RESTRICTED
MTN.GNG/NG11/14
12 September 1989

Special Distribution

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

MEETING OF NEGOTIATING GROUP OF 12-14 JULY 1989

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

Note by the Secretariat

1. The Group adopted the agenda set out in GATT/AIR/2804. As agreed at its May meeting, the Group had the whole of its agenda before it but focused its discussion on item I(B). No interventions were made under the other sub-items of item I or under item II of the agenda.

I. Continuation of the negotiations as required by paragraph 4 of the TNC decision of 8 April 1989, taking account of paragraphs 5 and 6 and of other relevant paragraphs of that decision

(B) The provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights

2. The Group had before it four new proposals for the negotiations under agenda item I(B), from Australia, the Nordic countries, India and Switzerland. These were circulated in documents NG11/W/35 and Corr.1, 36, 37 and 38 respectively.

3. Introducing the proposal of his country contained in document NG11/W/38, the representative of Switzerland said that the aim of the paper was to present the Swiss point of view on the level of protection of IPRs necessary to avoid trade problems caused by an absence, insufficiency or excess of protection of intellectual property. He made six points concerning the Swiss proposal. First, the norms proposed were the minimum deemed necessary to ensure that weaknesses in the protection of intellectual property did not hold back the liberalisation of trade in a disproportionate manner. The proposal did not deal with intellectual property matters in their entirety but only where they gave rise to trade problems. These problems had been identified in documents NG11/W/7 and addenda, in particular addendum 2 from Switzerland. Secondly, adequate norms by themselves could not deal with all trade problems. The application of the basic principles of the GATT, in particular the non-discrimination and mfn principles, the principles regarding the enforcement of IPRs, notably those presented by the European Communities in document NG11/W/31, the GATT dispute settlement system and the prevention of disputes were equally fundamental elements of an agreement that should

result from the work of the Group. Thirdly, the aim was not to create a new comprehensive system for the protection of intellectual property nor to replace the important work undertaken in other organisations, notably WIPO. Rather, the Group should aim at a certain complementarity between its work and the work being undertaken in the specific context of intellectual property as such. Fourthly, although the Swiss proposal was couched in legal language, its provisions reflected only the level of protection sought; Switzerland remained open as to the final form that these provisions should take. This would depend on the conceptual approach adopted by the Group. One of the possible approaches was that presented by his delegation in document NG11/W/25, which remained on the table and which could be combined with other approaches. Fifthly, as regards the substance of the proposal, he said that it was compatible with the positions defended by Switzerland elsewhere; it covered all the types of intellectual property, including geographical indications, and also copyright where Switzerland did not necessarily have major export interests but where the link between trade and intellectual property was also important. A proposal on the protection of proprietary information would be developed after further consultation with the various interested bodies. He added that the Swiss proposal was not a faithful reflection of Swiss national legislation; this reflected Switzerland's willingness to modify its legislation in line with the results of the Group's work. As his sixth point, the representative of Switzerland referred to the provisions on compulsory licences in the chapter on patents of the Swiss proposal. The first situation provided for in the proposal under which such licences might be accorded was a sort of safeguard measure to maintain the correct functioning of the market despite the temporary monopoly accorded to the patent holder. The patent holder would escape the application of such provisions if he acted in line with normal commercial practice and assumed his responsibilities as an actor on the market. The second situation that would permit recourse to compulsory licences was that of an overriding public interest. This would be a situation of necessity where rapid action was required, such as the case of an epidemic. Not every case of need would justify recourse to compulsory licences; for example, fiscal motives would not be a sufficient justification.

4. Introducing the Nordic proposal for the negotiations on standards and principles for trade-related aspects of IPRs (NG11/W/36), the representative of Norway said that the presentation of the proposal should not be interpreted as an expression of dissatisfaction with the proposals already made by others. The Nordic countries believed that it was complementary to other proposals. They furthermore thought that it would be beneficial for the negotiations if as many as possible of the participants were to present proposals so as to contribute towards a better understanding of each other's interests and priorities. He said that the Nordic proposal was not in conflict with any existing international agreement and was not designed to be a substitute for any provision in any such agreement. All sections of the proposal were in conformity with what was allowed under the agreements in question. However, the proposal tried to assemble those elements which the Nordic countries believed were needed to secure adequate levels of protection of trade-related IPRs. He repeated the Nordic view that efforts in the Negotiating Group to establish standards and principles were not a harmonisation exercise; the purpose was not to oblige participants to unify their national laws on these matters. The purpose was to establish certain minimum levels for protection of trade-related IPRs or, where appropriate, maximum levels for such protection. The representative of Norway then provided some additional explanations on some parts of the Nordic proposal. Referring to paragraph 1.1 of the Nordic proposal, he said that the exclusions from patenting permitted in the first two indents were allowed under the European Council Convention on Unification of Certain Points of Substantive Law on Patents for Inventions and under the European Patent Convention (inventions contrary to public order and certain biotechnological inventions). The second indent should be interpreted as covering the exclusion in the third indent for human beings, but a precision was thought desirable to remove any uncertainty. In relation to the last sentence of paragraph 1.1, he said that the Nordic countries recognised that the biotechnological field was a highly important industrial area where technology was developing rapidly and investments were high. Even so, discussions in the WIPO expert group and in other international and national fora had demonstrated that, for ethical or other valid grounds, the question as to what extent inventions in this area should be patentable was controversial. Against this background, the Nordic countries believed that the Group should seek a solution where parties were free to regulate this question in their national law in accordance with their own national interests. In relation to paragraph 1.2, he said that the proposed term of

protection of 20 years should be understood as a minimum rule. As regards compulsory licences (paragraph 1.5), he noted that some of the existing and proposed provisions under discussion in WIPO were rather controversial, but he believed that an internationally applied provision on the right to review by a court of a decision to grant a compulsory licence should be instituted; such a provision would clearly be trade-related. Referring to Section 2, he said that the proposed provisions on trademarks were in general based on existing generally internationally applied standards and principles. Highlighting two points, he said that the system of "prior use" was in the Nordic view no longer relevant and should be abolished; and compulsory licensing of a trademark, which was in any event not very practical, should in principle not be allowed. He emphasised the importance that the Nordic countries attached to the inclusion in a TRIPS agreement of industrial designs (Section 3). As for copyright, he said that the proposed provisions were generally based on the Berne Convention and commonly applied and accepted practices relating to that Convention. The subject matter for protection specifically included computer programmes in line with the common understanding in WIPO's expert group. The proposed text on neighbouring rights was based upon the Rome Convention. The term of protection of 50 years was proposed as being more in line with what was internationally applied today. In regard to the layout-designs of integrated circuits, he said that the proposal differed in a few respects from the provisions of the Washington Treaty. Regarding trade and business secrets, he recognised that these were on the edge of what could be defined as an intellectual property right, but the Nordic countries clearly saw the need to establish a commitment to protect such secrets.

5. In his statement introducing the Indian paper, the representative of India first referred to recent action by the United States under its trade law and recalled the serious reservations of his delegation about the relevance and utility of the TRIPS negotiations as long as measures of bilateral coercion and threat continued. Subject to this reservation, his delegation submitted the paper circulated as document NG11/W/37, setting out the views of India on this agenda item. At the outset, he emphasised three points. First, India was of the view that it was only the restrictive and anti-competitive practices of the owners of the IPRs that could be considered to be trade-related because they alone distorted or impeded international trade. Although India did not regard the other aspects of IPRs dealt with in the paper to be trade-related, it had examined these other aspects in the paper for two reasons: they had been raised in the various submissions made to the Negotiating Group by some other participants; and, more importantly, they had to be seen in the wider developmental and technological context to which they properly belonged. India was of the view that by merely placing the label "trade-related" on them, such issues could not be brought within the ambit of international trade. Secondly, paragraphs 4(b) and 5 of the TNC decision of April 1989 were inextricably inter-linked. The discussions on paragraph 4(b) should unambiguously be governed by the socio-economic, developmental, technological and public interest needs of developing countries. Any principle or standard relating to IPRs should be carefully tested against these needs of developing countries, and it would not be appropriate for the discussions to focus merely on the protection of the monopoly rights of the owners of intellectual property. Thirdly, he emphasised that any discussion on the intellectual property system should keep in perspective that the essence of the system was its monopolistic and restrictive character. This had special implications for developing countries, because more than 99 per cent of the world's stock of patents was owned by the nationals of the industrialised countries. Recognising the extraordinary rights granted by the system and their implications, international conventions on this subject incorporated, as a central philosophy, the freedom of member States to attune their intellectual property protection system to their own needs and conditions. This freedom of host countries should be recognised as a fundamental principle and should guide all of the discussions in the Negotiating Group. The representative of India then described the main elements of the Indian paper, paragraph by paragraph. In relation to paragraph 30, he added that there were provisions in the patent laws of industrialised countries, quite apart from whatever provisions were contained in their competition laws, that prohibited restrictive and anti-competitive practices of the sort listed and which declared such conditions in licences, contracts and agreements null and void. In conclusion, he reiterated that the intellectual property protection system had not been conceived as an instrument for the promotion of international trade. The basic elements of a patent law, such as the definition of an invention, patentable and non-patentable inventions, product versus process patents, duration of a patent, exclusive rights of a patent owner, commercial working, compulsory licensing, restrictive business practices and the like had always been viewed in the context of giving protection and exclusive rights for the purpose of encouraging inventive activity and the balancing of such protection or the possible misuse of the monopoly

rights with public interest needs. With the exception of the restrictive and anti-competitive practices of the patent owners that impeded and distorted international trade, these elements were not related to international trade. Substantive standards on intellectual property were really related to socio-economic, industrial and technological development, especially in the case of developing countries. It was for this reason that GATT had so far played only a peripheral role in this area and the international community had established other specialised agencies to deal with substantive issues of IPRs. The Group should therefore focus on the restrictive and anti-competitive practices of the owners of IPRs and evolve standards and principles for their elimination so that international trade was not distorted or impeded by such practices.

6. Introducing his country's proposal (NG11/W/35), the representative of Australia said that the paper was intended to address the key issue of what standards and principles concerning the availability, scope and use of IPRs were appropriate to avoid inadequate or excessive protection of intellectual property in trade. Noting the use of the word "adequate" in paragraph 4(b) of the April TNC decision, he said that this suggested to his authorities that the Group was not necessarily looking for the highest possible standards or the broadest scope of protection. Like most of the other participants that had made proposals, his delegation accepted that the enforcement of strong IPRs was a fundamental part of an economic and juridical environment which favoured creative activity, innovation and technological development. In many respects the Australian proposal was similar to those of the European Communities, Japan, the Nordic countries, Switzerland and the United States, reflecting similarities in national standards and common membership of WIPO conventions. However, it was clear from an analysis of the proposals that there were differences about how high the standards and how broad the scope of protection should be. The Australian proposal aimed to establish standards that would add as little as might be necessary to the existing international conventions to ensure "adequate" protection. The proposal suggested some areas of improvement in the many generally adequate standards that could be found in the most broadly subscribed Acts of the principal conventions (Berne, Paris, Rome and Geneva). In the Australian view, some of the standards in the "lesser" conventions exceeded adequate standards. He added that countries could not be expected to take on the burden of amending legislation in respect of differences in their practices of minor relevance to the adequacy of the protection of IPRs. It had to be accepted that the adoption of "adequate" standards would not mean that the same standards should be adopted in every case. There would remain national differences in time frames, administrative aspects and so forth which did not render national legislation inadequate.

7. A participant referred to the importance of the structure within which commitments on standards and principles would lie, in particular the provision of procedures for dispute settlement and dispute prevention as called for by paragraph 4(d) of the April TNC decision. Dispute settlement provisions should not only encourage signatories to respect obligations but also provide effective protection against unjustifiable unilateral action. Signatories should also undertake commitments to refrain from unilateral pressures on matters covered by a TRIPS agreement. In this connection, he hoped that the negotiations would not be adversely affected by recent decisions of the United States concerning the placing of countries on watch lists. The negotiations and their results would only be viable if all participants participated willingly and freely accepted and applied the results. He urged more countries attaching particular importance to paragraph 4(d) to come forward with concrete suggestions for how it might be applied. Another participant recalled the serious concern his delegation had expressed about the implications of recent decisions of the United States (NG11/13, paragraph 4) for the negotiations.

8. A participant put forward some perceptions which her delegation considered should be general guidelines for the negotiations on the issue of the provision of adequate standards and principles concerning the availability, scope and use of trade-related IPRs. First, the standards and principles to be applied to each kind of intellectual property needed to be considered separately; each kind of intellectual property had its own characteristics that might require different formulations. Second, standards and principles were of no use unless they were enforceable. Practical standards and principles would go a long way to enhance the effectiveness of enforcement. It might be necessary to pay due regard to this interrelation between standards and principles on one hand, and effective enforcement on the other. Third, standards and principles should accommodate

concerns raised by participants related to the underlying public policy objectives of their national systems for the protection of intellectual property, including developmental and technological objectives. She added that it should be borne in mind throughout the discussions that it was of paramount importance that the results of the negotiations on the protection of IPRs must attract the fullest participation. Further, in formulating standards and principles for each kind of intellectual property, it should be ensured that the promotion of effective and adequate protection of IPRs and the effective enforcement of these rights should not in any way become barriers to legitimate trade.

9. A participant said that his delegation was of the view that, for the effective protection of IPRs, a multilateral agreement on substantive standards and norms was necessary. In the light of the differences between the scope and coverage of IPRs in each country along with the differences in the level of economic development and technology, it was important to find a way to reflect all the interests of participants equitably. To achieve this goal, he suggested that the following four basic principles should be considered: first, all kinds of existing international agreements should be fully respected; second, a balanced approach between the protection of IPRs and the use of IPRs should be maintained; third, reasonable transitional agreements should be allowed for the adjustment of each participating country's national regulations, especially in new fields in which there were no international agreements; and fourthly, all problems arising from IPRs should be solved through multilateral methods rather than any kind of unilateral or bilateral action.

10. Some participants addressed the question of what would be considered trade-related. A participant said that he could not agree with the conclusions in paragraph 48 of the Indian proposal. In his view, no factual evidence had been advanced for the view that only the anti-competitive practices of intellectual property owners were related to trade. He did not deny that such practices could affect trade, but could not understand how it could be claimed that inadequate or ineffective protection of intellectual property did not affect export possibilities for products incorporating intellectual property. Another participant found the conclusion of the Indian paper that it would not be appropriate to establish within the framework of the General Agreement new rules and disciplines on standards and principles not to be fully in accordance with the April TNC decision. The TNC decision clearly left the question of whether the results of the negotiations were to be implemented in the GATT framework to be decided at a later stage. Responding to these and other comments, the representative of India said that he was concerned about what appeared to be an automatic assumption in most proposals that all aspects of IPRs were trade-related. He asked what aspects, in the view of those delegations making proposals, were not trade-related and therefore fell outside the scope of the work of the Group. A participant, describing his preliminary views on the question of the definition of "trade-related", said that it had to be recognised that the underlying purpose of the balance sought between the dynamic benefits of the protection of intellectual property, in terms of incentives to investment in research and development, and its static costs was to ensure an adequate social rate of return on this investment, i.e. to improve the standard of living, which was a GATT objective. For the purposes of work on TRIPS, the issue of compulsory licensing had to be seen from this material and economic perspective rather than from a formal, juridical perspective. Compulsory licences could be necessary to ensure an adequate social rate of return, for example by ensuring that the balance sought in the intellectual property system was not undermined and by correcting market imperfections.

11. Referring to the line of reasoning in the Indian paper, a participant was concerned that, if carried to its logical conclusion, it would provide for no improvement in terms of reducing distortions or impediments to international trade or in reducing trade tensions and the risk of unilateral action. The emphasis appeared to be on establishing the right of developing countries to do what they saw fit in the area of IPRs, with hardly any reference to the rights of IPR holders. In his view, the restrictive approach taken in the paper to the definition of what was trade-related detracted from the many interesting and valid points in it, including those related to economic development. It was difficult to see how account could be taken of developmental concerns related to standards of protection, if the relevance of such standards to the work of the Group was denied. He did not understand how it was possible to tally this approach with the language of paragraph 4(b) of the April TNC decision or what relevance paragraph 5 of that decision would then have.

12. Some participants said that they agreed with the emphasis attached in the Indian proposal to the concept of public interest as a determining factor in the protection to be accorded to intellectual property; in this regard, they stressed the importance of paragraph 5 of the TNC decision which they saw as closely related to paragraph 4(b) on standards and principles. A participant said that his delegation shared the Indian view that the central consideration should be the assurance of the freedom of States to adapt their intellectual property systems to their needs and conditions. Some other participants said that finding a satisfactory balance in the application of paragraphs 4(b) and 5 of the TNC decision was necessary if the Group was to be able to conclude an agreement with an acceptable balance between the rights and obligations of all countries. Attention was also drawn to the importance of paragraph 2 of the April TNC decision, in particular its reference to the general principles governing the negotiations set out in I.B of the Punta del Este Declaration, notably paragraphs (iv)-(vii) concerning differential and more favourable treatment. A participant recalled that, in order to ensure effective application of these provisions, the GNG was required to conduct, before the formal completion of the negotiations, an evaluation of the results attained. It was said that, for the exercise in the Group to be useful for developing countries and to be a truly multilateral exercise, the minimum guarantee that was needed was that the negotiations would not attempt to frustrate or impede socio-economic and technological objectives, which were at the very root of the development process. The view was expressed that both the historical evolution of the protection of intellectual property by different countries and the various proposals on the table, in which each proponent seemed to be aiming at preserving and multilateralising its own national practices, confirmed that each country's perception of its public interest was central to intellectual property policy. A participant suggested that the possible originality of the Group's mandate lay in giving a new impetus to public interest and developmental considerations in IPRs in the context of international trade in goods.

13. Responding to these comments, some participants said that they shared the view that the intellectual property system should provide for a proper balance between the interests of creators and those of society at large. Their proposals aimed to do this. For this reason, a participant said that his delegation could not agree with the statement in paragraph 4 of the Indian paper that the essence of the system for the protection of intellectual property was its monopolistic and restrictive character. A further participant, noting the emphasis on correctives to the protection of intellectual property in the Indian paper, said that in practice such measures were often counterproductive, because they discouraged IPR owners from investing in countries where they were employed. He also expressed the view that the description of the evolution of the protection of intellectual property in that paper did not take adequately into account the impact of the globalisation of markets, which was a relatively recent phenomenon.

14. Responding to a question on his country's proposal, the representative of Switzerland said that the question of how to take account of particular situations, notably in developing countries, was one that would need to be addressed in a pragmatic and creative way. His delegation was convinced that it would be in the interests of all countries to have a global system for the protection of intellectual property, anchored in the General Agreement, which would put equal commitments on all countries and place them on an equal footing. However, his delegation recognised that this could not be done overnight and envisaged that the results could take account of the problems of individual participants, notably developing countries, through transitional measures. A participant expressed his deep reservation about this approach; he did not see how fixed transition periods could adequately take into account the development needs of developing countries. In his view, the only way of promoting the widest participation in an agreement was to ensure its relevance to those needs.

15. Referring to the Indian paper, some participants said that the work of the Group should ensure adequate access to technology, and should bring restrictive and anti-competitive practices which impeded such access and caused distortions or impediments to international trade under adequate multilateral discipline. The representative of Brazil referred in this context to the Brazilian paper, NG11/W/30. Another participant said that such matters were clearly included in the Group's work by the word "use" in paragraph 4(b) of the TNC decision. It was suggested that a first step would be to list such practices, so as to study which might be related to the work of the Group and what might be done. It was also said that the work of the Group should serve to promote and facilitate the transfer of technology; should ensure that access to technology was not prohibitively

costly; and should safeguard against technological protectionism. It was suggested that the issue of transfer of technology constituted a unifying theme between the Uruguay Round work on TRIPS, TRIMS and Services.

16. Some participants said that the Group should pay attention to the work of other fora and should not attempt to be a substitute for such work or for existing international conventions. The results of the Group's work should not conflict with those conventions. A participant said that in his view some participants were seeking to revise existing conventions, for example by drawing up rules on matters on which those conventions were silent or which contained stricter standards on matters dealt with by those conventions. He had deep reservations about such an approach. Some participants said that they were particularly concerned at attempts to re-open the question of the international protection of the layout-design of integrated circuits within weeks of the adoption of a multilateral treaty on this subject. Some participants said that the Group should use existing standards wherever they were adequate to prevent distortions or impediments to international trade; it should only draw up new ones where existing standards were inadequate for this purpose. A participant, referring to whether the standards of existing conventions should be incorporated into a TRIPS agreement or whether a link of some sort with those conventions should be established, said that the essential aim should be the formulation of self-contained commitments in GATT, even if that involved a cross-reference to existing conventions. The commitments must be capable of independent interpretation and operation.

17. Some participants emphasised the importance they attached to the application of basic GATT principles and welcomed the references to them in some of the proposals.

18. A participant expressed concern that there appeared to him to be a tendency on the part of some participants to assume that the results would form a GATT agreement. He said that this was a matter to be decided at the end of the negotiations, as stated in the TNC decision.

19. After the introduction of the new proposals and general statements, the Group took up in turn each of the categories of IPR that had been raised for consideration in the Group. In this process, the Group examined not only the new proposals but also those tabled earlier, which were presented in synoptic form together with corresponding existing international standards, in secretariat document NG11/W/32.

(i) Copyright

20. A participant, presenting the position of his delegation on copyright, shared the view that the Berne Convention, in particular adherence to its 1971 text, would be an appropriate basis for standards in the area of copyright. Protection should also extend to two major categories of works not specifically covered by the Berne Convention, namely computer programmes expressed, fixed, embodied or stored in any manner and sound recordings. In relation to sound recordings, he believed that the issue was to ensure that there was adequate protection, especially against unauthorised reproduction, as this related to the fight against record piracy at the international level; the question was not so much whether sound recordings were protected via copyright or via neighbouring rights. In relation to the acquisition of protection, his delegation considered that there should be no formalities as a condition of the exercise of copyright. Economic rights under copyright should be freely and separately exploitable and transferable. The exclusive rights conferred on copyright owners should include moral rights. In the case of artistic works those rights should cover the presentation of the works in a public exhibition. In relation to sound recordings, a TRIPS agreement should guarantee owners the right to reproduce and authorise the reproduction of their works. However, he did not see the economic rationale for the inclusion in a TRIPS agreement of other rights in relation to sound recordings such as a public performance right, a broadcast right or a re-transmission right. As regards limitations and exceptions to the rights conferred by copyright, he believed that these should be governed by the Berne Convention 1971 standards. With respect to computer programmes, his delegation believed that all countries should undertake to provide protection against copying in all forms. This protection should essentially take the form of that given to literary works under the Berne Convention; the term should be at least 25 years; and protection should not extend to ideas, systems, formulae, algorithms and the like. He considered that more effective and uniform minimum international

protection of computer programmes would assist exports of computer programmes from his country as well as his country's exports of machinery and equipment which contained computer software; it would also enhance his country's access to computer programmes that were created in other countries.

21. Another participant, also presenting the overall position of his delegation in regard to copyright, said that all original literary, artistic and scholastic expressions should be protected. Protection should extend to computer programmes and data bases in addition to traditional creative works. The issue of its extension to communications by satellite should be considered at a later stage because of its complexity. The term of protection should, in principle, be the life of the author plus 50 years. Restrictions on the rights conferred should be confined to those provided for in the Berne Convention and in the Universal Copyright Convention. The treatment of distribution including rental rights, which were not prescribed in the Berne Convention, and of reproduction not unreasonably prejudicing the legitimate interests of the author, for example home reproduction for personal use, should be left to be decided by each country. The question of whether copyright protection should be provided in respect of works in the public domain in a country, though still subject to protection in the country of origin of those works, should also be left to be decided by individual countries, in accordance with Article 18(3) of the Berne Convention. He believed that on the basis of these proposals the standard of protection of copyright should be set at the level of the Berne Convention, but that adherence to that Convention should be left to be decided by each country taking into account the Universal Copyright Convention.

22. Other views expressed in the discussion on copyright are reflected below, organised under the headings used in the synoptic tables (NG11/W/32).

23.1 (1)Relation to Berne Convention. Speakers stressed the importance of the obligations contained in the Berne Convention. The representative of the United States said that the United States proposal aimed to incorporate in a TRIPS agreement the main standards of the Berne Convention and to clarify those standards where necessary. A participant believed that in some respects the United States proposal involved unnecessary clarifications of the Berne Convention on matters already sufficiently clearly covered by its existing provisions. The delegations of the European Communities and Japan recalled the proposals in their papers for an obligation to accede to the Paris Act of the Berne Convention, together with certain clarifications of the standards contained in it. The representative of the European Communities said that in the Community view accession to the Berne Convention plus clarification of its applicability to computer programmes would be sufficient to deal with trade distortions or impediments arising in connection with copyright. Responding to a question, the representative of Japan said that paragraph (1) of the Japanese proposal on copyright (NG11/W/17/Add.1, page 5) only attempted to stipulate the fundamental provisions of the Berne Convention; it did not intend to specify new standards. It had been included to highlight the importance of certain of those provisions, for example those relating to moral rights and to protection without formality. The representative of Switzerland said that her delegation shared the view that the standards and principles agreed by the Group should be those of the Berne Convention with certain clarifications, notably in regard to computer software; where the reproduction of Berne Convention standards would be excessively long, the Swiss proposal had used the technique of incorporating a cross reference to such standards. Responding to a question, the representative of Australia said that the reference in the Australian proposal to the "existing provisions of relevant international conventions" was primarily a reference to the Berne Convention, more specifically to its Paris Act which was the most broadly subscribed version of that Convention; but his delegation would be open to the possible inclusion of relevant standards in other conventions.

23.2 Some other participants agreed with the view expressed in the Indian proposal that the Berne Convention was more than adequate to deal with copyright protection. The Group should attempt neither to expand nor to modify this Convention. A participant said that any tightening of Berne standards in a way that circumscribed the ability of developing countries to promote their technological development would be unacceptable. Another participant suggested that the standards established in any Act of the Berne Convention or of the Universal Copyright Convention should be considered sufficient; these various Acts enabled the differing needs of different countries to be met.

23.3 Some participants said that a TRIPS agreement should not contain an obligation to accede to the Berne Convention. It had to be taken into account that accession to the Berne Convention could be subject to different procedures, including internal procedures, from those involved in accession to a TRIPS agreement, and also would have different financial implications. In response, the representative of the European Communities said that the Community was proposing accession to the Berne and Paris Conventions not only because of its substantive obligations but also to promote inter-locking membership of the organisations of the multilateral economic system and to facilitate the creation of an indispensable link between TRIPS activities and those of WIPO under the Paris and Berne Conventions.

24.1 (2)Subject matter for protection. The representative of the United States said that the United States proposal recognised an increasing international consensus that computer programmes should be protected as literary works as well as the conclusion of a 1982 joint WIPO/Unesco committee of experts that computer data bases and other machine readable works were properly considered copyrightable subject matter. It clarified the Berne Convention in specifying that compilations of unprotected materials and works created by computers were protectable works, as well as in regard to the protection of works in new media of expression and in forms of authorship yet to emerge. It further specified that sound recordings were to be considered copyrightable works. A participant considered it unnecessary to include, in the enumeration of works covered, compilations, works created by computers and computer data bases; in his view, these works were already clearly covered by the Berne Convention, provided they conformed to the relevant criteria set out in that Convention.

24.2 Responding to questions, the representative of Japan said that his delegation considered a copyright approach to the protection of sound recordings undesirable from the point of view of the international protection of IPRs; in his view, it was tantamount to a sui generis approach. There was also a problem in that countries adopting this approach often did not provide protection for performances or broadcasts, including live transmissions. Noting that the Japanese view appeared to be shared by most other participants which had made proposals, he expressed the hope that the United States would be willing to modify its proposal so as to extend protection also to performers and broadcasting organisations. Responding to another question, he said that the Japanese proposal in regard to computer programmes was that copyright protection should be accorded in accordance with their nature. In particular, it should not extend to any programming language, rule or algorithm used for making such works.

24.3 Responding to a question, the representative of Norway said that the definition of literary and artistic works in paragraph 4 of the Nordic proposal did not aim to alter the definition contained in the Berne Convention, but merely to clarify it, using language that he thought generally internationally applied and accepted. The same language was referred to in the first paragraph on page 16 of the study produced by WIPO, document NG11/W/24/Rev.1. Also responding to a question, the representative of Switzerland believed it appropriate to retain the technique used in the Berne Convention of an open-ended, non-exhaustive list of what could be considered a work; this had enabled, for example, the specific inclusion in the Swiss proposal of computer software.

24.4 The representative of the European Communities said that in the Community view computer programmes should be considered to be included in the categories of works protected by copyright under the Berne Convention. Consequently, exclusive rights of authors of computer programmes and their successors in title, any exceptions to these rights and the term of protection should comply with the Berne Convention. The representative of Australia, responding to a question as to why computer programmes were not specifically mentioned in the Australian proposal, said that in Australia computer programmes were considered literary works; no attempt had been made in the proposal to list all the types of work that could be considered literary.

24.5 A participant emphasised the need for careful examination of the inclusion of new categories of works, including in regard to the rights conferred and term of protection. Another participant, emphasising the opposition of his delegation to an expansion of the coverage of the Berne Convention, said that there were also

legal problems in regard to the treatment of computer programmes as literary works. It was a matter of debate whether a thing that was addressed to a machine rather than a human being could be regarded as a literary work and fell within the scope of what was intended by the copyright system. This was a matter that should be left to each country to determine.

25. (3)Conditions for obtaining protection. Responding to a question, the representative of Norway said, in regard to paragraph 4.4 of the Nordic proposal, that the requirement that the exercise of copyright not be subject to any formality meant that there must not be a requirement for any kind of registration procedure. In regard to the United States proposal, a participant saw problems with requiring protection to be accorded to pre-existing works. It was necessary to take account of the interests of persons who had lawfully taken steps to exploit previously unprotected works. Responding to this and other comments, the representative of the United States said that the intention of the United States in this respect was to go beyond Article 18 of the Berne Convention and to require, in signatories that had previously afforded no effective copyright protection to foreign works, retroactive application of the obligations under a TRIPS agreement to pre-existing works.

26. (4)Rights conferred. The representative of the United States, referring to the United States proposal, emphasised the importance his delegation attached to the inclusion of a distribution right. In the United States view this would be an important clarification of the provisions of the Berne Convention. Highlighting other aspects of the United States proposal, he said that it made clear that copying included copying less than all of a work and producing a work that was substantially similar; that a right of public display was included; and what constituted a public performance. It also defined the term "public". It clarified that satellite transmissions were protected, even when they emanated from beyond the national boundary. In response to a question, the representative of Norway said that the Nordic proposal did include a distribution right; the phrase "the communication of his work to the public" in paragraph 4.2 of the Nordic proposal was intended to cover all types of distribution to the public. A participant believed that an exclusive distribution right would be an excessive standard of protection that could impinge adversely on international trade in legitimate articles. Parallel imports were not counterfeit goods. The distribution right was not part of established internationally accepted standards of protection. The Berne Convention was silent on this matter, except in relation to cinematographic works. The Universal Copyright Convention did not mention a distribution right. He noted that, in the view of the author of the WIPO Guide to the Berne Convention, a distribution right might be superfluous, because copyright owners had the power to stipulate conditions on the distribution of their works in their licences to others to make copies of their works. A participant considered that the proposals of the United States on the rights to be conferred by copyright were excessively detailed, for example in relation to public performances. In response, the representative of the United States said that the absence of an adequate definition in the Berne Convention of the terms "publicly" or "public" had given rise to trade problems; one example was the showing of videotapes in mini-theatres. A participant wondered why, in the United States proposal, restrictions on exclusive rights to "public activity" should not apply to the reproduction or adaptation right.

27.1 (5)Limitations/exemptions/compulsory licensing. A participant said that the United States proposal on compulsory licensing was unacceptable because it appeared to impose standards higher than those set out in the Berne Convention. In his view, the proposed standards would defeat the aim of ensuring easy access to information for teaching purposes. Some participants considered the United States proposals excessively detailed for the purposes of a TRIPS agreement. Clarification was sought as to what was intended by "potential markets". Responding to these comments and certain questions, the representative of the United States said that, although he recognised that the US proposal used language a little tighter than that in the text of the Berne Convention, he believed that the proposal constituted a clarification of the Berne Convention rather than a substantive change. In this regard he referred to the Guide to the Berne Convention published by the WIPO. He considered the reference to potential as well as actual markets consistent with the Berne Convention, but clearer. In relation to compulsory licensing, the United States intention had been to add to existing disciplines provisions concerning due process, and to elaborate on the provision of compensation and on the notion of use of compulsory licensing as a last resort.

27.2 Responding to a question, the representative of Switzerland said that the provision in the Swiss proposal that limitations made to rights in favour of private use should not apply to computer software had been included because, unlike other categories of works, computer software was of a utilitarian character; unlike private photocopying or recording of broadcasts, private copying of computer software was generally undertaken for financial benefit - to economise on the price of buying a copy. The representative of Japan, responding to a question, said that the provision in the Japanese proposal that limitations on copyright should follow the line of the Berne Convention was simply a reference to the relevant provisions of the Berne Convention. In relation to the rights conferred by copyright, he drew attention to the importance his delegation attached to the limitation of these rights in respect of computer programme works provided for in paragraph (2)(b)(ii) of the Japanese proposal. A view, from a developing country participant, was that there was need for modification of certain of the special provisions of the Berne and Universal Copyright Conventions for developing countries, in particular in relation to the use of certain types of work.

28. (6)Term of Protection. Highlighting certain features of the United States proposal, the representative of the United States said that it made clear that works of judicial entities were entitled to a term of protection of at least 50 years from publication; this had been included with computer programmes and sound recordings specifically in mind. Responding to questions, the representative of Japan explained that the qualifying phrase "in principle" was used in the Japanese proposal to take account of the exceptions allowable under the Berne Convention to the general rule concerning the term of protection. He added that, in the Japanese copyright law, there was not a special term of protection for computer programmes. Such works were eligible for the full term of 50 years after the author's death in accordance with the general principle for literary or artistic works. Works bearing the name of a corporate body had a term of protection of 50 years after being made public or the making of the work when it was not made public. Another participant expressed the view that the United States proposal would impose standards which were too stringent. It allowed for no exceptions, unlike the Berne Convention which allowed for shorter terms for works of applied art.

(ii) Neighbouring Rights

29. The representative of Japan informed the Group that the Japanese legislature had approved Japan's accession to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention). The representative of Switzerland said that the Swiss government had submitted to the Swiss parliament a proposal to ratify the Rome Convention.

30. The representative of the United States, explaining that neighbouring rights were not included as such in the United States proposal, said that the United States proposed that sound recordings and other new types of work should be protected by copyright. Neighbouring rights protection was inherently too short and too weak. In regard to broadcasting organisations, the United States protected the programme content of broadcasts through copyright and through its communications regulatory law. The United States believed that the rights of performers were appropriately protected through private contracts between employers and employees. Responding to comments, he said that the United States had no plan to adhere to the Rome Convention.

31. The representative of the European Communities, introducing the Community's proposal on neighbouring rights, said that there was need for agreement on adequate standards of protection in this area in order to deal with important trade distortions and impediments that were arising. The question of which approach was taken to achieving such adequate standards was not so important and he counselled against transposing to the TRIPS Group the debate between those who favoured a copyright approach and those who favoured a neighbouring rights approach. The Rome Convention did not prevent signatories from providing adequate protection to neighbouring rights through copyright. For his delegation the important point was that, if a country chose a copyright approach, it should cover the same categories of rights as those covered by the Rome Convention. Signatories to a TRIPS agreement should be invited to adhere to the Rome Convention and to apply the same substantive standards as those in that Convention, including in particular those spelt out in the

Community proposal. In this connection, he highlighted the importance attached by the Community to a provision not specifically contained in the Community proposal, namely the principle of equitable remuneration set out in Article 12 of the Rome Convention.

32. A participant said that neighbouring rights protection should only be granted to live performers, record-makers and broadcasting organisations for a term of 20 years, as under the Rome Convention. Requiring protection in excess of that required by the Rome Convention would be excessive and would be opposed by his delegation. His delegation supported the Australian proposal on neighbouring rights. He believed that the proposal of the United States delegation concerning the protection of sound recordings and broadcasts under copyright would lead to excessive protection, as would certain provisions of the Nordic and Swiss proposals. Responding to this participant, the representative of Norway said that the reference to moral rights in the Nordic proposal on neighbouring rights was not intended to introduce a new type of right; moral rights were only a legal consequence of neighbouring rights. As regards the term of protection, which the Nordic proposal suggested should be 50 years, he believed the requirement in the Rome Convention to be outdated in relation to modern legislation, especially for phonograms. Also responding, the representative of Switzerland believed that producers of videograms should be covered by neighbouring rights protection, as suggested in the Swiss proposal. The Rome Convention was outdated in this and some other respects, which was why the Swiss proposal made no reference to it. There was need to take account in a TRIPS agreement of new technology. She added that the term proposed in the Swiss paper was 20 years, although in the draft Swiss law on this matter a 50 year term had been provided for. In this way, the Swiss proposal attempted to take account of the views of countries concerned about excessive international standards in this area.

33. A participant said that neighbouring rights were a relatively new category of intellectual property right that still needed further study by his authorities. They were carefully examining the proposals that had been made and his delegation reserved the possibility of expressing its views on this matter at a later stage.

34. Some participants found it surprising that countries which were not yet members of the Rome Convention should propose higher standards of protection for neighbouring rights than those provided for in that Convention. In their view the Rome Convention standards were adequate and those standards were the only valid ones for the international protection of neighbouring rights.

35. A participant, noting that the membership of the Rome Convention was limited, believed that standards on neighbouring rights in a TRIPS agreement should provide for protection below that required by the Rome Convention. The provision of special and differential treatment in favour of developing countries, for example through special royalty rates and transitional arrangements, should be taken into account.

(iii)Trademarks

36. The representatives of the European Communities and of the United States said that their proposals were aimed at addressing a number of important lacunae or deficiencies in the Paris Convention, notably where insufficient precision in the Paris Convention had led to significant trade distortions and impediments. In this connection, the representative of the European Communities highlighted the absence of an appropriate definition of exclusive rights in respect of goods and services and the too general use requirement for the maintenance of protection. The representative of the United States said that the main features of his country's proposal aimed at remedying deficiencies in the Paris Convention concerned: the provision for registration and protection of service marks along the same lines as trademarks; the specification of the exclusive rights of a trademark owner; expansion of the protection of well-known marks; transparency of regulations and procedures as regards the registration system; an early opportunity for third parties to challenge applications or registrations; a minimum term of ten years for both the initial term of protection and the renewal term; specification of the circumstances for justified non-use; inclusion of a licensee as the person who could fulfil use-requirements; an explicit prohibition of special requirements on the use of marks; prohibition of compulsory licensing; the permissibility of use as a prerequisite to registration; and the permissibility of

assignments.

37. Some participants stressed the importance of paragraph 5 of the April TNC decision. The representative of India believed that public interest considerations were particularly important with respect to the use of foreign trademarks in the domestic markets of developing countries, as explained in paragraphs 32-36 of his country's paper. Some participants had reservations as regards an approach to standards that would result in a complete revision of the Paris Convention, disregarding the procedure for such a revision. It was said that an agreement should be sufficiently flexible to provide for adequate protection without entering into an exercise of harmonisation. It was also emphasised that discussions in the Group should be limited to those features that had an adverse impact on trade. If there was an intention to depart from the Paris Convention, it should be justified on this basis.

38. The representative of India, referring to paragraph 37 of his country's proposal and supported by some participants, emphasised the quality assurance function of trademarks. In his view, there should be a clear obligation on a foreign trademark owner to assure that the quality of the products bearing his trademark would be identical to the products manufactured in his home country. In response to comments, he said that this would not preclude making allowances for taste preferences in different countries or for the need to use different ingredients in different countries; however, if this would lead to a product of a substantially different quality, the trademark owner should be prohibited from using the same trademark. Such an obligation was essential because exports from developing countries of products bearing the same trademark as products manufactured in industrialised countries were being prevented through trademark law on the grounds of inferior quality.

39. Some participants expressed concern about restrictive and anti-competitive business practices in trademark licensing agreements which in their view affected trade considerably in many instances. The representative of India, referring to paragraph 30 of his country's proposal, said that such practices should be prohibited and licensing agreements containing them should be null and void, for example along the line of Section 44 of the Patent Law of the United Kingdom relating to "Avoidance of Certain Restrictive Conditions".

40. A participant, presenting the overall position of his delegation on trademarks, said that a very broad definition was needed and was appropriate, given the increasing importance of trademarks to international trade. Trademark protection should also include protection for service marks and certification or collective marks. All marks capable of being represented graphically should be protected, including any sign, word, design, colour, shape of goods or of their packaging, or any combination thereof, provided that such marks were capable of distinguishing the goods or services of one undertaking from those of other undertakings. It should be possible for trademark rights to derive from use or registration or a combination thereof; use of a trademark as a prerequisite to registration should be allowed. Both systems provided generally adequate protection of trade interests and an obligatory adaptation to either of them would require major changes to national laws. Therefore a TRIPS agreement should be flexible enough to allow for both. The owner of a trademark should have the right to exclude others from using the mark in association with any goods or services, if such use would be likely to cause confusion. With respect to well-known marks, the only additional standard needed in his view was a requirement to protect well-known marks in a manner no less effective than that found in Article 6bis of the Paris Convention. Limited exceptions to the exclusive rights conferred by a trademark should be allowable, notably fair use of descriptive marks and exhaustion of rights, taking into account the legitimate interests of the proprietor of the trademark and of third parties. The term of protection should be at least ten years, renewable indefinitely for further terms of no less than ten years. To encourage cancellation of registrations no longer of interest to the owner, requirements for periodic renewal were needed; to require renewal at intervals more frequent than every ten years would impose an unreasonable administrative burden on trademark owners. Registration of a trademark that had not been in use for a reasonable time should be susceptible to cancellation, if no special circumstances could be shown to excuse non-use. In regard to the length of that time, his delegation had not been able to detect any major trade impact within the range of 3-5 years. Requirements on use that would inhibit recognition of the mark or that would inhibit the mark from

serving to distinguish a good or service should not be imposed. With regard to licensing and assignment, the following key rights should be provided: licensing should be permitted; no compulsory licensing or undue or discriminatory restrictions on a voluntary licence should be imposed; and transfer of trademarks with or without the transfer of the undertaking to which they belong should be possible. On the question of international registrations systems, his delegation did not consider that there was a demonstrable need for a requirement that all countries should be required to adhere to an international mechanism for the registration of trademarks. Although it might be desirable to work towards an international registration system to which all countries belonged, the absence of such a system did not appear to be causing any serious trade difficulties.

41. Another participant, also presenting an overall position in regard to trademarks, said his delegation had no basic problem with the line of any of the proposals already submitted. He said that the term trademark should also include service marks, collective marks and business emblems. It was for discussion whether colour, shape of goods and three dimensional characteristics should be protectable. Use should not be a prerequisite to registration. Well-known trademarks should be protected widely regardless of registration. A reasonable opportunity to challenge a registration should be afforded. A trademark should be registered for no less than ten years and should be renewable indefinitely for further terms of no less than ten years when conditions for renewal had been met. The period of non-use as ground for cancellation should preferably be short. Non-use due to import prohibitions or other government laws and regulations should be allowed as justified non-use. No compulsory licensing should be imposed and the transfer of trademarks should not be restricted.

42. Other views expressed in the discussion on trademarks are reflected below, organised under the headings used in the synoptic tables (NG11/W/32).

43.1 (1)Definition. The representative of the European Communities said, in response to questions, that colours or combinations of colours were not excluded by the definition in the Community proposal; the enumeration of graphical representations was not exhaustive but consisted of examples. He wondered why the Japanese proposal did not refer to graphical representations. The representatives of Norway and Australia said that their delegations had proposed a minimum provision, giving some explanation of what a trademark should consist of and leaving countries free to add colours to the enumeration. Nevertheless, they said that colour had not been taken up because colour in itself could not constitute a trademark, having a distinctive character only in combination with another element, such as a word or a sign. The representative of Japan, in response to questions, agreed with this view. Another participant was also opposed to a definition of trademarks which would include colour, as well as packaging and the shape of goods.

43.2 A participant was concerned that several of the proposed definitions provided for three-dimensional marks, when some countries had not provided for such marks in their national law. The representative of the United States, in response, said that his delegation believed that protection of shapes was necessary. The representative of Norway said that the possibility of trademarks consisting of the shape of goods or of their packaging had been incorporated in the Nordic legislation for many years, to the satisfaction of traders; in his view, the experience of both the Nordic countries and many other countries had been positive. The representative of Switzerland said that a form that would not be distinctive would not meet the requirement that the sign establishing the trademark should be capable of distinguishing goods and would consequently be refused trademark protection. The Swiss proposal had not specified exceptions, such as those concerning shapes due to the nature of the product or due to technical characteristics, to avoid overburdening the proposal. Responding to a question, the Swiss delegate further said that the words "in particular" had been included in the definition proposed by Switzerland, because new kinds of marks resulting from technical developments in the future should not be precluded, such as audio-marks.

43.3 Responding to questions about the sub-paragraph on service marks in the Japanese proposal, the representative of Japan said that the intention was to provide a minimum protection for service marks, avoiding the creation of an obligation within a TRIPS agreement to provide a registration system for service marks.

However, the Japanese delegation recognised that the international tendency in this respect went in a different direction and was willing to negotiate on the subject. Referring to his country's proposal, the representative of India said that his delegation was not in favour of a requirement for a definition of trademarks that would cover services on the same footing as goods and preferred the approach chosen in the Paris Convention, which obliged Member States to provide service mark protection without the obligation to provide a registration system. Whether service marks would be protected as trademarks or by some other legal means should be left to each country to determine. Responding to a question, the representative of the United States said that the concept of a certification mark was similar to that of a collective mark in European law. It was generally a mark, provided by someone other than the producer of the product, specifying either that the product had passed certain tests or was produced by a certain group, collective or union.

44. (2)Derivation of rights. The representative of the European Communities said that the Community proposal aimed at overcoming whatever uncertainties remained in this area, by making clear the freedom of countries to choose between registration or use as a basis for acquiring rights, while forbidding any type of requirement for the latter to be a prerequisite of the former. Some other participants also expressed their concern with regard to the proposal of the United States that use be a prerequisite to registration. The representative of the United States, in response, said that the proposal did not contain an obligatory, but a permissive, provision concerning the use of a trademark as a prerequisite to registration; an exception would apply to foreign applicants who would be allowed to register their marks merely on the basis of registration in their country of origin, so that no inconsistency with the Paris Convention would exist. Some participants believed that exclusive trademark rights should not arise from mere use. This could give rise to confusion as persons using a mark would have no way of knowing if they were infringing the rights of another person in so doing. One of these participants suggested that unregistered trademarks could at best be the subject of a common law action for passing-off. In response, the representative of the United States said that in common law the acquisition of trademarks by use was well established. Differences in legal systems in this respect should be accepted.

45. (3)Rights conferred. The representative of Japan, responding to questions, said that the proposal of his delegation did not intend to exclude rights acquired through use. Responding to an inquiry about why the Australian proposal limited protection to the same goods, the representative of Australia said that the proposed norm was intended to be a minimum standard. Australia would be open to negotiate the inclusion of similar goods or services. The representative of India said that he disagreed with the United States proposal in relation to the exhaustion of rights. Referring to paragraph 38 of the Indian paper, he said that the principle of international exhaustion of rights should apply to trademarks.

46.1 (4)Protection of well-known marks. Responding to questions, the representative of the United States said that the definition proposed by the United States was intended to expand on Article 6bis of the Paris Convention. Protection as a well-known mark should be achievable not only if a mark was well-known in the country but also if it was well-known internationally; either condition should be sufficient. Protection should be given also in respect of dissimilar classes of products. Thus, owners of marks having developed a substantial amount of interest in them through advertising, international travel and international trade, would be protected against being forced to sell in some countries under a different trademark because someone else had registered the mark in that country. In this respect he added that rights of priority of filing were not recognised in all registration procedures. Also, it was not feasible to secure prior registration in all countries for all classes of products for which a mark might be used. Some participants said that the reference to an internationally well-known mark would be too stringent a test. One of them said that if a mark was well-known locally, this would constitute sufficient grounds to have the registration of similar marks cancelled as confusion might arise. Referring to paragraphs 39 and 40 of his country's paper, the representative of India said that whether a trademark was to be regarded as well-known in a given country should be left to be determined by that country. As to the protection to be accorded to well-known marks, it was the responsibility of the owner of such a trademark to apply for defensive registration of his trademark in accordance with the trademark law of the host country. Cancellation of prior rights in the register should not be possible. Another participant wondered what

criteria would be employed for determining whether a trademark was internationally well-known. Responding to a question concerning the suggested minimum time period that should be provided for requesting cancellation or prohibition of use of a well-known trademark, the representative of the United States believed that five years was an adequate period for most commercial operations, but would be opposed, on grounds of ensuring predictability, to requiring an unlimited period, except in cases of use or registration in bad faith.

46.2 The representative of Switzerland said, in response to questions, that the term "well-known" in paragraph 7 of the Swiss proposal related to marks well-known at the national level, but also was intended to include marks well-known at the international level. Responding to a question, the representative of Norway said that the phrase "has a reputation" in the Nordic proposal was intended to cover only nationally well-known marks. Further, he said that the phrase "without due cause" could be substituted by, for example, "in an inappropriate way".

47. (6)National registration systems. Responding to a question, the representative of the United States said that his delegation considered the requirement that trademarks be published within 6 months reasonable, with a view to minimising adverse consequences on consumers and permitting prompt opposition. With respect to a question on the proposed requirement to permit a "reasonable opportunity" to challenge a registration, he said that in the United States the initial period to challenge a registration was 30 days, but that this period was extendable for an additional 30 days if there was reason for additional time to prepare an objection. A participant said that, considering the benefit of fixing rights and obligations as soon as possible, 30 days was a reasonable period. Another participant expressed the view that the Group should examine some basic principles or minimum standards for the national registration of trademarks. Provisions were needed to ensure that registration was not made difficult or impossible by national registration rules. Companies often complained that registration procedures took too much time, were very costly, and required an unreasonable amount of papers, certificates, designs and translations. Unduly complicated registration systems in foreign countries were a burden in particular for small and medium sized enterprises, especially where multiple registrations were sought. He suggested, for example, that in such cases fees should be degressive.

48. (7)Term of protection. The representative of India, referring to paragraph 42(i) of his country's paper, said that the initial period of registration and that of subsequent renewal should be left to each country to determine. No standard was available for measuring what should be the optimum period. Responding, the representative of the United States said that it was important to set a minimum term to safeguard against undue administrative burdens on trademark owners. Ten years seemed a reasonably well accepted practice. The representative of Australia, in response to a question, said that Australia had not proposed a specific term because no reasonable term should be excluded. However, this was a matter on which his delegation was willing to negotiate. The important thing here was to provide the possibility to renew a mark indefinitely. The representative of Japan said that the Community proposal did not seem to take into account that paragraph (1)(a) of Article 6ter of the Paris Convention obliged member States to refuse or invalidate registration of trademarks which consisted of State emblems, hallmarks, etc. In his view, this obligation also applied when considering whether a renewal of a registered mark should be allowed. This was why the Japanese proposal included the phrase "where conditions for renewal are met". The representative of the European Communities, in response, said that provisions in the Community proposal were automatically qualified by obligations in the Paris Convention.

49.1 (8)Use requirements for maintenance of protection. Responding to a question why the uninterrupted period of non-use before cancellation should be five years, the representative of the European Communities said that this accorded with general international practice. The representative of the United States said that five years was proposed because experience, not only in the United States, had shown that a period shorter than five years would not necessarily be an adequate time to utilise a mark. He also said that the first sentence of the United States' proposal did not intend to prevent other challenges to maintaining registrations. The representative of India said that the Paris Convention in providing for a "reasonable period" was sufficient in this respect. Another participant agreed with this and said that in his country a period of two years had proven

to be adequate.

49.2 Referring to paragraph 42(iv) of his country's paper, the representative of India said that his delegation was opposed to the prohibition on special requirements on the use of trademarks proposed in the third sentence of the United States proposal. Many countries, for example, required that brand names on drugs be used in connection with generic names. Requiring that foreign trademarks be used in conjunction with domestic trademarks should also not be prohibited. Another participant also believed that this proposal of the United States was unacceptable. In practice, certain features or elements of a trademark might be required to be decreased in size before the mark was accepted for registration. Non-distinctive features would generally be required to be smaller than the distinctive features of a trade mark. Other features might be required to be decreased in size so as to avoid confusion. If the effect of the proposal was to deprive the Registrar of the power of imposing such requirements, it was undesirable as the result would be that the Registrar would have to refuse registration for many marks.

49.3 The representative of Australia said, responding to a question, that the phrase "no use in good faith" in paragraph (v) of the Australian proposal was intended to deal with, for example, the case that by virtue of an agreement not the proprietor of the mark would be the one using the mark but some third person not being a registered user. With regard to the third sentence of the United States proposal, a participant said that it would be important that the registered proprietor retained sufficient control over the use by the third party such that the use would not give rise to confusion, and that the goods produced would be of the same standard as those produced by the registered proprietor or any other authorised user. The representative of India, referring to paragraph 42(iii) of the Indian paper, said that use of a trademark by a third party should be considered use by the trademark owner only if the third party was registered as a user.

50. (9)Licensing and assignment. The representative of the European Communities said that, to fill gaps in the Paris Convention treatment of this subject, there should be a straightforward prohibition of compulsory licensing of trademarks as well as a provision clarifying that transfer of trademarks would be allowed with or without transfer of the undertaking to which they belonged. The representative of India, referring to paragraph 42(v) of the Indian paper, was concerned that the proposals of the European Community would undermine the relevant provision of the Paris Convention and could promote trafficking in trademarks, if assignments could be made without the transfer of the goodwill or undertaking to which the mark belonged. Such assignments of trademarks could be used to circumvent the basic purpose of national trademark law, which was to protect the consumer against being deceived or confused. Responding to a participant who believed that the rationale for trademarks was inextricably linked to the goodwill attached to them, the representative of Australia said, with reference to paragraph (vi) of the Australian proposal, that assignment with or without the transfer of the goodwill of the business concerned had been in Australian law for many years to the satisfaction of users. The representative of Switzerland, responding to a question concerning paragraph 13 of the Swiss proposal, said that Article 6quater of the Paris Convention did not forbid assignment of trademarks without the transfer of the business or goodwill concerned; also Article 21 of the WIPO Model Law did not forbid such assignment. However, her delegation would give further thought to the situation where marks were intentionally created for the sole reason of selling them.

51. (10)Non-discriminatory treatment. The representative of the European Communities recalled that his delegation had made proposals on the question of the application of basic principles, such as non-discrimination, mfn and national treatment.

52. (11)International registration systems. The representative of the European Communities said that the recent conclusion and signature in Madrid of a Protocol relating to the Madrid Agreement Concerning the International Registration of Marks made the proposal of the Community on this subject more justified than ever.

(iv) Geographical indications including appellations of origin

53. Introducing the proposal of his delegation, the representative of the European Communities emphasised the major trade distortions and impediments that were arising in his view because of widespread misleading use of geographical indications, in particular the misuse of names of geographical areas located on European territory which represented products specific to the natural and/or human environment in which they were elaborated. In his view, the extent of the present international consensus on the level of protection to be accorded to geographical indications including appellations of origin was not satisfactory. While the Paris Convention and the General Agreement itself had relatively large memberships, the provisions in those two agreements were far from representing the minimum necessary to address trade problems in this area. The standards provided for in the Madrid and Lisbon Agreements were better, but those agreements had insufficient support. He felt that a considerable number of other countries, both developed and developing, had interests in this matter. The products affected were often processed agricultural products. He hoped that countries which stood to benefit from being able to exploit more fully a comparative advantage in agriculture as a result of the Uruguay Round negotiations on agriculture would recognise the legitimacy of the Community's desire to benefit fully from its own comparative advantage, which lay particularly in the accumulation of know-how, experience and in its specific conditions of soil and climate. The essence of what the Community was seeking was adequate protection against unfair use by third parties of the results of the work, investment and goodwill generated by its peoples. He added that nothing in the Community proposal conflicted with existing international obligations.

54. A participant emphasised the importance of the protection of geographical indications including appellations of origin, especially for developing countries. His country experienced problems in the protection of appellations relating to agricultural produce and beverages. He supported the proposal of the European Communities fully.

55. The representative of Switzerland, referring to his country's proposal on this matter, also expressed his support for the points made by the European Communities in its introduction and emphasised the importance of this issue for his country. He said that it should be born in mind that this issue was not only important for wines and other agricultural produce but also for other goods as well as services. The Swiss proposal was generally similar to that of the Community, but there were certain differences.

56. The representative of Australia, referring to the Australian proposal, said that his delegation supported the protection of geographical indications including appellations of origin and could agree widely with the proposal of the Communities; the differences between his country and the Community on this matter lay essentially in regard to names that had become truly generic. The representative of the United States said that his country's proposal dealt with the issue of geographical indications under the heading of trademarks. In the United States the fundamental principle of protection in this area was the avoidance of consumer confusion. The trademark law provided protection to prevent the misleading use of designations of origin. His delegation was concerned about the comprehensive scope of the Community proposal and had difficulties with a number of specific aspects. It considered the Swiss proposal somewhat less over-reaching. The representative of Japan, responding to a question concerning the absence of an entry in the Japanese proposal on this subject, said that Japan was still studying this matter and would come back to it in due course.

57. A participant said that his delegation considered that the provision of standards and principles for the protection of geographical indications including appellations of origins was necessary. However, such obligations should not put undue burdens on countries that would not benefit directly from such protection. In this regard he referred particularly to the proposal that signatories would be obliged to take measures to prevent geographical indications from developing into designations of generic character. The form of protection to be provided should be left to each country to decide, for example whether it would be through laws on unfair competition, trademark law or criminal law. Another participant said that effective protection for geographical indications should be provided by refusing the registration of trademarks using geographical names and by prohibiting the use of false indications of geographical origins. In his country the former was done through the

trademark law and the latter through unfair competition law.

58. The more specific points made in the discussion are recorded below organised under the headings employed in the secretariat compilation.

59. (1)Protectable subject matter. The representative of the European Communities said that his delegation considered the definitions contained in the Paris Convention and Madrid Agreement insufficiently precise. The Community proposal therefore suggested a minimum definition of what constituted a geographical indication. Responding to comments, the representative of Switzerland said that an example of a geographical indication relating to services might be "Les Portes du Soleil" in the area of tourism. This question was distinct from that of service marks. A participant was troubled by the suggestion in the Community paper that protection should be accorded to appellations of origin to the extent that it was accorded in the country of origin. This seemed to suggest to him that the protection accorded to foreign appellations in each country should be a function, not of its own law, but of the law of the country of origin of the appellation in question. He found it difficult to square this concept with the national treatment principle and also the principle of territoriality.

60. (2)Protection against unfair use. The representative of the European Communities said that the Community proposal did not advocate the adoption of an absolute system of appellations of origin. However, the Community was concerned about the trade problems that arose if the only form of protection accorded was that of consumers against deception. The Community therefore suggested a median approach. This also reflected the consensus amongst Community member States, in which the approaches to this question were far from identical.

61. (3)Protection against use as a generic term. The representative of the European Communities said that the Madrid Agreement was too open-ended in this respect. Explaining the approach reflected in the Australian proposal, the representative of Australia said that many of the terms in question no longer reflected a geographical indication but had become associated with a general set of characteristics that pertained to a particular product. As long as there was no intention, or effect, of deceiving the consumer, his delegation did not consider it necessary to protect names that had become truly generic. The representative of the United States said that his country also recognised the possibility that over time terms would become so widely used as to become generic. Responding to a question, the representative of Australia said that his delegation would be prepared to study the possibility of finding ways to ensure that in the future certain appellations would be protected from becoming generic. Referring to the Swiss proposal in this respect, he was not sure that such a programme could be developed on the basis of the definition of geographical indications put forward in that proposal. In relation to the Community proposal, he wondered what would be the "appropriate measures" that the Community envisaged. The most problematic part of the Community proposal on this matter was that requiring that appellations of origin for products of the vine should not be susceptible to develop into generic designations. His delegation considered the Madrid Agreement excessive in this respect. Joined by another participant, he wondered what was the logic in terms of intellectual property law for singling out products of the vine for special treatment.

62. (4)Protection against use as a trademark. A participant believed that the proposal of the European Communities on this matter went beyond what was necessary to prevent consumer deception and failed to recognise the realities of international trade practices. It appeared to him that the Community proposal would require that the use of marks such as Manhattan in relation to shirts and York in relation to air-conditioners would have to be limited to shirts and air-conditioners coming respectively from those two places. The representative of the European Communities said that this was a misunderstanding of the intention of the proposal. The representative of Switzerland said that the Swiss proposal on this matter was similar to that of the European Communities, but the qualifying phrase "if the use of such indication is likely to mislead the public as to the true geographical origin of the product" had been added.

(v) Industrial Designs

63. The representative of the United States, referring to the absence of an entry on industrial designs in his country's proposal, said that the United States Administration had submitted to Congress a bill which would provide a copyright-type protection for original designs fixed in a useful article. The term of protection would be ten years. Designs would have to be registered within a year of the date of first publication, or protection would be lost. A notice of design protection would be required in order for the designer to collect damages in an infringement suit. Protection would only be afforded against copying; use of a design independently created would not be an infringement. This step had been taken in response to the great weight of interest in this subject expressed by other participants in the negotiations. He hoped to be in a position to submit a negotiating proposal, after completion of internal requirements concerning consultation with Congress and the private sector. Some other participants welcomed the information provided by the United States.

64. The representatives of Switzerland, the European Communities, Japan and Norway, referring to their proposals, emphasised the importance they attached to the protection of industrial designs, underscoring the economic and commercial importance of the subject in the context of the TRIPS negotiations. The representative of Japan highlighted that his country's proposal, unlike some others, required both novelty and originality as conditions of design protection. Responding to a question whether this would not constitute a highly demanding criterion, he said that, since the proposed rights were similar to those conferred by patents, it was reasonable to demand the same requirements for the acquisition of protection. He recognised that in countries where the copyright approach was adopted this might seem demanding, but felt that the criteria for establishing protection should be commensurate with the strength of the rights conferred by the title. Responding to a question as to why their proposals provided for an initial term of protection of only five years, the representatives of Norway and Switzerland said that experience had shown that the lifetime of an industrial design was often very short, and that the first period of five years of protection often seemed satisfactory to right holders, since in many cases renewal was not applied for. To burden the register with designs that were no longer in use seemed unnecessary. In response to a question, the representative of Norway said that the enumerations of forms of exploitation in paragraph 3.3 of the Nordic proposal concerning designs and in paragraph 1.3 concerning patents should both be interpreted as relating to any kind of exploitation, as long as not explicitly excluded. The difference in the two enumerations was due to the fact that the different kinds of exploitation of patents had been split into three parts. Responding to a question about the meaning of the term "exploit" in paragraph 21 of the Swiss proposal, the representative of Switzerland said that paragraph 21 was based on Article 5B of the Paris Convention; the term "exploit" had been used instead because this was a reference to the acts enumerated in paragraph 18, which constituted acts of exploitation of industrial designs.

65. A participant shared the view that industrial design protection should form part of a TRIPS agreement. A design should be interpreted as meaning a two or three dimensional external appearance of an article which had a utility function. Protection should be granted to designs which were original or novel. The creator and his successor in title should at least be given the right to prevent others from manufacturing, using or selling articles bearing the design which had been copied or substantially copied. The term of protection should be at least ten years. Cancellation of a design right because of non-working should not be made possible; in this respect he noted that, since a design protects only the appearance of an article, not the article itself, it did not provide a monopoly on functional aspects.

66. A participant said that there should be a clear distinction between industrial design and copyright protection. Any overlap should be avoided. Concerning the duration of protection, he said that an unreasonably long term should be avoided and that a term of seven years could be considered adequate. In this respect he was supported by another participant, who said that the term of protection should be less than 10 years to prevent designs, which were in general easier to develop than patents, from being an obstacle to the development of new products. Protection should only be granted, upon registration, to industrial designs which were new, original, and industrially applicable.

(vi) Patents

67. Referring to their proposals, the representative of the United States and the European Communities said that the provisions of the Paris Convention were inadequate to prevent distortions or impediments to international trade arising from inadequate patent protection. In their view, improvements in this regard were of crucial importance for the conclusion of the TRIPS negotiations in particular and of the Uruguay Round in general. The representative of the European Communities recalled that his delegation advocated a two-pronged approach, comprising on the one hand an obligation to adhere to the Paris Convention in its most recent version and on the other the elaboration of a certain number of principles to address trade-related deficiencies in existing standards. Although the Paris Convention had a wide membership, some important trading countries had not yet become signatories. In this connection, he stressed the importance his delegation would attach to adherence by India. Wide adherence to the Paris Convention was important not only because of the contribution it would make to strengthening the multilateral system, but also because the Paris Convention had a certain number of provisions of substantial trade-related importance, including those relating to compulsory licensing.

68. Presenting his delegation's proposal on patents, the representative of India reiterated his concern that it appeared to him that most of the proposals before the Group assumed that all aspects of IPR standards were trade-related and hence within the scope of the work of the Group. He renewed his request for clarification from others as to what aspects of IPRs they considered were not trade-related. His delegation had reservations in accepting an approach that appeared to be attempting to create a super-Paris Convention in GATT. What was required in the Group was a debate to isolate the trade aspects from those not related to trade, and to consider the seriousness of their impact. In his view it was the restrictive and anti-competitive practices of IPR owners that created serious trade distortions. Some other participants agreed that, since the thrust of the Group's work was to avoid trade distortions, it should discuss those restrictive and anti-competitive practices in arrangements to license or assign IPRs, especially patents and know-how, that created such distortions.

69. Some participants emphasised the importance of paragraph 5 of the April TNC decision on the discussion of patents. The rights of patent owners had to be balanced by responsibilities so that the system served the public interest, in particular the interests of the poorer sections of the population of developing countries. It was suggested that the originality of the Group's work might lie in giving a new impetus to public interest and development needs in relation to trade-related IPRs. A participant said that three conditions would have to be fulfilled if patents were to be a useful instrument for the promotion of technological advance in developing countries. First, there should be obligations on patent owners, for example to allow greater access to technological innovations. Second, and in fact underlying the first, was the need for greater transparency of the relevant information contained in patents. Enhanced standards of disclosure that would upgrade the precision of information contained in patents would give developing countries greater access to the fruits of technological development. Such obligations would be elements of a balance with regard to the rights conferred on the owner, and would also help to reduce trade distortions caused by excessive protection of IPRs. A third condition related to the overall flexibility countries should enjoy in order to adapt the protection of patents to their socio-economic and technological needs, as well as to their cultural and juridical traditions in the field of the protection of intellectual property. One central element of this flexibility related to the possibility of establishing through domestic legislation exclusions from patentability.

70. Some participants suggested that too much attention had been placed on the protection of patents and not enough on special and differential treatment of developing countries. Such treatment should include their right to exclude certain products and processes from patentability on public health, scientific, etc. ground and to accord shorter terms of protection for patents than was the case in developed countries. A participant wondered how developing countries would benefit if, on the one hand, the bargaining power of intellectual property right owners was strengthened, but on the other adequate consideration was not given to the principle of the differential and more favourable treatment of developing countries contained both in Part IV of the General Agreement and in the Punta del Este declaration. Another participant was of the view that the patent system had to be designed in the light of the situation of developing countries, rather than the question being one of

special and differential treatment. Developing countries were net importers of technology, and held only 5 per cent of the patents granted world-wide. They suffered from an overwhelming non-utilisation and under-utilisation of patents that they granted, from low levels of technological development which often prevented the local adaptation of foreign technology even in the absence of patent protection, and from an inadequacy of resources for investment in research and development. Responding, some participants representing industrialised countries said that more than 90 per cent of the patents granted by their countries were accorded to foreigners and a large part of these were not worked. However, no definite conclusions could be drawn about the implications of the patent system for social and economic development on this basis. In their experience, the patent system had contributed to economic development through stimulating the development and diffusion of technology.

71. Replying to comments that inadequate attention had been given to paragraph 5 of the TNC decision in some of the proposals, some participants said that their public interest objectives were reflected in their proposals. It was up to other delegations to put forward reasons as to why their public interest objectives were not served by the proposals before the Group. The representative of India replied that his delegation's submission aimed to show how the design of various intellectual property provisions, such as those on exclusions, should reflect public interest objectives.

72. The view was expressed that the Group should give attention to aspects of IPRs not dealt with in other fora; the repetition, or transposition to the Group, of work being undertaken in other fora would constitute an unnecessary overlap. A participant said that if gaps existed in certain international conventions the proper forum for addressing them was WIPO.

73. A participant referred to patents as an area that required a balance to be struck between the need for protection on the one hand and for curtailing excessive monopoly power on the other. Her delegation attached great importance to the following areas: coverage of patentable subject matter, measures to prevent abuses of the patent monopoly, and restrictive practices in connection with patent licensing contracts. The Group might reflect on the following points relating respectively to these areas: whether patents should be extended to all types of inventions; whether contracting parties should be allowed to take measures such as compulsory licensing to prevent abusive practices; and whether contracting parties should be allowed to regulate voluntary licensing contracts to prevent restrictive business practices. In order to achieve a common goal, the Group should follow the guidelines set out in the April TNC decision relating to the underlying public policy objectives of national legislation and the need to secure the widest possible participation in the results of the negotiations.

74. Offering some general remarks, a participant said that, if an agreement was reached at the end of the negotiations to introduce product protection for pharmaceuticals, chemicals and foodstuffs, it would involve a change from the present situation prevailing in many countries, including his own, of mainly granting process patents. Referring to paragraph 4(e) of the April TNC decision, he said that such a transfer to a new regime could not be effected quickly and therefore required that the Group should work out meaningful transitional arrangements that would enable concerned industries to adjust to the new situation while allowing the legitimate rights of patent holders to be respected.

75. Describing his country's position on patents, a participant said that the appropriate coverage of subject matter for patent protection in a TRIPS agreement should be very broad because of the extensive increase in trade carried on by countries in goods and technologies subject to patent protection. In general, countries should be required to grant patents for all products and processes in all fields of technology, with the exception of inventions having an illicit purpose as their objective. This would encourage broad-based innovation and invention and dissemination of ideas and technology, and allow a free flow of trade in goods resulting from these inventions. In the field of bio-technology, his delegation considered that all countries should be required to grant patents for uni-cellular life forms and processes. However, the question of whether other biotechnological inventions should be patentable was currently being reviewed in his country and at this time he

wished to reserve his position as to whether countries should be required to grant patents for methods of medical treatment or for multi-cellular life forms or processes for producing new multi-cellular life forms. Patents should be granted for any patentable subject matter which was new and unobvious and either useful or susceptible of industrial application. The term of patents should be 20 years from the filing date of the application, since that appeared to reflect an emerging international consensus and also generally to allow an investor to obtain a reasonable return on his investment. The owner of a patent should have the right to exclude others from making, using or selling the patent or invention for a specified term. A process patent should be considered to be infringed if the patented process was used without the authorisation of the patentee, and also when a product was used, made or sold where the process claimed in the process patent was used in the manufacture of the product without authorisation. These rights were necessary to provide patentees with the necessary economic incentive to justify investment in innovation and to justify disclosure of inventions in return for the grant of the patent. His delegation, however, considered it legitimate to place some limits on the rights of patentees provided that these limits were balanced with the recognition of the patentees' right to benefit from the use of the invention. For example, in order to encourage further innovations by others, his delegation agreed with the views of some other participants that third parties should be permitted to make and use patented inventions for private and non-commercial purposes or for experimental or research purposes without liability to the patentee. Permitting research and experimental use of inventions as non-infringing activities would encourage business to experiment and develop innovations without fear of infringement. Such possibilities were important to countries like his which were heavily dependent on foreign technologies. In regard to compulsory licensing, the main concern should be whether it was done in such a way as to remove the economic incentive which a patent was intended to provide to innovation and disclosure. The necessary economic incentives would be adequately protected if the following three restrictions were placed on compulsory licensing: first, compulsory licences should only be granted in accordance with the Stockholm Text of the Paris Convention, which would permit countries to grant compulsory licences for non-working; second, compulsory licensing should be subject to judicial review; and third, compulsory licensing should provide for appropriate compensation to be paid to the patentee for the use of the invention. Revocation of patents should be available in cases of abuse of patent rights, but only in accordance with the Paris Convention and subject to judicial review. Non-discriminatory treatment with respect to patent rights was an issue of great importance to his delegation. The Negotiating Group had recognised that non-discrimination and national treatment must be fundamental principles in any GATT agreement on intellectual property. A concern of his delegation was that it was necessary to ensure that these principles were worded in such a way as to require the United States to remove what his delegation regarded as a discriminatory feature in its existing patent law, which gave priority among competing inventions to those which had been developed and reduced to practice in the United States. Under United States law, a patent was granted on a first-to-invent basis rather than on a first-to-file basis, as was the practice in most other countries. As a result, inventions made in United States facilities could be given a reduction to practice date earlier than the actual filing date. However, non-United States inventions could not achieve a similar benefit. Companies developing inventions outside the United States could not use their inventive activity to establish a United States reduction to practice date. This feature of United States law had the following commercial or trade impact. The failure to establish the earliest possible date for reduction to practice in the United States could result in a foreign company losing its right to a patent, having a granted patent held to be invalid because of priority, or even being sued by a later inventor who might have priority in obtaining a United States patent. To ensure the most favourable treatment under United States patent law, therefore, non-United States companies had to conduct their reduction to practice activities in the United States or license United States companies to perform this research and development for them. This resulted in a direct technology transfer to the United States. In the view of his delegation, this feature of United States law discriminated against technology developed abroad and encouraged United States companies to do their research and development at home.

76. A participant referred to intensive discussions within his country and indicated that a new law granting product protection was likely to be ratified by the parliament of his country, but added that a transition period of 5-6 years would be required for putting it into effect. His delegation believed that a term of protection of 15 years was sufficient and favoured the inclusion of provisions on compulsory licensing in accordance with those

of the Paris Convention in order to prevent abusive and anti-competitive practices. Importation should not be considered as working of the patent as that could create possibilities for the abuse of a patent right by its holder. Patent rights should not cover private use and use for non-commercial and research purposes. Restrictive business practices should be taken into consideration; his country's new law would prohibit licensees from accepting provisions of this nature.

77. A participant, outlining his country's position on patents, said that patents should be granted for all products and processes which were new, progressive, and could be used industrially, including chemical materials, medicine, and micro-organisms. There should be no obligation to grant patents for inventions violating local customs and public health or materials which were produced by atomic transformation; reasonable standards of protection should be designed for those areas. The law in his country currently provided for a term of protection of 15 years with the possibility of a 5-year extension in some cases, but his delegation was willing to negotiate on this at a later stage. Compulsory licensing should be allowed, to facilitate technology transfer and to balance the patentee's interests and user's interests by preventing the abuse of exclusive rights by patentees. The standards and process governing the granting of compulsory licences should be reasonably consistent with the Paris Convention. A compulsory licence should be non-exclusive, and a patent owner should receive reasonable compensation.

78. Other points made in the discussion are recorded below, organised under the headings used in the synoptic tables prepared by the secretariat (NG11/W/32).

79.1 (1)Patentable subject matter. Some participants said that some developed countries had only recently extended patent protection to certain important sectors, such as chemical products and pharmaceuticals and some were not expected to do so until the early or mid-1990s. If developed countries had been able to exclude certain sectors on public interest, health care and social grounds, why should developing countries, whose situation today was less favourable, not also be able to do so. As regards product patents in the fields of bio-technology and genetic engineering, it was said that the legal situation was full of legal complexities, which had yet to be resolved. Even if industrialised countries considered that they could handle the legal, ethical, environmental and other issues involved in patent protection of micro-organisms and higher life forms, it would be difficult for developing countries to do so. The representative of India, referring to the paper of his delegation, said that the approach in most of the proposals of allowing certain general exclusions from patentability but not allowing the exclusion of specific sectors or products would not be acceptable to his delegation because of the critical importance of some sectors such as pharmaceuticals, chemicals and foodstuffs for his country. Developing countries should have the option of either excluding certain sectors altogether from patentability or of granting process protection alone. Any restrictions in this respect would have serious repercussions for their future social, economic and technological development. It would not be appropriate to prescribe uniform criteria on the subject of exclusions from patentability applicable to developed and developing countries alike.

79.2 Responding to these points, some participants emphasised their belief that patent protection in their countries, including in sectors such as pharmaceuticals, had contributed to their development. The representative of the European Communities said that this belief underlay the decisions that had been taken over the years by some member States to raise the level of patent protection. In this regard, he cited the positive experience of a member State after having extended its patent regime to pharmaceutical products. In reply, some participants said that it could not be assumed that their economies would react in the same way as a member State of the European Communities; a typical developing country was not at a stage of development comparable to Community member States when they had taken these decisions.

79.3 Another participant questioned the belief that the general prices of pharmaceutical products would rise if product protection were to be granted by some countries. Only 5% of medicines and drugs on the market were subject to patent protection. In many areas, for example oral antibiotics and anti-hypertensive drugs, there existed many drugs which were so closely substitutable that the granting of patent protection, while possibly

affecting individual market shares, would not in itself alter competitive conditions significantly. In his view, the evidence pointed to the conclusion that patent protection served to increase competition as well as to generate other beneficial effects in terms of increased investment, research and development etc.

79.4 Responding to a question on the absence of any provision for exclusions in the Swiss proposal, the representative of Switzerland explained that no field of technology should be excluded per se from patentability; what determined whether a subject matter was patentable was its technical character. However, this did not exclude the possibility that special correctives or demarcations might be necessary in specific areas. An example was plant varieties. On this specific issue, given that there were ongoing international efforts to address this matter it would be premature to take a view now. Her delegation intended to revert to this matter at a future meeting of the Group.

79.5 A participant said that in his country the question of patentable subject matter had been largely clarified through case law. It would therefore pose legal difficulties if his country were to be obliged to adhere to a positive or negative list in this regard.

79.6 The question was raised as to why it was necessary, as proposed by Japan, to provide for the exclusions from patent protection of inventions contrary to public health: it was suggested that such inventions would in any event not be permitted to be used by regulatory authorities, and often, when combined with future inventions, they might not be contrary to public health. Responding, the representative of Japan said that whether the subject matter of any invention fell into this category had to be decided on a case-by-case basis. No case had in fact come up before the Japanese courts and no application had been denied protection on "public health" grounds.

79.7 A participant was concerned about proposals for the exclusion of potentially valuable areas such as plant and animal varieties, as had been suggested in the Community's submission. Experience in his country had shown that the granting of patents to plants and more recently to animal varieties had spurred a virtual explosion in research in these areas on account of the provision of appropriate incentives. It was asked of the Nordic and European Community submissions if the exclusion of plant varieties meant that the only form of protection for them would be that provided for in the UPOV Convention. The representative of Norway said that the Nordic proposal on this matter was drawn from the Strasbourg Convention and Article 53 of the European Patent Convention. Responding to another question, the representative of Norway confirmed that the exception proposed in the Nordic paper for human beings was covered by that relating to animal varieties; it was considered necessary to specify it separately in order to avoid any possible doubts of interpretation that could arise.

80.1 (2)Conditions for patentability. The view was expressed that the Australian submission contained provisions on the criteria for obtaining protection that were too specific and that took the Group into the area of patent law harmonisation. It was not the Group's task to engage in a discussion of whether there should be a first-to-file or a first-to-invent system, of the criteria for determining prior art, or of the technical details as to when an invention satisfied the criterion of inventive step. Replying, the representative of Australia said that these provisions had been included to secure adequate levels of protection that would address certain trade distortions; for example, several complaints had been received about the trade distortions caused by the lack of a first-to-file system in the United States. He added that the prior art base had been set at an intermediate level. The aim was to avoid the grant of weak patents that would negatively affect legitimate export possibilities.

80.2 The suggestion made by another participant for enhanced disclosure requirements is recorded in paragraph 69 above.

81.1 (3)Term of protection. The representative of the United States, referring to his country's proposal, said that his delegation approached the negotiations with a willingness to change its law to join the emerging consensus of granting a period of 20 years from the date of filing as the appropriate term of protection. He

suggested that the restoration of the patent term should be possible where the effective use of an invention had been delayed by regulatory approval processes in the pharmaceutical, chemical and other appropriate areas. With regard to the United States submission, a participant believed that, in providing for the extension of patent terms to compensate for delays in approval processes, the different effects of such processes for different kinds of patents had to be kept in mind.

81.2 Responding to a question, the representative of Australia said that his delegation felt that a 15 year term was adequate. However his delegation might be willing to be flexible on this issue if others showed a similar flexibility on other matters.

81.3 While agreeing with the substance of the Japanese submission, a participant wondered if it were not excessively detailed, possibly leading the Group in the direction of a harmonisation exercise. Responding, the representative of Japan said that in some countries divisional applications could be filed at any time as long as their parent application was pending. If the term of protection were to start from the date of filing of a divisional application then the patent term could possibly be unduly long.

81.4 Referring to his country's proposal, the representative of India said that the determination of an optimal duration of patent term was a largely speculative exercise lacking a clear rational basis. It was more advisable to allow the host country to determine the duration taking into account national factors. He emphasised three points. First, it was difficult to envisage, and argue for, an optimum duration applicable to all sectors and products alike and therefore the possibility of variation should be allowed for. Secondly, developing countries, because of the difficult circumstances facing them, should be free to set terms of protection shorter than those in developed countries. Thirdly, as commercial working of the patent in the host country was a fundamental obligation, the duration ought to be linked to that obligation; unworked patents should be subject to revocation. Responding, a participant said that for some products and even processes the term of protection granted under Indian law could be less than the average time required for regulatory approval. In his view, if such a de facto negative term were considered reasonable, it pointed all the more to the necessity of laying down an adequate minimum duration for all classes of inventions. Another participant agreed with India that it would not be possible to determine, on the basis of economic analysis, the appropriate term of protection. Nevertheless, in the present interdependent world a move towards an international consensus on this was essential.

81.5 Responding to a request for clarification, the representative of the European Communities said that the term "generally" in its submission meant that the Community would not necessarily dispute a patent term in another signatory of slightly less than 20 years. It also had a meaning in terms of a link to the question of transition periods. If at the end of the negotiations a long transitional period was agreed upon, the term of protection ought to be very close to 20 years; if, however, a relatively short transition period was agreed upon, there could be less rigidity on adherence to 20 years.

81.6 Referring to a question concerning the scope for patent term extension in the Nordic submission, the representative of Norway said the proposal in this regard merely laid down a minimum requirement and hence extensions could be provided under national law. However, in the light of his country's desire to avoid excessive protection, it was envisaged, even though that had not been specified in the submission, that an upper limit should be placed on the term of protection.

81.7 A participant referred to a recent review of patent law undertaken in his country which had concluded that a term of 16 years was adequate for the purposes of his country. He pointed out that this was 16 years from the date of filing of the complete specification which in practice could be longer than 16 years from the date of initial filing. His delegation was willing to reconsider its position on this issue as part of the negotiations.

81.8 A participant, concerned that the suggested terms of patent protection appeared to be purely arbitrary, suggested that the secretariat should undertake a study of the useful life of patents according to fields of activity in an effort to determine how long, on average, patents needed to be protected in order to respond both to the

patent holder's concerns with regard to the investment in research and development made and the actual utility of the patent in terms of the new technologies available and their life-span before obsolescence. Such a study could be of use to governments in exercising their freedom to determine patent terms.

82. (4)Rights conferred. Responding to questions on the Nordic proposal, the representative of Norway said that the use of the word "possessing" applied only to product protection and was intended to convey the same sense as the word "stocking" used, for example, in the submission of the European Communities; possession constituted an infringement of the patent even if the mere intention had been proven that the product would be subsequently produced, offered, used or put on the market. The exception covered by the phrase "exploitation for non-commercial purposes", was found in the patent laws of many countries; it referred mainly to use for solely private purposes, but it also could cover, for example, use by non-commercial entities which had purely idealistic objectives. It would be difficult to draw a clear line in a TRIPS agreement between cases covered or excluded by the phrase and this should be left to be determined by national courts in individual cases. In regard to a concern expressed that the exception to the exclusive rights in respect of individual preparations in a pharmacy could lead to misuse, he said that it would be up to national courts to give a reasonable interpretation as to whether a pharmacy had in fact grown into a pharmaceutical company and thus fell outside the scope of the exclusion. In response to questions and comments on the absence of a reference to importation in the scope of rights conferred in respect of product patents, the representative of the United States said that his delegation would reflect on this subject and would consider introducing a reference to importation, especially since this was already provided for under his country's law.

83.1 (5)Compulsory licensing/forfeiture. Explaining the rationale underlying the submission of the Nordic countries, the representative of Norway said that there was an ongoing exercise in WIPO on this issue which ought not to be interfered with. Nevertheless, the Nordic submission provided for the review of compulsory licensing by courts; that should be uncontroversial and would address certain trade-related problems. The representative of the European Communities, explaining the Community approach to this subject, said that although seldom used in practice, compulsory licensing was useful by virtue of its presence as a deterrent to the abuse of patent rights. His delegation did not view it as desirable to transpose to the Group the debate involving strongly opposed views regarding the desirability of modifying the substantive provisions of existing obligations in the Paris Convention. However, it would be very useful if agreement could be reached in the Group on the possibility of judicial review in the event of compulsory licensing so that a certain transparency and equity could be assured in what was an administrative action involving the transfer of property rights.

83.2 The representative of the United States, explaining the United States proposal, said that this subject was not satisfactorily dealt with in the Paris Convention because the relevant provisions were so open and permissive as to allow mischievous use by countries. His delegation favoured a practical approach that would impose realistic restrictions so that compulsory licensing was only used for legitimate purposes spelt out in his delegation's submission (NG11/W/14/Rev.1). Compulsory licensing on the ground of non-working was an outmoded idea, not reflecting modern business trends; it would be difficult to contemplate the working of a patent in every country because modern technology rendered that economically undesirable.

83.3 A participant replied that far from being outmoded, compulsory licensing was relevant to the situation of developing countries that suffered from an overwhelming rate of non-working of patents. It had also to be borne in mind that, when granting compulsory licences, restrictions were imposed to protect the rights of the patent holder and to guarantee a reasonable return on his research and development. Compulsory licensing was thus intended to strike a balance between the interests of the public and those of the right holder. The representative of India, explaining his country's proposal on this matter, agreed that compulsory licensing had to be viewed in the context of the balancing of the monopoly rights conferred on patent holders by obligations and responsibilities. This had been accepted as part of the patent system for over 100 years. It was not clear as to how trade, investment in production and technology transfer could be facilitated by the non-working of a patent. As regards the grounds on which compulsory licences could be granted, he referred to paragraph 12 of his delegation's submission and said that these were derived from Section 48(3) of the Patent Act (1977) of the

United Kingdom. They were also similar to provisions in Section 93 of the Japanese Patent Law and the laws of the Nordic countries. They recognised the possibility of misuse of a patent system based on monopoly rights, and therefore the need for enabling legal powers to grant compulsory licences, however sparingly they might be used, to address this misuse. He then referred to the view in his country's paper that the granting of licences of right was necessary to remedy the extreme forms of abuses that might arise, especially in certain critical sectors like pharmaceuticals, agro-chemicals and foodstuffs. The advantage of licences of right was that they avoided the litigation associated with the grant of compulsory licences. The WIPO Model Law had recognised the need for licences of right for developing countries, because their situation was different. In his view, the abuses of exclusive rights conferred by the intellectual property system should be clearly recognised and developing countries should have the flexibility to lay down the grounds for granting both compulsory licences and licences of right in order to attain their public interest, technological and development objectives. In response, a participant said that it had to be recalled that most participants in the negotiations were members of the Paris Convention and thus bound by its rules on compulsory licensing. Replying, the representative of India said that paragraph 12 of his delegation's paper was fully in conformity with the Paris Convention.

83.4 A participant said that his delegation had a broader view of the appropriate criteria for compulsory licensing than those reflected in most of the proposals submitted to the Group. His country would wish to maintain the right to issue compulsory licences for non-working. In his country this could be done subject to the fulfilment of certain conditions, for example ensuring that the patentee derived reasonable advantage from his right. In his view the Group could take alternative approaches to this: the first, which would be difficult, would be to agree on a narrow set of conditions under which compulsory licences could be granted; the second would be to lay down rather broader conditions subject to built-in safeguards such as the need to ensure equitable treatment of the patentee and to provide for the possibility of judicial review of compulsory licences.

83.5 Responding to a question, the representative of Australia confirmed that if government exploitation of patents was not considered as a form of compulsory licensing, the Australian proposal required that compulsory licences only be available to remedy adjudicated anti-competitive practices. Responding to a concern that the Swiss proposal on compulsory licensing was somewhat open-ended, notably in allowing for their grant on grounds of insufficient working or public interest considerations, the representative of Switzerland said that the Swiss proposal required that three conditions be satisfied before compulsory licences could be granted: it had to be shown that voluntary licences had not been granted on terms in line with normal commercial practices by the patentees, that local needs had not been met, and that the minimum time periods specified had elapsed. Responding to similar concerns, the representative of Japan said that the provision for compulsory licensing on "public interest" grounds could be found in the law of many countries including his own. In his country, coverage had not been defined and no compulsory licences had been granted under this provision so far. In replying to comments that patent forfeiture was an outdated provision, he said that his delegation was not advocating the use of patent forfeiture, but rather accommodating the possibility of its use which was found in the laws of several countries and which was also consistent with the Stockholm Act of the Paris Convention. Responding to a view that the United States proposal on compulsory licences might prove open-ended, given that it left the definition of what could constitute a violation of anti-trust laws to national legislation, the representative of the United States said that his delegation would give further thought to this matter.

83.6 A participant expressed doubts about allowing compulsory licensing for dependent patents as suggested in the submissions of the Nordic countries, the European Community and Japan. If a dependent patent had sufficient value, the normal operation of the market would lead to a cross-licensing of the dominant and dependent patents; this would allow the working of the dependent patent by its holder, as well as enable the holder of the dominant patent to use profitably the improvement to his invention contained in the dependent patent.

83.7 Responding to a question on the phrase "capable of independent review by a distinct higher authority", the representative of Australia said that this would mean for example that, where a patent office granted compulsory licences, independent review would have to be conducted externally of that office, by some higher

administrative body or by a judicial body. Similarly, if an independent administrative body were established to grant them, provision for independent review would have to be made, for example by a court.

84.1 (6)Voluntary Licensing A participant indicated what he considered to be among the restrictive and anti-competitive practices in arrangements to license or assign patents that created trade distortions. These included the unjustifiable imposition of territorial restrictions in patent licences which affected international trade by unjustifiably prohibiting exports of patented products to specified areas; the unjustifiable imposition of territorial, quantity or price restrictions or attempt to dominate an industry market or new industrial process, when negotiating or operating patent pools or cross-licensing agreements; the use of clauses concerning tied sales that obliged the licensee to obtain goods from the licensor or his designated source, when the tied sales were not justified, for instance, by technical reasons concerning the quality of the goods manufactured under the licence; and the use of clauses that unjustifiably limited competition by preventing one or more parties to the patent licensing contract from competing with other parties to the contract, or with third persons, in other industrial fields not covered by the licensed patent. The representative of India recalled his country's proposal that the Group should prepare a comprehensive list of such practices, similar to those listed in his country's submission, and that countries should undertake an obligation to declare them null and void in their patent law, as was done, for example, in Section 48 of the United Kingdom Patent Act under the title "Avoidance of Certain Restrictive Conditions". A participant suggested that the obligations contained in the instruments developed in UNCTAD to control restrictive business practices should be made binding. A participant said that in his country companies were forbidden to enter into contracts containing restrictive conditions of the sort that had been mentioned.

84.2 A suggestion was made that the secretariat should prepare a factual note indicating the incidence of restrictive and anti-competitive practices arising in arrangements to license and assign IPRs and their impact on international trade. It was said that such a note would facilitate discussion in the Group of an area that was central to the Group's work namely that relating to standards and principles concerning the use of IPRs.

85. (7)Non-discrimination The representative of the European Communities, referring to the statement recorded in paragraph 75 above, recalled that the proposal of the Community provided for commitments on non-discrimination in the context of suggestions for general national treatment and mfn-type commitments.

(vii)Layout-designs (topographies) of integrated circuits

86. Some delegations said that the recently concluded Washington Treaty on Intellectual Property in Respect of Integrated Circuits was unsatisfactory, in that it provided inadequate levels of protection to address the trade distortions and conflicts that could arise in this area. The inadequacies that were said to exist were: an inadequate minimum duration of protection of 8 years; provisions on compulsory licensing that were too permissive; the absence of a requirement for an innocent infringer to pay royalties after receiving notification; and ambiguity as to which transactions or products involving infringing chips should be defined as unlawful. The representative of the United States said that his country's proposal would remedy these deficiencies, and the representative of Japan said that his delegation was re-examining his country's proposal in their light. The representative of Norway said that the Nordic proposal was aimed at remedying two shortcomings in the Washington Treaty - those concerning the term of protection, in respect of which the Nordic paper proposed what should be understood as a minimum term of 10 years, and the right to remuneration in respect of innocent infringement. He informed the Group that in the Nordic countries existing legislation gave the right holder the right to remuneration from an innocent infringer not only after notice had been given but also for the period that he had acted in good faith. The Washington Treaty provision meant that an innocent infringer could find himself in an advantageous situation vis-à-vis a licensee; this would have an adverse effect on competitive conditions in the market. With regard to the Swiss and Nordic submissions, a participant said that it should be equally permissible to calculate the term of protection from the date of registration.

87. Referring to his delegation's proposal, the representative of the European Communities said that,

although his delegation had voted in favour of the adoption of the Washington Treaty, it was reviewing its position both on the question of signature to the Treaty and of the necessity of discussing in the TRIPS context additional or different provisions to address trade-related problems. This was consistent with its general approach to the TRIPS negotiations, including their relationship to the work of WIPO; WIPO would remain the focus for detailed intellectual property rule making in its area of specialisation whereas the Group should address the trade-related problems. He added that in this connection two further points had to be borne in mind. First, it would be necessary to work out compromise solutions to satisfy not only participating countries whose interests were mainly those of users and importers of chips but also those which had legitimate interests as producers. Second, whatever the rules adopted in respect of this intellectual property right, they would have to be sui generis and could not be transposed to other IPRs, because of the particular characteristics of the technology involved, including its short product cycle, its key role as a technology driver, its strategic aspects etc.

88. The representative of India, referring to paragraph 45 of his delegation's paper, together with some other participants, expressed the view that the recently concluded Washington Treaty was adequate for the protection of this IPR and that it would be inappropriate to attempt to re-open the question of the standards established by the provisions of the Treaty. Each country should be allowed to deal with this subject according to the Treaty just concluded.

(viii)Trade secrets/acts contrary to honest commercial parties

89. The representative of the United States, referring to his delegation's proposal, said that according to information from business in the United States a large proportion of intellectual property was protected in the form of trade secrets, rather than through patents or other IPRs. Trade secrets and business know-how were important for competitiveness in a wide range of industries and should be an essential element of any system of intellectual property protection. The absence of adequate protection exerted a major chilling effect on the transfer of technology. Another participant said that it favoured the inclusion of a generally worded provision in a GATT agreement to protect trade and business secrets, according to which the proprietor should have the right to prevent such secrets from becoming publicly available or being used by others in a manner contrary to honest commercial practices.

90. The representative of India, referring to his country's proposal, and some other participants maintained that trade secrets could not be considered a form of intellectual property; hence, they fell outside the scope of the Group's work. It was said that the fundamental basis of an intellectual property right was the disclosure, publication and registration of the subject matter of protection, whereas confidentiality and secrecy were fundamental to trade secrets. The observance and enforcement of secrecy and confidentiality clauses should be governed by contractual obligations and the provisions of civil law, and not by intellectual property law. A participant said that in his country this subject was dealt with adequately under special legislation concerning the abuse of economic power. He also recalled the view expressed by his delegation, in the context of the discussion of patents, that there should be greater disclosure of information as a condition of the grant of a patent. The point was also made that, if private parties could not themselves protect confidentiality of valuable information, it was difficult to see why governments, expending public resources, should do so on their behalf.

91. Another participant said that the protection of trade secrets had become increasingly important with the growth in international trade. However, there was no concrete international definition of the term "trade secret," and trade secrets were not capable of objective identification as they were not registered. Each trade secret was a function of its individual degree of secrecy and value and the relations if its proprietor with competitors. Therefore, his delegation saw many problems in prescribing in an international agreement uniform protection for trade secrets. Whether it should be included in the work of the Group should be discussed with full and fair consideration of the arguments expressed by related international organisations.

III. Consideration of relationships between the negotiations in this area and initiatives in other fora

92. The representative of WIPO informed the Group of the dates of certain forthcoming meetings of that organisation: the second session of the Committee of Experts on Model Provisions for Legislation in the Field of Copyright (6-10 November); the seventh session of the Committee of Experts on the Harmonisation of Certain Provisions in Laws for the Protection of Inventions (13-24 November); and the first meeting of the Committee of Experts on the Harmonisation of Trademark Law (27 November - 2 December).

IV. Other business, including arrangements for the next meeting of the Group

93. The Group agreed to hold its next two meetings on 11-13 September and 30 October - 3 November. It agreed to undertake a "second reading" of agenda items I(A), I(C) and II at the first of these meetings, and of item I(B) at the second meeting. The full agenda would be before each session of the Group, giving an opportunity for any matter to be discussed.

94. Giving his preliminary thoughts on the meeting that the Group had agreed, at its May meeting, to hold in the week of 11 December 1989, the Chairman said that the Group might continue the discussion on items I(A), I(B), I(C) and II; consider items I(D), I(E), I(F) and III; take stock of its work as a whole; and consider the planning of work in the first part of 1990. The Group would, however, come back in the autumn to the precise arrangements for this meeting.

95. The Group then took up the proposals made for papers to be prepared by the secretariat (paragraphs 81.8 and 84.2 above). Some participants supported these proposals. Some other participants had doubts about whether such papers could be factual and could be reasonably asked of the secretariat. There was also some discussion of the status of the issue of restrictive business practices in terms of the decisions taken at Punta del Este and at the April 1989 meeting of the TNC. As regards the proposal for a study on the duration of patents, it was agreed that the secretariat should start investigating the possibility of carrying out such a study. As for the proposal for a study on restrictive and anti-competitive practices related to trade in licensing arrangements, it was agreed that consultations would be held, particularly on how to ensure the factual nature of such a study.

96. The secretariat was asked to update the synoptic tables in NG11/W/32.

97. The Chairman urged participants having papers to present relevant to matters to be discussed at the September meeting of the Group to attempt to make them available to the secretariat by 22 August and for matters to be discussed at the October meeting by 9 October.