional to that in respect of the published material is undertaken.	The GATT language in which the legislation is notified. Original language text, if notified, is available in Secretariat for consultation by interested delegations. Under some agreements (e.g. dumping and subsidies) translations into the other GATT languages are normally made by the GATT Secretariat. Under some other agreements, translation into another GATT language by the GATT translation services is provided for on request.
<b>Distribution/access</b>	That part of national legislation which is published is done so as pull-out supplements to the journals of the WIPO - <i>Industrial Property and Copyright</i> - which are distributed to member governments and subscribers from the public. These supplements are designed to be filed separately as collections of laws and treaties. The complete collection is also available for sale. As of April 1994, the published material can also be obtained on CD-ROM from the WIPO in the IP-LEX system. The collection on CD-ROM is updated quarterly.	The material in the WIPO collection, other than that which is published, is not distributed. It is available for consultation by governments and members of the public in the offices of the International Bureau. In the area of industrial property, a country-by-country index of available material is available for consultation.	Notifications are distributed as documents of the relevant committee and made available in the number of hard copies requested by the members and observers concerned (certain particularly voluminous documents may be made available in more limited quantities only). After derestriction (usually within a year or so), access to the documents is made available to the general public. GATT documents are also put in machine-readable form and available to delegations and the public (after derestriction) on diskette.

**TABLE 2 (cont'd)**

	WIPO System		General GATT Practice
	Published Laws	Collection	
<b>Form in which notifications are distributed or otherwise made available</b>	Legislation wherever possible is published in consolidated form. The consolidation, if not available from the country concerned, is undertaken by staff of the International Bureau, but checked with the authorities of the country in question before publication.	Apart from the consolidation undertaken of legislation to be published, laws and regulations are held in the form notified or available from other sources.	The notifications are generally distributed in the form supplied by governments.
<b>Timing of notifications</b>	The Berne and Paris Conventions require that new laws and official texts be communicated to the International Bureau promptly. In addition, the International Bureau circulates to member States every two years a request to submit any new legislation.		Notifications are generally required as soon as possible after the entry into force of the relevant provisions for the country in question and after any subsequent changes to national legislation.
<b>Timing of distribution</b>	A delay of six months to one year before publication would not be unusual. Publication of amendments usually awaits the accumulation of sufficient changes to the underlying law to warrant the publication of a new consolidated text.	No distribution. Additional material is incorporated in the collection without delay.	Promptly after receipt - usually one to two months.

do not have the possibility of joining WIPO or most of its Conventions. However, the WIPO collection and even its published laws are not, in practice, limited to the legislation of WIPO members.

28. Table 2 compares the procedural aspects of the WIPO system with the customary GATT practice in regard to notification obligations of the sort found in Article 63.2 of the TRIPS Agreement. In summary, under GATT practice the emphasis has been put on the rapid distribution of a sufficient number of hard copies of the texts notified to the members of the competent committee in order to provide a basis for that committee's consideration of the legislation in question at a forthcoming meeting. The rôle of notification obligations in providing the basis for a permanent database for consultation by delegations and, after derestriction, by members of the general public has been largely incidental. Under the WIPO system, this latter rôle has been the predominant one. Indeed, the texts in question are not distributed to the members of the relevant WIPO bodies as such; some of the texts are published, after an inevitable delay, and are received therefore by member States in the same way as private persons who subscribe to the publications in question. The closest GATT parallel to the WIPO collections is probably the tariff information held in the Secretariat, where an attempt is made to obtain from contracting parties a comprehensive collection of national customs tariffs and to provide an information service, on request, to the public at large as well as to governments.

29. It might also be of interest to note that UPOV has a notification system and collection of implementing legislation of member countries. Under the 1978 and 1991 UPOV Conventions there is a procedure by which each applicant country is required to submit, prior to depositing its instrument of adherence, a copy of its implementing legislation and seek from the Council of the Convention in question advice on its conformity with the provisions of that Convention. Under the 1991 Act there is also a requirement that any changes in legislation be notified. Notified legislation is distributed in the UPOV Gazette and Newsletter to members and to other recipients. The complete legislation of UPOV members is also published as a collection in a form susceptible to periodic updating.

### ***B. Issues for Discussion***

30. In order to consider the scope for the establishment of a common system for the notification of national legislation between WTO and the WIPO, it will be necessary for the WTO Members to be clear about the basic purpose or purposes that they wish the notification system to serve and how such a system might best operate from the TRIPS perspective. In general terms, there are two basic purposes that an obligation to notify national legislation can serve:

- the provision of a database for ongoing reference purposes; and
- facilitating the monitoring of the operation of an agreement.

These two functions can of course be complementary, and not mutually exclusive. As mentioned earlier, the emphasis in the WIPO system would appear to be on the first of these two functions. Traditionally in the GATT the emphasis has been on the latter. This function would also seem to be envisaged in the TRIPS Agreement since the notification obligation figures in Part V of the Agreement entitled "Dispute Prevention and Settlement" and the provision states that the purpose of the notifications is to assist the Council for TRIPS in its review of the operation of the Agreement.

31. The central question to be considered is whether a common notification and collection system for national legislation should be established or whether complementary systems, cooperating wherever possible, should be envisaged. The answer to this will in part depend on whether the basic purposes of the two systems can be efficiently met by a common system. An important issue in this connection is whether the nature of the obligation in Article 63.2 is such that it will, in any event, be necessary for each WTO Member to identify in written notifications to the TRIPS Council its specific laws and

regulations that "pertain to the subject matter" of the TRIPS Agreement and hence implement its obligations under it. If so, the fact that legislation is submitted to or contained in a collection, whether run by WIPO alone or common to WIPO and the WTO, would not replace the need for some form of TRIPS-specific notification. Another general issue is that, in the event that a common system were to be established, the question of cost sharing between the two Organizations would have to be considered.

32. The sub-sections of this note which follow raise a number of practical issues, both in regard to what WTO Members would seek to achieve under Article 63.2 and in regard to possible cooperation with WIPO in so doing. The sub-sections address the questions of arrangements for the submission of notifications, for their distribution and for their translation.

(i) The submission of notifications

33. To what extent can it be agreed that a single notification made by a government would be treated as meeting its obligations under WIPO and under the TRIPS Agreement? If it is considered that it will, in any event, be necessary for each government to identify its TRIPS implementing legislation, the following questions arise:

- Where a government has already communicated the legislation in question to WIPO and it figures in the WIPO collections (in an appropriate language - see below), would it be acceptable for the government in question simply to provide the WTO Secretariat with a list of the legislation in question and a statement to the effect that the full texts can be found in the WIPO collections?
- As regards new legislation required to give effect to the TRIPS Agreement or subsequent amendments, it will be necessary for the texts to be notified in full as being a notification to meet the requirements of Article 63.2. In this situation, could an arrangement be established under which a single notification would be accepted as meeting the requirements of the TRIPS Agreement and those of the WIPO system? If so, any notification received by the WTO Secretariat could automatically be forwarded to the International Bureau of WIPO for inclusion in the WIPO collections and possible publication and, reciprocally, any notification to the International Bureau which made it clear that the legislation in question was part of the TRIPS implementing legislation could be automatically forwarded by the International Bureau to the WTO Secretariat, where it would be treated as a notification under Article 63.2 of the TRIPS Agreement.

34. A further point which might be considered in relation to the nature of notifications that should be made is what type of notification would be appropriate, from the perspective both of the burden on the notifying country and of the utility to the TRIPS Council, in regard to those aspects of the TRIPS Agreement for which implementing legislation would not be found in specific intellectual property laws or other narrowly-focused laws, such as on customs enforcement, but would be found in more general legislation, which could be quite voluminous. Examples of this would be the procedural obligations relating to enforcement, which might relate to many parts of the code of civil procedures, and the provisions on the prevention of abuse of IPRs where much of a country's competition laws might have relevance. One technique that has been employed in the GATT in the past (in the Committees on Customs Valuation and Government Procurement), as a complement to the basic notification obligation, has been to ask each member country to provide responses to a checklist of issues on the main elements of its legislation for circulation to the Committee.

(ii) Distribution of notifications

35. A basic question is whether the WTO Members would wish that all legislation notified under Article 63.2 be distributed to Members. This has been the normal practice in GATT Agreements which have similar notification provisions. However, under the Tokyo Round Agreement on Government Procurement, the Committee in question agreed that, whereas the complete texts of national laws, regulations and procedures should be submitted to the Secretariat and be available to members for inspection, only the basic documents relating to the implementation of the Agreement would be circulated to the Committee (GPR/M/1, paragraph 16). In the light of the likely volume of texts relevant to the implementation of the TRIPS Agreement, it would be for WTO Members to consider whether a similar practice should be adopted. It could be supplemented with a requirement that, in respect of laws and regulations not characterized as basic texts and not circulated, a listing of such laws and regulations, together with a brief summary of their contents and reference to the TRIPS Agreement, would be made available to TRIPS Members by the notifying Member. Moreover, provision could be made for any text to be circulated to all Members on the request of a Member of the Council for TRIPS.

36. As regards cooperation with WIPO, the question arises as to what extent can arrangements be made to avoid the duplication of publication of laws under the WIPO system and distribution of the texts of the same laws to TRIPS Members in pursuance of Article 63.2. It will be recalled that, under the WIPO system, the texts of laws and regulations notified are not distributed to member governments, except to the extent that they are published in the WIPO journals (in English and French) and on CD-ROM, that few regulations and not all laws are published by WIPO, and that there is usually a delay (up to one year) between the date of enactment of a legislative text and its publication by WIPO.

37. Two specific points might be considered in relation to the avoidance of duplication of the circulation of those texts which the WTO Members consider it necessary to be circulated:

- Where a law or regulation notified pursuant to Article 63.2 has already been published by WIPO, would this obviate the need for any further distribution of the text to TRIPS Members? If so, the TRIPS Members could simply be informed that the law has been notified under Article 63.2 and where its text can be found in the WIPO published laws.
- Where a law or regulation notified pursuant to Article 63.2 is not yet, but is planned to be, published by WIPO, would this obviate the need for immediate distribution to TRIPS Members? One possibility in such an instance would be not to distribute the text but to give information on WIPO publication plans. The text would then only be distributed in advance of WIPO publication if a specific request was made.

(iii) The translation of notifications

38. The normal practice in the GATT has been to require the notification by the member concerned of its laws and regulations in one of the GATT languages (sometimes together with submission of the original version, to be available for consultation by interested delegations). In some agreements, translation by the GATT Secretariat into the other GATT languages has been normal whereas, in some others, provision has also been made for translation into a second GATT language to be effected by the GATT Secretariat only on the request of a member of the committee in question. Under the Tokyo Round Agreement on Government Procurement, it was agreed that only the basic documents relating to the implementation of the Agreement, the ones that would be circulated to the Committee, need be submitted in a GATT language. The question thus arises as to what decision should be reached under the TRIPS Agreement in connection with the languages of (i) notification and (ii) distribution of notifications.

39. If the GATT practice of requiring the notification of legislation in a GATT language were to be maintained, the following synergies between the WTO and the WIPO in regard to any translation necessary would present themselves:

- If arrangements were made along the lines of those discussed in paragraph 37 in respect of texts that have been published or are planned for publication by WIPO, the question of translation would already be regulated under the WIPO practice in this regard (except where a request was made for the advance distribution to the Council for TRIPS of a text planned for publication by WIPO).
- On the other hand, where a law is new and has been notified to the WTO in either English or French (of the three WTO languages), the fact that the translation would already have been undertaken by the notifying country would be of assistance to the International Bureau in the process of preparation of the law in question for publication. Similarly, if the WTO Secretariat had made a translation of such a law into another WTO language, this could also be taken advantage of by the International Bureau.



ANNEX 1

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

**MTN.TNC/MIN(94)/ST/33**  
12 April 1994  
General Distribution  
(UR-94-0148)

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**Trade Negotiations Committee  
Meeting at Ministerial Level  
Marrakesh (Morocco), 12-15 April 1994**

**Original: English**

**WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)**

Statement by Mr. Daniel Gervais, Head, Copyright Projects Section  
on behalf of the Director General

On behalf of the Director General of the World Intellectual Property Organization (WIPO), Dr. Arpad Bogsch, it is a great honour to speak at this meeting, the last of the Uruguay Round Trade Negotiations Committee.

We have noted that WIPO is mentioned four times in the text of the Final Act to be signed Friday, more precisely in the Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods, known as "TRIPS". We are happy about those references, in particular in so far as they relate to cooperation between WIPO and the World Trade Organization.

WIPO will be glad to cooperate with the WTO as soon as the new organization will have been established, and before that with its Preparatory Committee, just as we cooperated with the GATT Secretariat in the past, notably by providing full information every time a request was made.

This mutually beneficial cooperation should avoid any duplication, due account being taken of the complementary nature of both organizations. One could mention for example the publication of national laws.

WIPO will also be glad to provide advice on the interpretation of obligations arising under the international conventions that we administer, including the Paris and Berne Conventions.

As regards any other matters in which both organizations may have a joint interest, WIPO is constructively looking forward to the initiatives to be taken by the future TRIPS Council.

## ANNEX 2

### FUNCTIONS OF THE TRIPS COUNCIL AS PRESCRIBED BY THE WTO AND TRIPS AGREEMENTS

Excerpt from document PC/IPL/W/1

1. The *Council for TRIPS* shall oversee the functioning of the *Agreement on TRIPS* and shall carry out the functions assigned to it by the *Agreement on TRIPS* and by the *General Council (WTO Agreement, Art. IV:5)*.
2. The *Council for TRIPS* shall establish subsidiary bodies as required which shall establish their respective rules of procedure subject to the approval of the *Council (WTO Agreement, Art. IV:6)*.
3. The *Council* may also submit to the *Ministerial Conference* proposals to amend the provisions of the *Agreement on TRIPS (WTO Agreement, Art. X:1)*.  
General Functions
4. In the case of an interpretation of the *Agreement on TRIPS* the *Ministerial Conference* and the *General Council* shall exercise their authority on the basis of a recommendation by the *Council for TRIPS (WTO Agreement, Art. IX:2)*.
5. A request for a waiver concerning the *Agreement on TRIPS* shall be submitted initially to the *Council for TRIPS* for consideration during a time-period which shall not exceed 90 days. At the end of the time-period the *Council* shall submit a report to the *Ministerial Conference (WTO Agreement, Art. IX:3(b))*.
6. The *Council for TRIPS* shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights (*Agreement on TRIPS, Art. 68*).
7. The *Council for TRIPS* shall carry out such other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures (*Agreement on TRIPS, Art. 68*).
8. In carrying out its functions, the *Council* may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the *Council* shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization (*Agreement on TRIPS, Art. 68*).  
Review and Amendment
9. The *Council* may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement (*Agreement on TRIPS, Art. 71:1*).
10. The *Council* shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The *Council* shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter (*Agreement on TRIPS, Art. 71:1*).
11. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the *Ministerial Conference* for action in accordance with paragraph 6 of Article X of the *WTO Agreement* on the basis of a consensus proposal from the *Council (Agreement on TRIPS, Art. 71:2)*.  
Notification
12. Members shall notify the laws and regulations referred to in paragraph 1 to the *Council for TRIPS* in order to assist that *Council* in its review of the operation of this Agreement. The *Council* shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the *Council* if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful. The *Council* shall also consider in this connection any action

required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6~~ter~~ of the Paris Convention (1967) (*Agreement on TRIPS*, Art. 63:2).

13. Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the *Council for TRIPS* (*Agreement on TRIPS*, Art. 1:3).
14. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the *Council for TRIPS* (*Agreement on TRIPS*, Art. 3:1).
15. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member: ... (d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the *Council for TRIPS* and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members (*Agreement on TRIPS*, Art. 4:(d)).

#### Transitional Arrangements

16. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of ten years from the date of application as defined under paragraph 1 of Article 65. The *Council for TRIPS* shall, upon duly motivated request by a least-developed country Member, accord extensions of this period (*Agreement on TRIPS*, Art. 66:1).

#### Geographical Indications

17. The *Council for TRIPS* shall keep under review the application of the provisions of this Section [Geographical Indications]; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the *Council*, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The *Council* shall take such action as may be agreed to facilitate the operation and further the objectives of this Section (*Agreement on TRIPS*, Art. 24:2).

#### Further work on Specific Points

18. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the *Council for TRIPS* concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system (*Agreement on TRIPS*, Art. 23:4).
19. Members may also exclude from patentability: ... (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective *sui generis* system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement (*Agreement on TRIPS*, Art. 27:3).
20. During the time period referred to in paragraph 2, the *Council for TRIPS* shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the *Ministerial Conference* for approval. Any decision of the *Ministerial Conference* to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process (*Agreement on TRIPS*, Art. 64:3).

### ANNEX 3

#### PROCEDURE FOLLOWED FOR THE IMPLEMENTATION OF ARTICLE 6<sup>ter</sup> OF THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

##### Information Supplied by the International Bureau of WIPO

#### I. States Party to the Paris Convention

States desiring, under Article 6<sup>ter</sup>(3)(a) of the Paris Convention for the Protection of Industrial Property of 20 March 1883, revised at Stockholm on 14 July 1967, to communicate to the other States party to the Convention the list of armorial bearings, flags and other State emblems, and official signs and hallmarks indicating control and warranty, that they wish to have protected under Article 6<sup>ter</sup>(1)(a) of the Convention, must take the following steps:

- (1) send to the International Bureau of WIPO, in the form of a simple letter signed by the competent national authority, a request for communication under Article 6<sup>ter</sup>(3)(a) of the Paris Convention of the armorial bearings, flags and other State emblems, and official signs and hallmarks indicating control and warranty, that they wish to have protected under Article 6<sup>ter</sup>(1)(a);
- (2) attach to the request 600 reproductions, preferably on DIN A4 size sheets (297 mm x 210 mm), of the relevant armorial bearings, flags and other State emblems, and official signs and hallmarks indicating control and warranty;
- (3) provide in English and French any information accompanying the reproductions.

Upon receipt of the required documents, the International Bureau prepares and sends a diplomatic Note to the Ministries for Foreign Affairs of the countries party to the Paris Convention for the purpose of communicating the reproductions of the signs for which protection is sought. A copy of that Note is sent, together with the reproductions, to the Industrial Property Offices of those countries.

Under Article 6<sup>ter</sup>(4), any country party to the Paris Convention may, within a period of twelve months from the receipt of the notification, transmit its objections, if any, through the intermediary of the International Bureau, to the country concerned.

#### II. International Intergovernmental Organizations

International intergovernmental organizations desiring, under Article 6<sup>ter</sup>(3)(b) of the Paris Convention for the Protection of Industrial Property of 20 March 1883, revised at Stockholm on 14 July 1967, to communicate to the States party to the Convention the list of armorial bearings, flags, other emblems, abbreviations and names that they wish to have protected under Article 6<sup>ter</sup>(1)(b) of the Convention, must take the following steps:

- (1) send to the International Bureau of WIPO, in the form of a simple letter signed by the Head of the organization concerned or an officer of that organization duly authorized by him, a request for communication under Article 6<sup>ter</sup>(3)(b) of the Paris Convention of the armorial bearings, flags, other emblems, abbreviations and names that the said organization wishes to have protected under Article 6<sup>ter</sup>(1)(b);

- (2) attach to the request 600 reproductions, preferably on DIN A4 size sheets (297 mm x 210 mm), of the armorial bearings, flags, other emblems, abbreviations and names for which protection is requested;
- (3) provide in English and French any information accompanying the reproductions;
- (4) attach a copy in English or French of the Statutes of the organization submitting the request and a list of the member States of that organization, except in the case of an organization belonging to the United Nations system or an organization that has already communicated such information to WIPO.

Upon receipt of the required documents, the International Bureau checks whether the organization concerned is entitled to request protection under Article 6*ter*. If so, the International Bureau prepares and sends a diplomatic Note to the Ministries for Foreign Affairs of the countries party to the Paris Convention for the purpose of communicating the reproductions of the signs for which protection is sought. A copy of that Note is sent, together with the reproductions, to the Industrial Property Offices of those countries.

Under Article 6*ter*(4), any country party to the Paris Convention may, within a period of twelve months from the receipt of the notification, transmit its objections, if any, through the intermediary of the International Bureau, to the organization concerned.