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Negotiating Group on Trade-Related
Aspects of Intellectual Property Rights,
including Trade in Counterfeit Goods

MEETING OF NEGOTIATING GROUP OF 17-21 OCTOBER 1988

Chairman: Ambassador Lars E.R. Anell (Sweden)

Note by the Secretariat

1. The Negotiating Group adopted the agenda as set out in GATT/AIR/2679.

Trade-Related Aspects of Intellectual Property Rights

2. A participant presented some further thoughts elaborating on submissions and oral presentations made at previous meetings of the Group. In regard to the Negotiating Objective, he said that the reason why there were disagreements was because of differences in views on substance, not because the Negotiating Objective was not clear. The Negotiating Objective should not be used as a pretext for not undertaking the work that the Group had been asked to do. Its first paragraph neither compelled a negotiation of new rules and disciplines nor prohibited it, but it did reflect an expectation that new rules would be elaborated if found appropriate to reduce impediments and distortions to international trade. Each participant had the right to propose new rules and disciplines to this end and have them discussed. Participants could of course legitimately object to such proposals, but such objections should be founded on a belief that such proposals did not reduce distortions and impediments to international trade, or that they were counter to other objectives of the Group. With regard to existing GATT Articles affecting intellectual property rights, he was of the view that a broad common understanding, rather than an agreement on all the details, was all that was required to enable a discussion of the appropriateness of new rules and disciplines. It was paradoxical that some participants, on the one hand, claimed that intellectual property right legislation was not covered by references in the General Agreement to national laws, rules and regulations and, yet, were reluctant to discuss the elaboration of new rules and disciplines; and that other delegations, like his own, believed that GATT provisions had a wide application in the field of intellectual property rights, and at the same time concluded that the elaboration of new rules and disciplines was necessary. If general GATT provisions such as those in Articles I and III did not apply to intellectual property rights, what would then be the need for

Article XX(d), which provided an exception from other GATT provisions, and what would be the meaning of the requirement in that provision that intellectual property right legislation enforced using that Article must itself be consistent with the GATT. It was clear that the Council had taken the broader view that several GATT Articles covered national intellectual property right provisions as they affected trade. It was difficult to see

how the interpretation of the relevant Articles could be different in substance from that set out in Annex II of the Chairman's letter of 11 August.

3. The representative of Norway, speaking on behalf of the Nordic countries, presented a submission on the issue of substantive standards/norms in a GATT context. This submission, which elaborates on the five points his delegation had made to the Group at its previous meeting (MTN.GNG/NG11/9, paragraph 27), has been circulated as document MTN.GNG/NG11/W/29.

4. Some participants said that the text of the Group's Negotiating Objective had been carefully drafted to steer clear of a discussion of substantive standards. Statements made by some delegations after the Punta del Este Declaration had recognised that the protection of intellectual property rights per se was not within the jurisdiction of GATT. They stressed the importance of the third paragraph of the Group's Negotiating Objective in circumscribing the rôle of the Group. It was said that this constituted a recognition that the Uruguay Round must not interfere with, or intrude upon, the work of WIPO and all other relevant organisations on all aspects of intellectual property rights. The proposals tabled in the Group were already having a prejudicial effect on initiatives elsewhere, as was seen in the fact that the negotiations on the revision of the Paris Convention were stalled. The distinction between the first and second paragraphs of the Negotiating Objective was also emphasised. Only the second paragraph, concerning international trade in counterfeit goods, spoke of a multilateral framework of principles, rules and disciplines.

5. It was said that, even if substantive standards had an effect on trade, this was not a sufficient reason to negotiate on them in the Group. The work under paragraph one of the Negotiating Objective should be based on the GATT provisions. The Group should first identify these provisions and examine their operation, and then see what further should be done.
The purpose of these provisions was not to protect intellectual property or to enforce intellectual property rights but to ensure that action avowedly taken for these purposes did not in reality distort or impede international trade, by constituting a disguised restriction on trade or a means of discrimination. It also had to be borne in mind that there was an underlying conflict between the protection of intellectual property, which involved the restriction of trade, and the basic objective of the General Agreement, which was to liberalise trade. The recognition of this conflict was reflected in Article IX:2 and in the fact that intellectual property was referred to in Article XX under the category of exceptions. Further, intellectual property laws aimed to find a balance, that would promote the public interest, between rewarding the owner of intellectual property so as to encourage innovation and the restrictive and anti-competitive effects of intellectual property rights. The Group was not the appropriate forum to discuss this balance, since the trade effects were not the appropriate yardstick for its discussion. Nonetheless, a participant said that he could see elements for a common exploration of the trade-related aspects of intellectual property rights. In regard to the second paragraph, it was recognised that there were problems arising from international trade in counterfeit goods; these problems were not necessarily limited to infringements of trademark rights. However, it had to be recognised that policies of governments with respect to intellectual property rights could not be scrutinised by or changed to suit the interests of other participants.

6. Some participants welcomed the Nordic submission (MTN.GNG/NG11/W/29) as a useful basis for a dialogue in the Group. It was said that the first point was logical because GATT commitments would require reference points to substantive standards. A participant recalled that his delegation had proposed in this connection that these should take the form of principles of trade-related substantive standards. With regard to the second point, it was argued that, in fact, a considerable degree of specificity of the substantive standards would be required to avoid the sort of problems in the dispute settlement process that had arisen from a lack of adequate specificity in some Tokyo Round Codes. One participant wondered whether the distinction drawn between harmonisation and convergence in the fourth point was meaningful, especially if retaliation was possible in the event that a country's laws on intellectual property rights were at variance with the standards elaborated in GATT. Another participant reiterated his delegation's view that the Group should not attempt a harmonisation exercise, but should draw up certain principles which countries would draw upon when

elaborating their national legislation. Some participants expressed difficulties with the fifth point, arguing that, although generally internationally accepted and applied standards should be the main source of inspiration, any GATT agreement on TRIPs could not be limited to them, as there were significant lacunae in existing international conventions in addressing trade problems.

7. Introducing document MTN.GNG/NG11/W/14/Rev.1, the representative of the United States said that it contained an updating of the proposal made by the United States last year and brought together in a formal proposal the views that his delegation had expressed at the various meetings of the Group since then. It was meant to facilitate examination, by other participants, of the current thinking of his delegation on the means for achieving the Negotiating Objectives of the Group. It proposed a comprehensive agreement containing a series of obligations all of which were aimed at protecting the free flow of legitimate trade. He said that the groups in his country that were the strongest supporters of the GATT and an open international trading system were the proponents of a comprehensive agreement on the trade-related aspects of intellectual property rights. A comprehensive treatment would not only deal with the problems of the substantial economic losses suffered by United States companies, mainly in foreign markets, as a result of inadequate intellectual property protection, but also would create economic benefits for all participants and contribute to the successful conclusion of the Uruguay Round.

8. Commenting on the United States submission, a participant said that the objectives set out in it did not correspond to those in the Punta del Este Declaration. The principal concern in the first paragraph of the Negotiating Objective, that measures to protect intellectual property should not represent barriers to legitimate trade, was not adequately addressed. His delegation was also not ready to look into intellectual property right protection in relation to services, as had been proposed. Another participant said that two elements were missing from the proposal of the United States and some other countries. The first concerned the provision of adequate safeguards for countries importing technology and the second related to the special treatment for developing countries. The task of the Group would be rendered easier if these two elements were included for discussion. A further point that needed clarification was how to institute effective procedures for dispute settlement, when the retaliation possibilities open to some countries were extremely limited.

9. Introducing document MTN.GNG/NG11/W/30, the representative of Brazil said that the most striking feature of the proposals presented so far was the absence of any reference to the link between the granting of intellectual property rights and the promotion of domestic technological development. It was striking not only because the promotion of development and growth was one of the objectives of the Uruguay Round, but also because the furtherance of the public interest was the fundamental goal pursued by governments when granting intellectual property rights. Despite being frequently mentioned by some delegations, these aspects had not merited the attention of some participants, thereby impeding the progress of work in this Group. The Brazilian submission was intended to contribute to a better understanding of these aspects. Her delegation considered the system established by the Paris Convention sufficient for the international protection of intellectual property. The basic principles of the patent system contained in that convention were not of a commercial nature, and thus should be discussed not in GATT, but in the competent international organisations. The elaboration of new and more rigid standards for intellectual property would benefit technologically-advanced countries, at the expense of developing countries that used technology as an irreplaceable tool in the development process. Her delegation was actively participating in the negotiations on the revision of the Paris Convention in WIPO, which aimed at obtaining greater flexibility for the patent system in order to take account of the special needs of developing countries. The scope of the Group's Negotiating Objective, as well as of the General Agreement itself, which had been established to deal with trade in goods, did not provide a legal context for a negotiation on the evolution of the intellectual property system, that would take account, in a balanced way, of the interests of developing and developed countries. The Group should consider the concerns of those countries, which were victims of unilateral trade measures incompatible with the General Agreement and the Punta del Este Declaration and applied in an attempt to force countries to modify their domestic legislation on intellectual property rights. The mandate of the Group could not be enlarged to permit discussions on basic changes in the international intellectual property system, administered by WIPO, due to pressures exerted by some countries.

10. Welcoming the submission as a positive contribution, a participant said that it also reflected his country's concerns. The task before the Group was to focus on the trade-related aspects of intellectual property rights and not on intellectual property rights per se. There was no legal vacuum with respect to the latter, as WIPO was adequately dealing with them. The submission recognised the public and private objectives of intellectual property right legislation and focused usefully on the abuses of intellectual property rights and the attendant distortions to international trade. Discussions so far had concentrated heavily on the interests of owners rather than on those of users of intellectual property. Intellectual property right protection should adequately compensate the creator of intellectual property but could not be used as a licence to appropriate monopoly rents. He supported further examination of the abusive, anti-competitive uses of intellectual property rights that would permit a better balance in the work of the Group between the interests of users and holders of intellectual property rights. Another participant said that, although the emphasis in GATT was on the trade-related aspects, consideration of growth and development should be borne in mind as called for by the preamble to the Punta Declaration. It was up to each government, in preparing its national position, to do this. If a participant felt that proposals would run counter to its development needs, it was up to that participant to explain why. In his view, the discussion in the Brazilian paper addressing trade problems arising from excessive protection and enforcement of intellectual property rights was quite appropriate in terms of the Group's Negotiating Objective, provided problems arising from inadequate protection and enforcement were similarly discussed. The representative of Brazil replied that there had been no change in her delegation's position, which had always stressed that the negative trade effects arising from the application of intellectual property legislation, rather than the legislation itself, were appropriate for discussion.

11. One participant submitted that a fundamental premise of his delegation's proposal was that adequate intellectual property protection, by promoting innovation and economic growth, furthered the public interest and the development process. It would be useful, at a later stage, to exchange views relating to access to new technology, inventions and products provided for in different national laws on intellectual property. In this connection, he referred to the issue of compulsory licensing, which involved a conflict between the principle of free and fair trade and attempts to promote the public interest, as meriting attention. Although his delegation had strong views on this issue, he expressed his willingness to consider the manner in which other countries had addressed it, in particular with a view to preventing protectionist pressures from flourishing in the field of intellectual property.

12. A participant considered it appropriate, with the Mid-Term Review approaching, to summarise his delegation's position, with a view to seeking common ground in the work of the Group. First, his delegation, like some others, had adopted a comprehensive approach to deal with the trade-related problems of intellectual property rights, which envisaged the establishment of rules on standards and enforcement procedures. The standards proposed, would be binding on all participants, in that national laws would have to be framed on their basis. It was important to complete the negotiations on standards by the end of the Uruguay Round. The annex to his delegation's submission (MTN.GNG/NG11/W/17/Add.1) did not include geographical indications, including appellations of origin, as his government had not decided whether or not they should be dealt with in the Uruguay Round. Secondly, his delegation was of the view that principles drawn from GATT principles, such as most-favoured-nation treatment, national treatment and transparency, should be applied to intellectual property rights. Thirdly, an international mechanism for consultation and dispute settlement in regard to intellectual property rights should be established. In regard to dispute settlement, he generally agreed with the points contained in Annex I of the Chairman's letter of 11 August 1988, but considered that it would be difficult to establish rules on the "due allowance" that should be made for the different circumstances of countries. (In response, the Chairman said that the thought on this matter that he had tried to reflect was not that specific rules concerning the notion of "due allowance" should be drawn up but that this would be left to the assessment of each panel.) Finally, his delegation recognised that some participants might find it difficult to commit themselves to the proposals put forward and was willing to discuss further measures which would alleviate their concerns, such as technical assistance and transitional arrangements.

13. In regard to the interpretation of the Negotiating Objective, a participant said that it would be more useful to focus on the text of the Declaration rather than statements made after it. The first paragraph called not only for the clarification of existing GATT provisions but also for the elaboration of new rules and disciplines, which did not rule out a discussion of substantive standards in the Group. Furthermore, the third paragraph stated that initiatives in other international organisations should be complementary to the work of the Group and not that the work of the Group should complement initiatives elsewhere.

14. The representative of the European Communities provided further responses to questions put on two aspects of his delegation's proposals. The first concerned the preference of his delegation for integrating the results in the General Agreement, over a code approach. A code approach suffered from a number of disadvantages: it might discourage countries from participation in the negotiating process, create the likelihood that results of the negotiations would find limited acceptance, and could lead to pressures, after the conclusion of the agreement, on non-signatories to adhere to the agreement, in the negotiation of which they had contributed little. He re-affirmed the commitment of his delegation to a transparent, multilateral negotiating process in the framework of this Group. This would not preclude bilateral and plurilateral discussions. What was important was the maintenance of transparency and the preservation of the Group as the focus of the negotiations. However, the only way of retaining the effectiveness of the multilateral process, and thus avoiding the pitfalls of the code approach, was the more active participation in and contribution to the work of the Group of a larger number of countries. A lack of participation would be tantamount to a unilateral renunciation of an important part of the objectives of the Punta del Este Declaration and would create adverse consequences. The second issue related to the recourse of signatories to multilateral dispute settlement procedures under any future agreement on TRIPs. In this connection, he drew attention to his delegation's submission (MTN.GNG/NG11/W/26, page 4, second indent) and emphasised that disputes on matters contained in a TRIPs agreement should be resolved multilaterally rather than bilaterally or through unilateral action. A wide coverage of issues in a TRIPs agreement would not only better meet the concerns of those experiencing trade problems as a result of inadequate intellectual property right protection but also the concerns of those interested in safeguarding their exports from unilateral national action. His delegation's proposal would place important limitations on the freedom currently enjoyed by contracting parties in taking unilateral action to protect intellectual property rights.

15. A participant welcomed the support of the European Communities for the integration of the results in the General Agreement and for keeping the Group as the focus of the negotiations. He affirmed his country's view that the final outcome of the negotiations should not be a code and that all participants should be subject to the same rules and disciplines. However, in drawing up these rules, it was necessary to bear in mind, not only a country's trade interests with respect to technology, but also its state of development. In this respect, suggestions relating to transitional arrangements, technical assistance, due allowance, etc. could be usefully examined. Another participant maintained that the Group's Negotiating Objective ruled out any outcome that contradicted the spirit and objectives of the General Agreement.

16. One participant argued that the substantive problem before the Group was an economic and not a legal one. The increased international protection being sought for intellectual property rights was intended to improve the competitive position of those countries and firms which owned these rights. However, net importers of the intellectual property rights would experience a deterioration in their terms of trade as higher payments would have to be made for intellectual property rights; they would also face adverse effects in their attempts to develop autonomous national capabilities in these areas, to the detriment of their national development strategies. A recognition of the economic dimension suggested that the Group should consider the following points in its future deliberations: first, it should be generally acknowledged that intellectual property rights had a price which should be determined in GATT; secondly, the determination of that price should be negotiated multilaterally, with smaller countries paying the lowest price; thirdly, a discussion on substantive standards should be preceded by an examination of the economic aspects underlying intellectual property right protection, including criteria such as "sufficient usefulness" which could form a basis for negotiations on the suitable price of intellectual property rights; fourthly, certain aspects of the discussion on

substantive standards, such as special and differential treatment for developing countries, exclusion of trade retaliation measures, and longer duration of patent terms, should be examined in economic and trade terms with a view to determining the prices of, or profits resulting from, intellectual property rights; fifthly, the determination of lower prices for developing countries could take account of the concessions that they should be granted in other areas of the negotiations such as agriculture and natural resource based products; finally, the elaboration of substantive standards should be considered only after a consensus had been reached on the economic trade-offs relevant to intellectual property right protection.

17. In response, a participant said that the statement had inverted the order in calling for a discussion of the economic aspects before the substantive issues. It was up to Ministers to decide on the economic trade-offs at the end of the Uruguay Round.

18. The representative of Mexico made a statement that has been circulated subsequently as document MTN.GNG/NG11/W/28. Referring to the Punta del Este Declaration, he said that its first two paragraphs specified the scope of the negotiations with respect to trade-related aspects of intellectual property rights and trade in counterfeit goods respectively. With regard to the first paragraph, the initial basis for negotiations consisted of the identification and examination of the Articles which should be the focus of the Group's attention. In the second paragraph, the commitment was clearer, namely, to develop a multilateral framework of principles, rules and disciplines dealing with trade in counterfeit goods which could draw upon the work already undertaken in this area. The third paragraph of the Punta del Este Declaration, supplemented the other objectives described above, and called for the identification of, and co-operation with, international fora with the activities of which the GATT negotiations converged. Proposals should contribute to the formation of a "common basis" for negotiation, but such common ground had not yet been agreed on, because the terms of reference appeared to be insufficiently broad for some countries in the light of their specific interests. His delegation considered that the negotiations should take into account the following:

- consideration of the Articles of the General Agreement should be continued in order to determine whether they contributed to developing effective and adequate protection of intellectual property rights, which did not distort or impede international trade, as well as their possible amendment, where this was agreed to be required. In order to pursue this exercise, without prejudice to its outcome, Articles IX, XX and XXIII of the General Agreement should be examined, because their revision could contribute to the achievement of the negotiating objectives;

- the provisions of the General Agreement should not be used to modify legal régimes governing intellectual property rights, but should aim, in the best of cases, at recommendations to reduce distortions in international trade and barriers to that trade which may derive from the application and protection of intellectual property rights;

- the negotiating objective regarding the improvement of intellectual property rights should not become a barrier to access by developing countries to technologies produced in developed countries. Therefore, any results obtained in this Group would necessarily have to include more flexible elements for the use of such technology by developing countries, since countries with different levels of development could not respond in the same way to each of the trade and intellectual property aspects.

Finally, with respect to trade in counterfeit goods, his delegation shared the international community's concern that trade in such goods must be attacked on all fronts. The Group should aim to develop a multilateral framework of principles and rules to strengthen action against trade in such goods. This could be achieved in a manner which would create the greatest benefits for all participating countries, by the effective application of existing provisions in the field of intellectual property rights which enabled trade distorting effects to be reduced.

Trade in Counterfeit Goods

19. Some participants said that they believed that the issue of trade in counterfeit goods should be dealt with as part of a broader approach to the trade-related aspects of intellectual property rights. In this regard, some of them recalled the provisions in the specific proposals that they had tabled which addressed the problem of trade in counterfeit goods within the context of the enforcement of intellectual property rights. They reaffirmed their commitment to seeking results on this matter, and indicated their willingness to discuss them under both this agenda item and the first agenda item. They urged more participants to come forward with specific proposals on this matter. The view was expressed that it was only within a general framework dealing with the trade-related aspects of intellectual property rights that it would be possible to ensure that action to repress trade in counterfeit goods did not give rise to obstacles to legitimate trade.

20. Some other participants regretted that the work of the Group on trade in counterfeit goods had not been pursued as intensively as work under the first agenda item and wondered whether there was still a will on the part of some other delegations to implement this part of the Negotiating Objective. In considering the comprehensive proposals that had been made, it had to be recalled that the Negotiating Objective was divided into three separate paragraphs, with a different level of commitment between the first and second. In this context, it was said that Annex I of the Chairman's letter of 11 August 1988 did not adequately recognise this distinction.

21. A participant stressed the importance of effective co-operation with other relevant international organisations and of ensuring that what was done in the Group was not inconsistent with or in opposition to initiatives in those fora.

22. Some participants took up points raised in Annex I of the Chairman's letter of 11 August 1988. In regard to the basic objectives that should underlie the work on this agenda item, a participant endorsed the view of the Group of Experts as outlined in paragraph 31 of document MTN.GNG/NG11/W/23. In regard to which intellectual property rights should be covered, some favoured a broad coverage extending beyond registered trademarks; reference was made to the approach adopted in the WIPO Committee of Experts on Measures Against Counterfeiting and Piracy and to that envisaged by the GATT Group of Experts. One participant preferred limiting the work to registered trademarks and copyright. Another participant wondered if extension of the coverage beyond trademarks would not lead to the area of piracy. Some other participants indicated their willingness to consider counterfeiting involving intellectual property rights additional to trademarks as had been envisaged by the GATT Group of Experts. On which types of infringement of the intellectual property rights covered might be dealt with in GATT disciplines relating to this agenda item, a participant supported the third possibility referred to in Annex I of the Chairman's letter of 11 August, namely that employed in the draft WIPO model legislation on measures against counterfeiting and piracy, although he would not a priori exclude any intellectual property right infringement. However, his delegation had doubts about some aspects of the proposals tabled, for example where they dealt with performer's rights. He also doubted that parallel imports should be covered. Another participant emphasised that the work should not deal with infringements that were not susceptible to action at the border, notably counterfeit services. In regard to the substantive intellectual property law with which GATT commitments on counterfeiting would be designed to secure compliance, a participant considered that, in order to define those infringements that would be covered by the agreement, incorporation of minimum standards of intellectual property right protection would be needed. In regard to the points of intervention at which procedures and remedies should apply, some participants advocated the negotiation of commitments in respect of action both at the border and internally. In regard to goods in transit, a participant said that systematic control should not be envisaged as this would risk creating barriers to legitimate trade; but a readiness to intervene in co-operation with the authorities of the country of origin or destination of the good in question could be envisaged. Another participant said that his delegation had not yet addressed questions relating to goods for export and in transit, but supported consideration of such issues in the Group.

23. In regard to procedures, a participant said that there should be an obligation on governments to have effective procedures in place in order to enable intellectual property right holders to protect their rights. He expressed support for the suggestions of the European Community outlined in paragraphs 4 to 6 of the synoptic table in document MTN.GNG/NG11/W/23. Some participants stressed that governments could not be expected to accept an obligation to prevent trade in counterfeit goods, since this was beyond their power to carry out fully. Legal systems were determined by their social, political and cultural circumstances and could not be expected to operate perfectly. The justice accorded to foreign nationals had to be determined by local conditions and evaluated in the light of treatment accorded to nationals of that country. Another participant said that the work should not aim at the harmonisation of enforcement procedures. In regard to safeguards against barriers to legitimate trade, a participant said that compatibility with GATT principles such as transparency, non-discrimination and national treatment should be ensured and a dispute settlement mechanism modelled on and linked with that in the GATT should be provided for. It was also suggested that there should be adequate procedures for a petitioner for a preliminary injunction or a temporary order to compensate an innocent party suffering harm as a result. It was further suggested that administrative procedures, whether at the border or internally, should be subject to opportunities for judicial review; and that the responsibility to prove counterfeiting should remain with the right holder. Some participants were concerned that obligations to provide special border procedures, especially if combined with the danger of international sanctions if not properly applied, could lead to the over-enthusiastic application of measures at the border in a way that could impede legitimate trade. The costs of legitimate traders would be increased as a result of higher insurance premiums, losses due to improper handling, etc. leading to higher prices to consumers and protection of nationally produced goods. In this connection, it was asked how the requirements of Article III of the General Agreement could be met if special border procedures were used. Other safeguards proposed included provisions for an obligation on the complainant to provide security, limits on the duration for which goods suspected of infringements could be held by the relevant authorities, and the right of appeal and compensation in the event that a groundless allegation of counterfeiting was made.

24. In regard to the legal form of any final agreement, a participant argued that it was premature to specify this before deciding on the contents of the agreement; his delegation would prefer an agreement that all contracting parties could subscribe to and did not rule out the possibility that an agreement under the second paragraph of the Negotiating Objective could be achieved as part of a wider one addressing all paragraphs simultaneously. Some other participants indicated their opposition to a code but did not want to prejudice the legal form of any final agreement. They indicated their difficulty in modifying national legislation that had been implemented in conformity with obligations contracted previously by members of the Andean Pact.

Consideration of the Relationship between the Negotiations in this Area and Initiatives in Other Fora

25. The Group agreed to recommend to the TNC that WIPO be invited to the Ministerial meeting of the TNC in Montreal, on the understanding that this would not constitute a precedent for other TNC meetings or prejudge the treatment of other international organisations.

26. The representative of WIPO welcomed this recommendation. He also provided information on the dates of major forthcoming WIPO meetings.

Other Business, Including Arrangements for the Next Meeting of the Group

27. Brazil informed the Group that on 20 October 1988 unilateral restrictions had been applied by the United States to Brazilian exports as a retaliatory action in connection with an intellectual property issue. This type of action seriously inhibited Brazilian participation in the work of the Group, since no country could be expected to participate in negotiations while experiencing pressures on the substance of its position. The action of the United States Government was a blatant infringement of GATT rules and was thus contrary to the standstill commitment of the Declaration of Punta del Este. The United States action was an attempt to coerce

Brazil to change its intellectual property legislation. However, Brazil's legislation was fully consistent with the relevant intellectual property conventions. Furthermore, it represented an attempt by the United States to improve its negotiating position in the Uruguay Round, specifically in this Group.

28. The representative of the United States said that the measures had been taken with regret and as a last resort after all alternative ways of defending legitimate United States interests had been exhausted. The United States was prepared to lift the measures as soon as Brazil responded fully to United States concerns. The United States further believed that the adoption of effective patent protection was in Brazil's own interest.

29. A number of participants expressed their support for the Brazilian statement and their concern for the effect of the United States action on the multilateral negotiating process.

30. The representative of the United States said that, on 20 October 1988, the United States Senate had joined the House of Representatives in unanimously approving implementing legislation for the United States to adhere to the Berne Convention.

31. The Group agreed to meet again on 14 November and the morning of 15 November.