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MTN.GNG/NG11/21
22 June 1990
Special Distribution

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

MEETING OF NEGOTIATING GROUP OF 14-16 MAY 1990

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

Note by the Secretariat

1. The Group adopted the agenda proposed in GATT/AIR/2974. After a discussion on the basis of document NG11/W/69 on transitional arrangements in a TRIPS agreement, the Group focused its discussion on four new draft legal texts presented by the United States (NG11/W/70), fourteen developing countries (NG11/W/71), Switzerland (NG11/W/73) and Japan (NG11/W/74). The Group also had before it a paper from Chile (NG11/W/72), explaining the basis on which that delegation associated itself with document NG11/W/71.

Transitional arrangements aiming at the fullest participation in the results of the negotiations

2. The representative of Hong Kong introduced document NG11/W/69 submitted by the delegations of Australia, Hong Kong, New Zealand and the Nordic countries on transitional arrangements in a TRIPS agreement. He emphasised that the paper was not a proposal, but rather was a discussion document that presented the various options in this area. He recognized that it was not easy to reach any kind of final view on this matter, given that the substantive commitments to be entered into were not yet defined, but considered it necessary to engage in a consideration of this issue in parallel with that of the substantive commitments.

3. Many participants welcomed the paper as a useful contribution to the debate on the question of transitional arrangements and stressed the importance of the issue, particularly from the viewpoint of encouraging the fullest participation in the results of the negotiation. One delegation, however, was concerned that the document appeared to be predicated on the assumption that certain types of substantive commitments on standards and enforcement would be entered into as a result of the work of the Group, something which his delegation did not accept. He, together with some other delegations, was also concerned that the document appeared to assume that uniform commitments for all would be phased in and that there would be no scope for differences in the level of obligation according to the stage of development. Another delegation considered that the paper was somewhat premature given the absence of clarity concerning the substantive commitments.

4. In the discussion, four reasons why transitional arrangements might be necessary were referred to. First, it was suggested that all countries might need some time for the national procedures necessary to put into effect the legislative changes consequent on a TRIPS agreement. Some participants, however, considered that this matter might be more appropriately dealt with by a suitable entry into force date for the agreement as a whole rather than through transitional arrangements. Secondly, the point was made that some countries might need a rather longer period to establish the necessary administrative and judicial structures to implement the commitments, especially in the area of enforcement where new skills and maybe even new services might need

to be established. Thirdly, it was suggested that, where countries had to make more far reaching changes in their intellectual property regime, this might have considerable economic effects and there might be need for an economic structural adjustment period so as to ensure that these effects were introduced at a politically acceptable rate. Fourthly, some participants also referred to the need to recognize explicitly the special position of developing countries, and in particular the least developed countries, in terms of adjustment periods, although for some others this matter would more appropriately be dealt with by reference to the three factors referred to above.

5. Referring to Article 4 of Part V of his delegation's proposal, document NG11/W/68, the representative of the European Communities said that the Community position fell between the options contained in paragraph 4(b) and 4(c) of the paper on transitional arrangements. The Community could accept different cut-off dates for the transitional periods of countries at different stages of development, but in doing so account should be taken not only of the traditional distinction between developing and least developed countries but also of the need for the requests to benefit from transitional arrangements to be duly motivated and subject to acceptance by a TRIPS committee. The Community proposal thus did not envisage a wholesale application of transitional periods, but their application on a case-by-case basis. He said that his delegation was also favourably inclined towards the suggestion that all countries which faced special problems in the preparation and implementation of intellectual property laws should be able to benefit from transitional periods on the submission of a duly motivated request.

6. A participant suggested that a TRIPS agreement should be sufficiently flexible to accommodate the position of a participant that might be able to meet all the requirements except on one or two very minor elements, so as to ensure that those minor points did not delay the entry into force of the agreement as a whole.

7. The representative of Hungary recalled that in document NG11/W/56 his delegation had suggested a single cut-off date for the transitional period available to all participants and that, within this timeframe, each signatory country would have the right to establish unilaterally a schedule for the implementation of the commitments in a TRIPS agreement. He emphasised that it would not be acceptable to his delegation if transitional arrangements did not give each participant the unilateral right to avail itself of them.

8. The representative of Switzerland, referring to Section Four of his country's proposal (NG11/W/73), said that in his delegation's view, transitional periods should be treated as a matter of structural adjustment; technical adaptation of laws and regulations to the new commitments should be dealt with through the provisions on the date of entry into force of the agreement. From this point of view, it might be logical to provide different transitional periods in respect of the different areas of the agreement, where different problems of structural adjustment might arise. Even within areas differences might be appropriate, for example in the pharmaceuticals area account might be taken of the built-in transitional period resulting from the delay in the marketing of new products due to testing requirements. His delegation supported differing solutions for developing countries and least developed countries, and believed it important that countries be treated equitably in respect of transitional arrangements; a country which chose to adopt the TRIPS agreement at a later date should not be able to benefit from a transitional period as long as a country which had acceded earlier. He considered it important to avoid a country-by-country or case-by-case approach, as this would give rise to considerable problems of negotiation and equity. His delegation also attached importance to the monitoring of the implementation of the transitional arrangements by a committee. Some other participants agreed with the views of Switzerland concerning the merits of providing for different transitional arrangements in respect of different areas of the results and also on the burdens and difficulties of negotiating individual country transitional schedules.

9. All participants who spoke on this matter considered that countries should should benefit from the full rights under a TRIPS agreement during their transitional periods. A participant said that his support was contingent on the transitional period being brief and on the agreement of the TRIPS committee to the transitional periods. Another participant said that in any event the national treatment provisions of the Berne

and Paris Conventions would give countries a right to benefit from the full protection accorded under a TRIPS agreement.

10. A participant raised a number of questions. He wondered what would happen if his country's parliament rejected a TRIPS agreement; what would be the implications of this to his country and more generally to the globality of the negotiations? He said that his country would not adopt anything as a result of the Uruguay Round until it had been adopted by the United States Congress. He was also concerned about the balance of rights and obligations and about ensuring reciprocity between those countries in which a TRIPS agreement would be self-executing in law and those countries where it would not be. He noted that the proposals made to incorporate the results of the negotiations on TRIPS into the General Agreement and expressed concern that some developed countries where GATT provisions were not self-executing did not presently even respect their GATT obligations in certain areas relating to trade in goods.

New draft legal texts proposed by participants

(i) Communication from the United States (NG11/W/70)

11. The representative of the United States said that, in drawing up the proposed Draft Agreement on Trade Related Aspects of Intellectual Property Rights, an attempt had been made to reflect the positions and submissions of other delegations wherever possible. The proposal would require changes to the legislation of all participants, including the United States, but this was a common feature of any international agreement. While it did not seek to harmonise legislations, which was the role of the WIPO, it tried to create an agreed level of obligations with respect to those aspects of intellectual property regimes which had led to the greatest trade distortions. The proposal incorporated the entirety of what his delegation considered to be the relevant provisions of the Berne and Paris Conventions. Incorporation of other intellectual property conventions was not deemed appropriate because their membership was too limited or they were not yet in force. The United States believed in the direct integration in the General Agreement of a TRIPS agreement.

12. He then went on to deal with specific issues regarding each part of the draft. He said the proposal was not only a "Paris plus" and "Berne plus", but also a "GATT plus" proposal; it did not contain anything that would derogate from the General Agreement. On copyright and related rights, he said the proposal kept with the "Berne plus" approach, clarifying and adding a number of provisions, including an obligation to protect sound recordings at a level comparable to other works protected under the Berne Convention. With respect to geographical indications, the proposal attempted to provide appropriate protection while safeguarding the interests of those who currently rely on terms which have long since become generic in their countries. Concerning industrial designs he said the draft agreement provided an appropriate level of protection, which countries may increase. On the question of patent protection the proposal sought to achieve an agreement in those areas where insufficient standards had in the past led to the greatest trade distortions, i.e. subject matter, coverage, term and compulsory licensing. As regards lay-out designs of semiconductor chips, the proposal reflected the law of countries that had enacted to date this type of protection. Regarding acts contrary to honest commercial practices including protection of trade secrets, the proposal attempted to provide greater precision to Article 10bis of the Paris Convention. In the area of enforcement, much of the proposal has been based on the legal text tabled by the European Communities (NG11/W/68), as his delegation had found that most of it provided those elements that would indeed result in effective enforcement of intellectual property rights.

13. The general approach and structure of the US proposal were welcomed by a number of participants despite divergences of views on a number of substantive issues. The parallelism between this proposal and that of the European Communities was also said to be a positive step as it would simplify and facilitate the coming debates. One of these participants was concerned however that the proposal tended to put too much emphasis on the interests of owners over users of intellectual property rights, on the rôle of governments over private parties in their enforcement, on detail over principles, and on effectiveness over safeguards for legitimate traders. He was also concerned that no explicit provision had been made for limits on unilateral measures. The

representative of the European Communities welcomed as positive a number of elements in the United States proposal similar to those in that of the European Communities: the structure including in regard to the incorporation in the GATT; the proposal on national treatment (although he had hesitations about the provision on mfn); the section on trademarks where there were only a few significant divergences; most of the enforcement proposals; and the willingness of the United States to take the Community proposals on supplementary provisions as a basis. He placed in an intermediate category the United States proposals on geographical indications, patents and trade secrets. The section on geographical indications still fell far short of Community ambitions, but at least constituted progress from his point of view. There seemed an implicit acceptance in Article 23 on patentable subject matter of the Community proposal on this matter and Article 27 on compulsory licences provided for, at least in part, similar criteria to those put forward by the European Communities. However, he continued to have doubts on the approach to this matter in the chapeau to Article 27. As for trade secrets, he welcomed the similarity of approach in Article 31 but noted there were still significant differences in the treatment of exceptions between the Community and the US proposals. In the negative category, from his point of view, he placed the section on copyright and related rights and that on industrial designs. The representative of Switzerland, also comparing his delegation's paper with that of the United States, said that the main differences lay in the areas of national treatment and mfn treatment, copyright, geographical indications which was a particularly important area for Switzerland, patents in particular as regards compulsory licensing where he had fears that the broad reference to competition law could lead to trade distortions given the very different standards employed around the world, and enforcement where the Swiss approach made more provisions generally applicable to all enforcement procedures rather than just to civil procedures and provided for broader criminal sanctions.

14. Some participants expressed their disquiet that the proposal did not adequately address the questions of the balance of the rights and obligations of rights holders, developmental concerns and public policy objectives, notably in the light of paragraph 5 of the Mid-Term Review decision. There should be freedom for countries to attune their level of protection to these needs, which could not be met simply by transitional arrangements. It was said also that the proposal used existing Conventions merely as a peg to hang a whole new set of international obligations and that from that standpoint it ran counter to the traditionally territorial nature of intellectual and industrial property protection. A participant considered that the practical effect of the implementation of this proposal in GATT would be to hinder the further work of organisations such as the WIPO. It was felt by some that the level of detail was too high, especially in the part on enforcement; the proposal should have focused instead on clear basic principles. Further, such a high level of protection could create barriers to legitimate trade. A participant expressed the view that the absence of a preamble in the proposal implied little regard for the underlying objectives of a future TRIPS Agreement; it seemed to bode ill for the concerns of many developing countries which should be reflected in the preamble. A preamble would prove useful later in the interpretation of the agreement. Some participants said that the comments they had made at the previous meeting of the Group on the Community proposal also applied to the United States submission in areas where the two were similar.

15. A participant said that the promotion of innovation and creativity through the intellectual property regime was not an objective in itself but rather was done by each country to the extent that it felt such promotion would facilitate the attainment of economic and social objectives. The existing international intellectual property conventions respected this, including the fact that the relative costs and benefits of the protection on intellectual property rights varied from country to country depending on the level of economic development. In the absence of internationally agreed qualitative criteria that gave due recognition to the needs of each country at different levels of economic and technological development, it was only national governments that would be in a position to assess the kind of intellectual property regime that would best address their specific needs. The proposals of the European Communities, United States, Switzerland and Japan called on all other countries to provide protection of intellectual property equivalent to that found in developed countries; they thus ran counter to the wisdom of the present international intellectual property regime as described above, would undermine the territorial nature of intellectual property protection, would imply unqualified reciprocity, and would produce serious asymmetry in the relative welfare costs and benefits to be

derived by developed and developing countries from intellectual property protection. In his view the four submissions overlooked the objectives of the Punta del Este Declaration, failed to give due regard to the provisions of paragraph 5 of the Mid-Term Review decision and failed to attach importance to the obligations of intellectual property owners as well as their rights. The possibility for his country to implement the results of the TRIPS negotiations would depend on the extent to which they enabled genuine development and technological needs to be served by intellectual property protection, and even then his country would still require an adequate transitional period to build up its administrative and judicial capacities in order to be able to undertake the minimum enforcement and other obligations under the agreement.

16. The proposed incorporation of the agreement in to the General Agreement was also commented upon, with some participants recalling what they had said on this point when discussing the Community proposal. A participant said the basis in the General Agreement should be firmer. Another favoured a form of incorporation which would permit the inclusion of objectives. It was also said that legally incorporation in the General Agreement would pose a number of difficulties, flowing from a forced adaptation of the General Agreement to fields of a different nature. Results on standards, as distinct from the issue of counterfeit goods, should be lodged outside of the GATT. In reply to a comment to the effect that the new draft Article did not mention the avoidance of barriers to legitimate trade, the representative of the United States said this point was dealt with in Article 1 of Part 3 of the proposed Annex.

17. Regarding the chapeau to the Annex, the representative of the United States said the phrase "more extensive protection" was self-explanatory, but gave as an example protection which could be negotiated under the auspices of the WIPO efforts towards a patent harmonisation treaty. A participant considered that, despite the explicit exclusion of rights for individuals, the rest of the proposal did little else than create such rights. On Part I, General Provisions, the following points on the individual proposed Articles were made:

- Article 1: Intellectual Property Conventions. Some participants had doubts about the appropriateness of limiting to the economic rights the rights under the Paris and Berne Conventions incorporated by reference. It was also questioned whether identification of the economic rights might give rise to problems of interpretation. Another participant liked the United States approach since it was more obviously limited to the trade-related aspects of these Conventions.

- Article 2: National Treatment. A participant considered that this provision should allow for the exceptions to national treatment provided for in not only the Paris and Berne Conventions but also in other intellectual property conventions, as had been done in the Community proposal. Some other participants considered it appropriate to limit the exceptions to those found in Paris and Berne. Another was concerned about the inclusion of any exceptions. A further participant doubted the applicability of Article III of the General Agreement to intellectual property matters, other than trade in counterfeit goods.

- Article 3: Most Favoured Nation Treatment/Non-discrimination. Some participants stated they would have preferred a stricter MFN obligation along the lines of that found in Article I of the General Agreement, which was particularly important for small and medium size countries. It was also said that from this point of view it was an improvement over the formulation proposed by the European Communities. A number of participants sought clarification of the meaning and scope of the exception in the last few lines of the Article; would it cover Article XXIV agreements and existing bilateral agreements; would accession be on the same terms as the original parties and would it be automatic or subject to successful negotiations? Some delegations doubted that a right of accession would necessarily prevent or remedy discrimination resulting from certain bilateral agreements, since this might depend on how those agreements were drafted. The absence of an explicit reference to customs unions was also noted. A participant said that his delegation was prepared to consider an mfn provision provided it was linked to addressing the problem of better than national treatment; otherwise national treatment would be sufficient. The representative of the United States said the Article attempted to fall

between the Swiss and Community proposals. His delegation could show some flexibility in further negotiations on this point. In response to an enquiry as to why the mfn obligation related to the extension not of advantages given to any other country but to advantages given to another contracting party, he said that this formulation was intentional.

- Article 4: Transparency. A participant felt that since the General Agreement was only relevant to trade in goods, the only aspect that this provision should cover was that of trade in counterfeit goods. Another participant said that it would be clearer either to restate the relevant elements of Article X of the General Agreement or to state that it should be applied mutatis mutandis.

18. In the area of copyright and related rights, a participant asked what was the difference if any between "related rights" and "neighbouring rights". The view was expressed that the Berne Convention was sufficient and that it was unnecessary to add further obligations in this area. A participant favoured the Community approach to this matter as being simpler, focusing on where trade-related problems were occurring most often and better encapsulating the "Berne plus" approach. He added, and this view was shared by another participant, that paraphrasing the Berne Convention might open the door to endless interpretation problems in cases where the wording was not the same. The following points on the individual Articles were made:

- Article 1. Answering questions as to the exact meaning and scope of the expression "economic rights", the representative of the United States explained that it meant virtually the same thing as the expression used in the Community proposal, i.e "substantive rights", save for moral rights.

- Article 2. A participant queried the need to specify that computer programs be protected by copyright; he felt that participants should have discretion in this regard. Another participant said that there should not be an obligation to protect databases for a term in excess of 25 years. The representative of the United States, in reply to comments, said the last line of the Article should read "works created with the use of computers". In respect of the list of economic rights in paragraph 2 of this Article, he said his delegation had deemed it unnecessary to repeat rights already covered by the Berne Convention. In answer to a question, he said paragraph (2)(b) could be clarified at a later stage, but the intent was that exhaustion of rights in one territory would not exhaust rights elsewhere. In that light, if goods put on the market in one country were exported to another country where exhaustion had not taken place, it would not undermine the rights established by paragraph (2)(a). Some participants said that they were concerned about the introduction of a right of importation, both here and in Article 9(b), since it could affect the right to effect parallel importations; such a right was not called for by the Berne Convention and could in itself give rise to trade distortions, especially in small countries. Another participant felt the relationship between the right of importation and the right of first distribution was not clear, the latter seeming to cover the former. In response to a question, the representative of the United States indicated that paragraph (2)(a) would not prevent imports of legitimate goods. He also confirmed that simultaneous retransmitting to audiences in range of the original transmission would be permitted under paragraph (2)(c)(i) subject to the limitations provided for in Article 11bis of the Berne Convention. In reply to a comment to the effect that paragraph (3) of this Article seemed to apply reciprocally, the representative of the United States said that this was not the intention; the intention was rather to bring private taping under the Berne Convention. When countries implemented compensation schemes for nationals, it should be done on a national treatment basis, whether or not the beneficiary was a natural of judicial person.

- Article 3. A participant wondered why the protection accorded under this Article should only apply to legal entities where the domestic law of their country of origin so provided.

- Article 6. A participant considered the reference to actual or potential commercial value too restrictive, perhaps removing the fair-dealing exception available under the Berne Convention. In response, the representative of the United States said that exceptions such as time-shifting would be permitted if

consistent with Article 9(2) of the Berne Convention.

- Article 7. Questioned as to the exact meaning of the term "lawfully", the representative of the United States answered that it referred to a work which had not yet fallen in the public domain by the operation of law, which in practical terms meant that the legal term of protection had not expired. A participant felt it would be difficult to protect works which had fallen into the public domain.

- Article 8. The representative of the United States explained that this Article had two objectives. First, it aimed to qualify compulsory licensing provisions by introducing a criterion of failure to satisfy the local market's legitimate needs. Secondly, it aimed to remedy a lacuna in the Berne Convention under which a compulsory licence could be issued without the copyright owner having a prior hearing.

- Article 9. Responding to a concern that the provision of rental rights to producers of sound recordings might upset the balance of rights between composers, performers and producers, he stated that enhanced protection of producers would also be in the interest of performers and composers, since the latter realised benefits from their activities as a result of the production and distribution of sound recordings.

19. In relation to the proposed provisions on trademarks, a participant expressed concern about the absence of provisions on the quality assurance function of trademarks, safeguards against the trafficking of trademarks which existed under many national laws, and on parallel imports and exhaustion of rights. The following specific points were made in relation to the United States proposal on trademarks:

- Article 10: Protectable Subject Matter. Some participants expressed the view that provision should be made for exceptions to the signs that must be protected as marks, for example as regards national emblems and names. In answering questions, the representative of the United States said that it would be obligatory to provide protection for combinations of colours but not to protect single colours; their protection would, however, be permissible under national legislation. Answering a comment about the meaning of the reference to service marks, the representative of the United States said that any word, name, symbol or device used by a person to identify and distinguish his services from the services of others should constitute a service mark. A participant felt that, while service marks should be protected, the form of such protection should be left for national governments to decide. Another participant doubted the relevance of service marks to the work of the Group which should be confined to matters related to trade in goods.

- Article 11: Acquisition of Rights. The representative of the United States said that the phrase "reasonable opportunity" meant that the public or the prior user of the mark in question should have a reasonable time period to file a petition to cancel the mark; for example, two weeks would not constitute a reasonable delay. He should also have a fair opportunity to present his case to the appropriate authorities. Some participants suggested that it would be preferable for the opposition procedure to take place prior to the registration of the mark.

- Article 12: Rights Conferred. Answering a query, the representative of the United States said that the last sentence of the first paragraph did not refer to parallel imports. The reason for this formulation was that his delegation had a difficulty with the comparable statement in the Community text which suggested that confusion should not be required where an identical sign was used on an identical good, because it had some difficulty in providing rights in the trademark area where confusion did not exist. The proposal that confusion would be presumed to exist in such cases was aimed at bridging this difference. A participant wondered if "use" of a mark included advertising and distribution and whether it could be presumed that exhaustion of rights would be left to national legislation. Some participants felt that the balance in the second paragraph leant perhaps too strongly towards the interests of international companies and could create uncertainty for domestic industry. To a participant who had asked how a trademark office would determine if a mark was well-known, the representative of the

United States answered that the extent of the use and promotion of the mark in international trade would have to be taken into account, and thus the office should not limit itself to looking at the situation on the domestic market. The intent was to prevent entrepreneurs from registering internationally-known marks not used in a given territory, in order to bargain their buyback by the rightful owner. A participant believed that for a mark to qualify as a well-known mark it should be well-known within the country. A participant expressed the view that only the concept of passing off should be referred to in the third paragraph as its definition was better understood internationally.

- Article 13: Term of Protection. A participant indicated his preference for a term of protection of seven years.

- Article 14: Requirement of Use. Some participants expressed the view that the period of non-use leading to cancellation should be three years. One suggested that a possible alternative would be to require that marks not be cancelled before a reasonable period of non-use.

- Article 15: Other Requirements. A participant indicated his reservations on this proposal since it would appear to prevent requirements obliging marks to be used in conjunction with other marks.

20. In regard to the United States proposals on geographical indications, including appellations of origin, a participant felt that the issue of protecting geographical indications should be looked at from the viewpoint of the prevention of consumer deception, and that the question of generic appellations should be dealt with accordingly. Another participant said that the proposals went too far and that the provisions proposed in document NG11/W/71 were more appropriate. A further participant agreed that the proposals in Article 19 were over-ambitious and the question was asked why they were limited to wine. Another participant indicated that his delegation could in general accept the United States proposals, but had some concerns about the implication in Article 19 that protection should be provided through the establishment of some list or equivalent system.

21. In relation to the United States proposals on industrial designs and models, some participants believed that the conditions required to obtain such protection were excessive and that there should be an obligation to provide protection for designs that were original or novel. In response, the representative of the United States said that the four criteria listed constituted a maximum requirement; countries would be free to register designs meeting less stringent criteria. A participant felt that a criterion of utility should be added to the list. It was also said that the level of protection envisaged for industrial designs was insufficient, particularly when compared to the level proposed in the Communities' draft. A participant considered the minimum term was too short, while some others said it was too long and should be limited to 7 or 8 years. Support was also expressed for the proposition as it stood on this point. In relation to the proposal on the rights to be conferred, a participant was concerned that the references to using and selling in the proposed Article tended to reinforce too strongly distribution rights. He was also concerned that the proposed Article 22, as well as Article 27(b), could prejudice the position of those participants who had not enacted competition laws. Another participant believed that compulsory licensing on grounds of defence or government need should be allowed.

22. In relation to the Articles proposed in the United States paper on patents, the following specific points were made:

- Article 23: Patentable Subject Matter. Some participants were concerned at the absence of provision for exceptions to patentable subject matter. One suggested that the approach taken in document NG11/W/71 was more appropriate. Another participant considered that a permissive exclusion of plant and animal varieties was important, while a further one believed that multicellular life forms and pharmaceuticals should be excludable. Preference was also expressed for the approach in the Community paper. It was also said that the Article was deficient in not obliging adequate disclosure as a condition of grant. Concern was expressed about the absence of a reference to the adoption of a first-to-

file system and stress was placed on the importance of eliminating discrimination in favour of invented activity in the United States in this regard.

- Article 24: Rights Conferred. In response to a participant who was wondering if a fraudulently obtained patent could be revoked under the second paragraph, the representative of the United States said that revocation might be justifiable on the grounds that "but for" the withholding by the applicant of certain information, the patent would not have been granted in the first place. Another approach might be to consider a fraudulently obtained patent to be unenforceable as opposed to invalid. A participant expressed the view that revocation should be allowable where working has not taken place within two years after the grant of a compulsory licence. In response to a view that a provision on reversal of the burden of proof was not necessary, the representative of the United States believed that it was essential for the effective enforcement of process patent rights. The proposal sought to achieve a compromise between the approach in United States law and other national approaches, so as to provide an effective mechanism acceptable to all countries.

- Article 25: Term of Protection. In responding to a view that the term of protection should be left to national legislation, the representative of the United States said that the absence of an international standard on this matter was a gap in international law that was giving rise to serious trade problems and needed to be closed. The United States was prepared to amend its national law to conform with the emerging consensus in Europe, Japan and elsewhere on this matter. A participant said the term should be either 15 years from issuance or 20 years from date of filing.

- Article 26: Transitional Protection. A participant questioned the retroactive nature of this Article. The representative of the United States disagreed with the view that the Article would render transitional periods meaningless, because it would only apply once the agreement had come into force for a contracting party. The provision would only preclude future copying of proprietary products not yet on the market. In answer to another query, he said the term "marketed" in the third indent excluded experimental or test use by governments, and referred rather to actual commercial marketing by the proprietor or his licensee.

- Article 27: Compulsory Licences. Some participants expressed their preference for the structure and approach to this question in the Community proposal, in particular its focus on the conditions attached to the grant of a compulsory licence. The view was also expressed that the grounds for the granting of compulsory licences had been too narrowly defined and failed to take into account the circumstances of developing countries. It was suggested that they should include national defence, public interest and non-working. A participant indicated his agreement with points (a), (b) and (c) but had problems with points (d) and (e); he also stressed the need to put conditions on government use as a ground for the grant of compulsory licences. Another participant was concerned at the exclusion of the obligation to provide remuneration in respect of compulsory licences granted to remedy violations of competition law, since most compulsory licences were of this nature. He also believed, in regard to subparagraph (a), that compulsory licences should be non-assignable in all cases.

23. In regard to the United States proposal on the lay-out designs of semi-conductor chips, some participants expressed the view that the Washington Treaty was sufficient to deal with this question. Another participant advocated a Washington Treaty plus approach. It was also said that acts for personal, teaching or evaluation purposes and reverse engineering should be allowed. Drawing upon experience in his country, a participant said a protection term of 4 years would be in line with the average lifecycle of "chips". In his view the Washington Treaty was thus quite adequate in this respect.

24. Referring to the section in the United States proposal on acts contrary to honest commercial practices including protection of trade secrets, a participant indicated the doubts he had about the need for the inclusion of such provisions in a TRIPS agreement; he also felt that some specific points in this part of the proposal

would render it difficult to implement in countries not providing for statutory protection in this field. Some participants were concerned about the level of detail in the United States proposal. One of these had reservations about going beyond the provisions of Article 10bis of the Paris Convention and was concerned that the inclusion of detailed provisions on the protection of trade secrets might lead to difficulties in the enforcement area of a TRIPS agreement. A participant indicated that his delegation had no objection to the protection of trade secrets, but was of the view that this matter was different from other intellectual property rights since there were many ways in which the protection could be granted; any provisions should leave the form of protection to the discretion of signatory governments. In response to these and other comments, the representative of the United States said that the protection of trade secrets was one of the most important standards because it was vital for the voluntary transfer of know-how. Responding to a view that the United States was unduly stretching the intent and purpose of Article 10bis of the Paris Convention as a means of legitimising protection of trade secrets by way of an intellectual property right, he said the interpretation of this Paris Article had been taken from the WIPO model law on this point. With regard to the situation of people acquiring information without committing a breach of confidence, he said that there were many ways in which such acquisition could nonetheless be contrary to honest commercial practices; many of these were listed in the footnote to Article 31. A case by case determination would be necessary as for any other violation of an intellectual property right. In response to a view that it would be difficult to apply the exceptions contained in Article 33 since trade secrets were protected by public law, he said that permissible exceptions had to be regulated otherwise countries could erode and eliminate the protection.

25. With respect to the provisions on enforcement, a number of participants indicated that their positions in that regard had been voiced during the discussion of the Community draft. Some participants were concerned about the level of detail of this part of the proposal, which they considered would be excessive in the light of the stage of development of developing countries; they believed that rules in this area should be limited to general guidelines. One of these participants considered that the proposal constituted an attempt to harmonise national laws, going beyond even what the European Communities had proposed, as was demonstrated for instance by the second part of Article 6. In his view it was not appropriate to use these negotiations to attempt to impose uniform rules of evidence. Some other participants welcomed the proposal, including its similarity on many points with that put forward by the European Communities and the attempts that had been made to take into account some of the concerns that they had expressed, for example in relation to ex officio action. However, some of these participants continued to have difficulties on some specific points, either because these points entered into excessive detail or because they failed to take into account adequately differences in national legal systems, as called for by the Mid-Term Review decision. One of these participants said that his country would require more flexibility in particular as regards Articles 5 and 6. The following specific points were made on the individual Articles of the proposal on enforcement:

- Article 10: Remedies Against Governments. A participant was concerned that this provision amounted to a form of compulsory licensing for government use of intellectual property.

- Article 11: Right of Information. A participant said that this provision was alien to the legal systems of the countries on behalf of whom he was speaking, under which it was possible to provide information to public authorities but not to private persons. However, he thought that there might be a way out of this problem by making provision for a requirement of the sort envisaged in this Article through a specific law which would not have repercussions for national legal systems as a whole.

- Article 12: Indemnification of the Defendant. A participant expressed concern that the safeguards in cases of ex officio action were more limited than in the proposal of the European Communities.

- Article 15: Suspension of Release by Customs Authorities. A number of participants reiterated their doubts about the appropriateness of providing for border remedies of the sort envisaged here for infringements of intellectual property rights other than trademark counterfeiting and copyright piracy. In response, the representative of the United States said her delegation believed this type of procedure

appropriate for all intellectual property rights violations, in the light of the importance of border enforcement. In both the Unites States and Community proposals safeguards, such as detention of goods for a limited duration and the requirement that the applicant must provide prima facie of infringement, should curtail potential abuses of this procedure and limit its application to instances where the customs authorities might reasonably be expected to recognise and enforce the right at the border.

- Article 24: Criminal Procedures. In response to a view that it would be inappropriate to oblige countries to criminalise violations of intellectual property rights other than trademark counterfeiting and copyright piracy, the representative of the United States said that under the proposal only in cases of wilful infringement of trademarks and copyrights on a commercial scale would there be an obligation to provide for criminal sanctions.

(ii) Communication from Argentina, Brazil, Chile, China, Colombia, Cuba, Egypt, India, Nigeria, Peru, Tanzania and Uruguay (NG11/W/71)

26. The delegations of Zimbabwe and Pakistan associated themselves with this proposal. Introducing the same, the representative of Peru said that it was a demonstration of a wish by the countries making the proposal to negotiate in a practical way. The text represented the views expressed in the Group by a number of developing countries and also took account of the views of some other participants. The text was premised on the need to protect inventiveness and creativity and on a recognition of the sovereign right of states to legislate in this area taking into account national, social, development, technological, economic and public policy considerations. International obligations of a general nature had been envisaged, leaving it to national governments to implement them taking account of their legal system and traditions. The text was divided in two parts. Part I entitled "Intellectual Property and International Trade" contained commitments on trade in counterfeit and pirated goods including adherence to the GATT principles of national treatment and mfn in respect of national enforcement measures and procedures, and the institution of appropriate border measures and procedures while ensuring that these did not themselves become obstacles to legitimate trade. Commitments had also been envisaged to prevent anti-competitive practices arising from abusive use of intellectual property rights. The text sought commitments not only on the use of but also on the threatened use of unilateral measures. Part II addressed standards and principles concerning the availability, scope and use of intellectual property rights, its underlying philosophy being reflected in the preamble. The representative of Peru then drew the Group's attention to some of the specific provisions in the draft text. With respect to the international implementation of final results, he drew attention to Article 22, and said that some sponsors of the text had specific views on this issue which they would express in the Group.

27. One of the participants sponsoring the proposal said that Parts I and II should be regarded as two different papers in practical terms. Part I dealt with trade aspects and could be implemented in the GATT framework. As for Part II, it was the position of his delegation that these matters were not trade-related and that the results of the negotiations on these matters should be lodged in a relevant organisation outside the GATT. Another sponsoring participant said that his delegation favoured the Chilean proposal on dispute settlement contained in document NG11/W/61.

28. Some participants welcomed the proposal. Some of those participants said that it contained a number of positive features, such as its reflection of the social, economic, technological and developmental considerations underlying intellectual property protection and of the balance between rights and obligations of owners of intellectual property rights, and its provisions seeking to prevent the abuse of intellectual property rights and non-recourse to unilateral measures. This text along with the other proposals submitted could form the basis of negotiations in the future. A participant indicated that his authorities were currently considering the draft text with a view to co-sponsoring it.

29. Some participants, while welcoming specific aspects of the text such as the commitment on border

enforcement in Part I, the provisions on the protection of geographical indications and the fact that it represented a useful synthesis of views expressed by some participants in the Group, expressed dissatisfaction with what they considered to be certain overall deficiencies in the text. It was said that the level of intellectual property protection provided for in Part II was inadequate. There was a lack of clear multilateral commitments on the standards of protection; a wide degree of latitude was allowed to governments with respect to legislating on standards. The philosophy underlying the text appeared to be a belief that socio-economic development would be protected by providing the widest possible exceptions to intellectual property rights protection rather than by ensuring adequate levels of protection for intellectual property. Greater emphasis seemed to have been laid on governments' ability to restrict intellectual property rights rather than on the provision of such rights. Some participants considered the distinction between Part I and II to be artificial; both substantive standards and enforcement, internally and at the border, had important trade effects and hence needed to be addressed together in a trade context. A GATT-based solution was therefore the appropriate one. A participant said that some essential elements such as institutional features, surveillance, dispute prevention and settlement were inadequately dealt with in the text. It was said that the proposed dispute settlement procedures comprising consultations and other amicable methods of settling disputes would not be adequate in resolving trade disputes in this area. An effective mechanism such as the GATT panel system which would assure certainty of resolution was lacking. With regard to the provisions seeking to prevent the use of unilateral measures, some participants wondered if it was realistic to expect participants to refrain from adopting such measures in the absence of an effective multilateral dispute settlement procedure and of commitments to improve the protection and enforcement of intellectual property rights; in their view, it was the absence of such protection that had led to trade tensions in this area. It was said that, although the draft legal text was an encouraging sign of an attempt to comply with the April TNC decision, in most areas it fell short of the commitments on the protection and enforcement of intellectual property rights that a final agreement should contain. A participant said that existing levels of intellectual property protection, including in the pharmaceutical sector in some countries which had sponsored the text, were higher than the multilateral commitments that had been proposed. In his view, there was a trade-off between substantive obligations in the field of intellectual property and the limitations that could be placed on what was currently a sovereign right to use unilateral measures on matters not covered by the General Agreement. In reply a participant said that under the GATT there was no right to use unilateral measures and any such action would be GATT-inconsistent; the trade-off referred to was therefore not a real one. A participant said that his delegation rejected attempts to put pressure on participants with a view to seeking changes in intellectual property right protection. An intellectual property right system that was geared to national circumstances continued to remain the most appropriate one.

30. The following records the specific comments made and questions put on Part I of the draft text.

- Article 1: Objectives. The question was raised as to why the phrase in paragraph 1 of the Punta del Este Negotiating Objective for this Group, "taking into account the need to promote the adequate and effective protection of intellectual property rights", had been omitted.

- Article 2: Trade in Counterfeit and Pirated Goods. A participant asked for clarification of the term "slavish" in the footnote to this Article; did this mean an exact copy?

- Article 4: Non-recourse to Unilateral Measures. A participant asked why this Article referred to "economic measures" whereas the analogous Article in Part II referred to "measures of any kind".

31. The following records the specific comments made and questions put on Part II of NG11/W/71:

- Article 4: Patent Protection. A participant asked if the exceptions in paragraph (1) were intended to be mandatory. Some participants considered the exceptions provided for in paragraph (2) to be lacking in precision and excessively permissive.

- Article 5: Rights and Obligations of Patent Owners. A participant sought clarification of the coverage

intended by the notion of "working" contained in sub-paragraphs (1)(i) and (2)(iii), and in particular if it included the acts of importing and stocking referred to in the Swiss text (NG11/W/73). Another participant stated that the proposed obligations on the right holder could effectively undermine the value of the rights conferred on him. A further participant expressed strong support for the approach in this Article, which could help ensure more balanced regimes for the protection of intellectual property rights.

- Article 7: Marks. A participant said that the rights conferred were too limited and that excessive latitude was being offered to national legislation in this area as reflected for example in paragraph (3).

- Article 8: Industrial Designs. Some participants said that in requiring designs to be novel and original, the criteria for obtaining protection had been set needlessly high. A participant considered paragraph (2) unacceptable because it appeared to imply that the exclusive rights obtainable on registration under industrial design protection could not be obtained under copyright.

- Article 9: Protection of Geographical Indications Including Appellations of Origin. Some participants considered the level of protection to be adequate while another participant disagreed with this view.

- Article 11: Computer Programs. A participant said that, although some commitment appeared to be envisaged for computer programs unlike for other works under copyright, this was effectively negated by the absence of specificity on the level and content of the rights conferred and the large amount of freedom granted to national legislation. With respect to paragraph (2), he asked why the current negotiation was not an appropriate time and place for identifying a suitable method of protection for computer programs and for evolving international rules in this regard.

- Article 12: Protection of Integrated Circuits. A participant said that the text was inadequate because the Washington Treaty contained important deficiencies of a trade-related nature. He welcomed, however, the readiness to enter into some level of commitment in relation to this intellectual property right and to accept the principle of a cross-reference to other international conventions, but wondered why similar approaches had not been adopted for other intellectual property rights and for the Paris and Berne Conventions.

- Article 13: Remedial Measures under National Legislation. A participant supported sub-paragraphs (i) and (ii) and asked if the list of situations justifying the grant of compulsory licences was intended to be exhaustive or illustrative.

- Article 14: Co-operation to Ensure Fulfilment of Obligations. A participant said that his delegation could not accept this Article and Article 16 as they made governments responsible for the actions not undertaken in their jurisdiction.

- Article 15: Control of Abusive or Anti-Competitive Practices in Contractual Licences: National Legislation. A participant said that it was not necessary to have such a provision in a TRIPS agreement; the control of anti-competitive practices should be left to national legislation.

- Chapter VIII: Enforcement. Some participants stressed the importance of internal enforcement, which they considered more effective than border measures in tackling infringement of intellectual property rights as it addressed the problem at the point of production. They therefore regretted that the provisions here were less detailed than in relation to border enforcement and expressed the view that considerably more specificity should be provided in respect of the level and contents of obligations on internal enforcement so as to ensure a meaningful agreement in this area. A participant regretted that the proposal did not go as far, in his view, as that put forward by India in document NG11/W/40.

32. In reply, the representative of Peru stressed that the document should be viewed as an attempt to find

solutions to the problems facing the Group and to establish a balance between the rights and obligations of intellectual property right owners. With regard to dispute settlement the text was not intended to be final but to stimulate further discussion in the Group on this matter. Finally, he said that references to the alleged trade-off between substantive obligations on intellectual property rights and the right to use unilateral measures was unacceptable: in effect, developing countries were being threatened that they should change their national legislation or else face unilateral trade sanctions.

(iii)Communication from Chile (NG11/W/72)

33. Introducing the communication (NG11/W/72) of his country, the representative of Chile said that it was the view of his delegation that Part II of the text submitted by a group of developing countries (NG11/W/71) should not be incorporated in the structure of the GATT. If adopted, it should be the subject of an agreement administered by WIPO or a multilateral body other than the GATT as it covered matters that were not trade-related. These two submissions should be read in conjunction with his delegation's earlier proposal on dispute settlement contained in document NG11/W/61 which in his view had the support of a number of developing countries.

(iv) Communication from Switzerland (NG11/W/73)

34. Introducing the draft amendment to the General Agreement on the protection of intellectual property rights proposed by his delegation, the representative of Switzerland said that a major difference with the United States and Community drafts was its form and framework. The appropriate form to amend the General Agreement, in his delegation's view, was through a new Part V, which would reflect properly that introducing rights and obligations on intellectual property was quite a significant and qualitative step in GATT. He emphasised the importance of inclusion into a TRIPS agreement of objectives, which could guide interpretation of its provisions. Of course, such a Part V would only apply to contracting parties having ratified it without excepting any commitment. However, the draft amendment provided for the possibility of its provisional application, which would not require a two-thirds majority before it could be effective. He stressed that all countries joining would enjoy full protection under the proposed agreement, while developing countries would benefit from transitional periods. The draft distinguished between developing countries and least developed countries, in that transitional periods could be extended for the former once only, while there was no such limitation for the latter. Switzerland believed that by establishing a system of prior notification future disputes and tensions could be reduced. Under institutional arrangements, provisions for monitoring and surveillance had been suggested, of which the core element was a system of country reports on a periodic basis, in order to examine the implementation of the proposed Part V of the General Agreement by participating countries. A TRIPS committee would also have the possibility of establishing joint expert groups consisting of representatives of contracting parties and of the member States of Unions administered by WIPO. With respect to Section One (General Provisions, Rights and Obligations), he highlighted the effort to provide for a comprehensive list of exceptions to national treatment and mfn. A transitional provision on mfn had been proposed, because mfn was a new element in the field of intellectual property. However, existing agreements which constituted arbitrary and unjustifiable discrimination should not profit from such a transitional period and would be challengeable immediately. As regards Section Two (Standards), some modifications had been made with respect to the Swiss proposal contained in document NG11/W/35, taking into account views expressed in the Group. Switzerland had followed the structure of the relevant part of the Community text as closely as possible. He said that the protection of geographical indications was of great importance to his delegation. An attempt had been made to introduce definitions of geographical indications and appellations of origin in order to clarify the legal situation in the area. In the field of industrial designs substantive changes in the current system had been suggested for the sake of the textiles and fashion industries. In the patent area the problem of potential abuse of patents for biotechnological inventions had been addressed. Also a proposal had been made to give up the prohibition of double protection for plant varieties, in order to stimulate discussions in that field. Compulsory licensing should be subject to well defined criteria; a broad reference to competition law would not provide sufficient legal security. On Section Three (Enforcement), he said that Switzerland had made an

effort to take over as much as possible from the Community text. The major difference was that some of the provisions limited to civil and administrative procedures in the Community draft had been put under the general provisions. Finally, he said that his delegation believed that there was no reason to confine criminal sanctions to trademarks and copyright, since other areas of intellectual property deserved as strong a protection.

35. In commenting on the Swiss submission, some participants welcomed the effort to have the TRIPS agreement solidly embedded in the GATT. One delegation expressed its support for the broad framework chosen in the proposal, which as a basis for negotiations served the purpose better than the other draft agreements submitted to the Group. Another participant said that his delegation liked the direction taken in the paper, because it addressed in a comprehensive way the kinds of trade issues that had been brought before the Group, and because an agreement like the one proposed would lead to higher standards and to a stronger international enforcement system of those standards. The representative of the European Communities welcomed the many aspects in the Swiss draft which reflected convergence or even accordance with the text put forward by his delegation. He wondered to what extent the slightly different language used in many instances were expressions of differences in view as to the substance. Another participant noted that the proposal contained certain innovative ideas, for example a new approach to the basic principles of mfn and national treatment, certain solid ideas on transitional arrangements, and - most innovative of all - the idea of provisional application.

36. A number of participants stated that all or many of the comments they had made on the United States' proposal were also applicable to that of Switzerland.

37. The following points were made on the preambular paragraphs of the Swiss proposal containing suggested objectives:

- Objective (b). A participant was of the opinion that the substantive proposals in the Swiss draft would not strengthen the role of GATT but would endanger its very structure because of the introduction of all kinds of issues that were not trade-related.

- Objective (c). A participant said that, although excessive protection was recognised in the objectives as a source of international trade distortions, the Swiss proposal contained no provisions aimed at avoiding it but rather would oblige signatories to provide excessive protection.

- Objective (d). A participant said that by itself adequate protection of IPRs did not lead to transfer of technology. This could only be achieved by a balanced intellectual property system, in which obligations as well as rights were present, working of a patent within the host country was ensured and the avoidance of restrictive business practices was secured. All these essential elements were absent in the present draft agreement.

- Objective (e). In response to a comment, the representative of Switzerland said that his delegation was open to suggestions to substitute for the word "persecute".

- Objective (f). A participant said that to meet the needs of developing countries it was not sufficient to provide for transitional arrangements; paragraph 5 of the Mid-Term Review decision also needed to be addressed.

- Objective (g). The representative of Switzerland accepted a suggestion that the text be adjusted to refer to regulations and requirements as well as laws.

- Objective (h). Some participants particularly welcomed this objective. One of them only wondered whether "countermeasures" should not be "measures and countermeasures". In response, the representative of Switzerland said that adjustment of the text in this respect did not seem problematic.

- Objective (i). A participant wondered whether this objective was relevant to the task before the Group. Another participant believed that the substantive provisions of the Swiss draft agreement, instead of "recognizing the efforts to harmonize and promote intellectual property laws by international organizations specialized in the field of IP law", aimed at usurpation of those functions of other international organizations. The representative of Switzerland, responding to a view that his delegation's proposal aimed to harmonise national legislation, said that real harmonization provisions were much more specific and detailed.

38. In regard to section one of the proposal concerning the general provisions, rights and obligations, a participant said that his delegation was of the opinion that this section of the Swiss proposal contained a number of positive features, in particular in the Articles 102 and 103 relating to mfn. Another participant was concerned about a lack of balance in the section, since it did not refer to basic principles like public interest, balance of rights and obligations, special and differential treatment, independence of protection and freedom of determining scope and level of protection. Specific points made on the individual Articles were as follows:

- Article 100: Scope and Coverage. Some participants said that the phrase "all areas of intellectual property law" could have a different meaning in different jurisdictions. They wondered whether all participants would have a common understanding of the outer limits of the agreement envisaged. The representative of Switzerland, in response, said that the phrase took into account that intellectual property was a field in evolution. His delegation believed that the general provisions of national treatment and mfn should apply to future IPRs. A participant expressed support for the approach taken in the provisions on national treatment and MFN, which allowed exemptions only when absolutely necessary and well justified.

- Article 101: National Treatment. A participant, referring to paragraph (2), said that this provided a good definition, which gave the Group a good basis for addressing the question of "free-riders".

- Article 102: General Most-Favoured Nation Treatment. A participant reiterated his delegation's position that the notion of national treatment appearing in intellectual property conventions sufficiently addressed the problems involved, except in so far as the issue of "better than national treatment" was concerned. No satisfactory solution had been shown yet in this respect. Another participant expressed support for the proviso of "not particularly confined to the protection of IPRs" included in the first indent of paragraph (2). In response to questions as to why agreements on geographical indications merited special treatment (second indent of paragraph (2)), the representative of Switzerland said that such agreements generally related to the treatment of particular products from particular countries. Therefore, automatic MFN treatment was generally not feasible. Hence the provision stipulated a right for third parties to an equivalent agreement. A participant wondered why the provision was limited to bilateral agreements and how it should be interpreted in the light of Article 103(2), which said that all bilateral agreements should be phased out. Another participant wondered whether the provision was conditional upon the subject matter concerned being not within the TRIPS agreement. With regard to the third indent of paragraph (2), several participants raised doubts as to whether the suggested proviso was the most suitable one in the circumstances. Responding, the representative of Switzerland said that his delegation had tried to apply the philosophy behind the conditions contained in Article XX of the General Agreement, in order to give some assurance that regional economic spaces, customs unions and free trade areas would not give rise to unjustified privileges in the field of intellectual property law. A participant said that a provision along the lines of Article XXIV of the General Agreement might be preferable in this respect, since it contained the requirement of not raising barriers to the trade of parties outside the customs union or free trade area. Another participant was not convinced that a customs union or free trade area exception was necessary. Responding to requests for clarification of the term "regional economic spaces", the representative of Switzerland said that such a regional economic space was actually being negotiated between the European Communities and the EFTA countries. However,

its precise shape was not yet very clear. Nevertheless, his delegation had included the concept, because regional economic spaces, unlike customs unions and free trade areas under the General Agreement, might also cover services to which to some extent IPRs related as well.

- Article 103: Transitional Provisions Related to Most-Favoured Nation Treatment. A participant considered that the first obligation in regard to the subject matter of paragraph (1) should be an obligation to notify; this appeared to be covered only indirectly by Article 500(3). As regards paragraph (2), he reiterated that exemptions from mfn should only be accepted with a strong justification. Any exceptions to be subject to gradual phasing out would need to be strictly justified and subject to stringent multilateral control which would require a special mechanism. In response to questions on the scope of paragraph (2), the representative of Switzerland said that transitional arrangements were necessary with respect to existing treaty obligations, because hitherto there had been no tradition of mfn in the field of intellectual property, and because bringing international agreements into compatibility with such an obligation could not be effected overnight. Hence, his delegation had proposed a temporary grandfather clause in the present Article, which would, according to paragraph (2), allow countries to phase out in a reasonable period inconsistent practices provided for in international agreements. However, arbitrary and unjustifiable discrimination under existing agreements would be excluded from the temporary grandfather clause. Paragraph (1) allowed for the possibility of challenging such agreements immediately.

39. In regard to the sub-section of the Swiss proposal on copyright and related rights, the representative of Switzerland said, in response to questions, that the reference to the Berne Convention in Article 202 corresponded to those in Part 2, Article 1 of the Community and United States drafts. References to the Berne Convention could also be found in Articles 203 and 205. Several participants raised doubts as to the approach taken by the Swiss delegation to incorporate the Berne Convention by reference while at the same time spelling out certain Berne Convention requirements. A participant expressed the view that a single and clear reference to the Berne Convention would remove the need for what he considered to be the paraphrasing of that Convention in this sub-section of the Swiss text. Responding to questions on the provisions relating to videograms, the representative of Switzerland agreed that many videograms contained cinematographic works and were protected by the corresponding copyright. However, videograms could also be made from cinematographic works which were in the public domain, and would not therefore be protectable by copyright. A participant welcomed the inclusion of rental rights in Articles 204, 208, 209 and 210 but did not think it necessary to provide for distribution rights beyond those for cinematographic works, as in the Berne Convention, and computer software. The following points on the individual Articles of this sub-section were made:

- Article 201: Definition of a Work. Responding to questions on the meaning of this Article and its relationship with Article 2 of the Berne Convention, the representative of Switzerland said that her delegation had proposed for systemic reasons a definition of protectable subject matter with regard to each intellectual property right. The definition would be without prejudice to existing Berne Convention provisions. As regards the concept of "originality", she said that her delegation would not have difficulties in replacing this by the notion of "individuality".

- Article 202: Protection. Responding to questions concerning paragraph (2), the representative of Switzerland said that not all computer programs should be protectable per se, but only if they met the requirements of Article 201. As regards databases, these could be protected as collections, if the way in which they had been assembled led to a sufficient degree of individuality.

- Article 203: Term of Protection. The representative of Switzerland said, responding to questions with respect to the proposed term of protection for computer programs of fifty years after the date of creation, that her delegation had been inspired by the proposed Community Directive in this area, which corresponded with actual tendencies in Europe.

- Article 204: Rights Conferred. The question was raised as to which of the rights enumerated in paragraph (1) were additional to those provided in the Berne Convention. In response, the representative of Switzerland said that the six indents of paragraph (1) constituted the minimal rights national legislation should provide, leaving contracting parties free to introduce more extensive rights. Some participants wondered whether the proposed distribution rights did not go too far and did not contravene the principle of exhaustion. One participant, however, expressed his support for the extensive rights proposed, in particular those related to the use of software. Other participants wondered what was intended to be the coverage of the right to use a computer program. Responding to the question whether "renting" in paragraph (2) related to a right before or after sale, the representative of Switzerland said that in Switzerland a bill concerning the protection of computer programs had been submitted to Parliament providing for an absolute rental right to the proprietor of a computer program work. The reason for not providing for a right to equitable remuneration, as in the case of rental rights for other copyrighted works, lay in the specific use characteristics of computer programs.

- Article 205: Limitations, Exemptions and Compulsory Licensing. With regard to paragraph (2), some delegations expressed the concern that enforcement of the provision might create problems in relation to the right of privacy. Another participant thought the paragraph an unnecessary attempt at harmonisation.

- Article 206: Protection of Related Rights. A participant said that his delegation preferred to limit obligations on neighbouring rights to sound recordings.

- Article 207: Term of Protection. A participant said that his delegation was happy to see the call for a minimum term of protection of fifty years for sound recordings.

- Article 208: Rights Conferred to Performers. A participant said that his delegation wondered why Switzerland had sought to require protection well beyond the minimum standards of the Rome Convention. It appeared that the Swiss text would confer a full and assignable right on performers, so that, even if a performer had consented to the fixation of his performance, he could prevent distribution of such a fixation beyond the first sale.

- Article 209: Rights Conferred to Producers of Phonograms and Videograms. A participant said that his delegation regretted the apparent absence of any reference to rental rights for phonogram producers. Another participant wondered how Switzerland envisaged to deal with the complicated situations that could arise in cases where distribution rights of producers of phonograms and distribution rights of performers would be involved, and perhaps even copyrights as well.

40. In regard to sub-section B of the Swiss proposal on trademarks, the following points were made:

- Article 212: Protection of Trademarks. Responding to a question as to the use of this merely illustrative provision, the representative of Switzerland said that his delegation had tried to provide for a minimum standard in this respect. Contracting parties would be free to add other categories of marks to be denied protection, for example, generic marks or public signs and emblems. A participant wondered what was the difference between the provision of paragraph (1)(iii) and that of paragraph (2). In his view, the only basis for denying registration of a mark was that it was likely to cause confusion or result in deception of the public. With regard to paragraph (2), the representative of Switzerland said, in response to a question, that the provision implicitly dealt with two kinds of well-known marks: well known marks according to Article 6bis of the Paris Convention and "marques de haute renommée".

- Article 213: Acquisition of Trademark Rights. Several participants welcomed the formulation in

paragraph (3) which took account of the North American trademark systems and might prove to be a basis for a compromise provision on this subject.

- Article 217: Use of Trademarks. A representative reiterated the problems his delegation had with provisions like the ones proposed here.

41. In regard to sub-section C on geographical indications, including appellations of origin, some participants believed the provisions proposed by Switzerland to be excessive. One of them drew attention to the fact that the new world had been colonised by Europeans, so that many regions, towns and villages had European names; it would be unacceptable to be required to give up the use of such names which were part of the very history of their countries.

- Article 220: Protection and Definition of Geographical Indications and Appellations of Origin. Responding to a question on paragraph (2), the representative of Switzerland said that an "indirect reference" could, for example, be a picture of the Matterhorn or the Fujiyama on a product not originating in Switzerland or Japan respectively. With regard to paragraph (4), he said, in response, that there was a real potential for this kind of service mark in the field of tourism; in sectors like insurance or banking particular qualities might also be linked to particular places. As regards paragraph (5), several participants asked for clarification of the notion of "interested circles". One of these participants was concerned that the provision might take away much of the significance of the level of protection provided for in the rest of the sub-section. The representative of Switzerland responded by giving examples: if in a country other than France "Chablis" or "Champagne" was produced, producers of wines with similar names in other countries would be included in the interested circles; however, if bicycles were produced in that country with the name Champagne, the interested circles would be different.

- Article 221: Use of Geographical Indications Including Appellations of Origin. The representative of the European Communities, comparing the chapeau to paragraph (1) with the text his delegation had proposed on geographical indications, noted with concern that some important criteria were not present. In response to a question as to why no reference had been made to unfair competition, the representative of Switzerland said that his delegation believed that protection here should be absolute, and that no undue burdens of proof should be introduced. In addition, he said that the phrase "is likely to mislead the public as to the true origin of" had not been included, because the misleading of the public should not be limited to matters of origin; it could, as indicated in Article 220(2), relate to quality characteristics. Basically, it was the goodwill linked to a geographical indication or an appellation of origin that should be protected.

42. In regard to sub-section D on industrial designs, the following points were made:

- Article 222: Definition. Responding to the question on what were the advantages of providing for a definition, the representative of Switzerland said that it gave more legal security. In response to requests for clarification of the protection envisaged for designs with a functional aspect, the representative of Switzerland said that according to Swiss law, which only provided for the protection of models and designs and not, like some countries, also for utility models, only patent protection was available if the form for which protection was requested served a useful purpose. Model protection could only be granted for those forms and details of forms which were not indispensable for their practical and typical use.

- Article 223: Protection. A participant expressed the concern of his delegation about the apparent narrow scope of the protection proposed.

- Article 224: Grant, Maintenance, Cancellation of Industrial Design

Rights; Other Procedures. Responding to questions and comments on the reference to textiles in paragraph (1), the representative of Switzerland said that her delegation had introduced this provision with a view to stimulating the discussion of a problem regarding the functioning of the existing system of design protection, which did not meet the needs of the textiles industry. In the fashion sector in particular a swift procedure was needed for the acquisition of design protection, without the obligation of immediate publication. Industry could not foresee which of the thousands of specific designs devised for the new season would turn out to be successful. Registration of all designs was very costly, particularly because of the publication requirement. Moreover, the commercial life of fashion designs was normally limited to one season. Another disadvantage of the publication requirement in this area was that it could actually assist counterfeiters, who thereby had advance notice of new designs.

- Article 225: Industrial Design Rights. A participant said that this provision entrenched distribution rights to a very far extent. It was not clear what it implied in terms of enforcement.

- Article 227: Compulsory Licensing of Industrial Designs and
Article 228: Exploitation. A participant expressed his delegation's concern about these provisions, which were very restrictive on measures to deal with restrictive practices; such measures might be necessary if, for example, spare parts were to be protected by industrial design legislation.

43. In regard to sub-section E on patents, a participant said that the entire approach was unacceptable, being based on inappropriate objectives. In addition, the following points were made:

- Article 229: Patentability; Patent Protection. In response to a comment that the text was silent on disclosure requirements and what could constitute grounds for invalidity, the representative of Switzerland said that these were more matters for work on patent law harmonisation. Responding to other comments, he said that, because of new developments in the field of biotechnology, paragraph (3) did not exclude animals from patent protection, but tried to build in necessary safeguards against abuse of patent protection in this respect, which were to be developed by case law. As regards paragraph (4), he said that his delegation was of the view that the prohibition of double protection of plant varieties should be overcome in these negotiations. This would neither oblige contracting parties to introduce double protection of plant varieties, nor would it preclude them from doing so. With regard to paragraph (5) some delegations welcomed the call for protection according to the first-to-file principle. Another participant reiterated that the attempt to move his delegation into a first-to-file system was a non-starter, if only because, if his delegation were to consider it, the whole of the WIPO harmonization treaty on patent laws would need to be incorporated in a TRIPS agreement.

- Article 231: Patent Term. The representative of the European Communities wondered in what way paragraph (1) differed in substance from his delegation's proposal.

- Article 232: Patent Rights. Some participants expressed the view that the obligation in paragraph (2) to include importing went too far. Another participant objected to the use of the terminology of specific national laws, such as the word "stocking". With regard to paragraph (3), a participant said that his delegation had doubts on the details although it favoured inclusion of the reversal of the burden of proof in a TRIPS agreement. Another participant could accept paragraph (3)(a), but thought that paragraph (3)(b) was tilted too much in favour of the right-holder.

- Article 233: Compulsory Licences and Exploitation for Governmental Purposes. A participant welcomed paragraphs (1) and (2). Some participants welcomed the Swiss approach of providing for a number of criteria that contracting parties should obey if and when they chose to grant compulsory licenses, but had problems with many of the specific conditions proposed. One of them regretted, in particular, the apparent absence of an explicit obligation to provide for remuneration, in addition to the requirement to subject decisions on this matter to judicial review. A participant wondered, with regard

to paragraph (6), what in case of non-working should be the method to protect users.

44. In regard to the sub-section on layout designs of integrated circuits, some participants expressed a preference for a Washington plus approach. One was concerned that an attempt to paraphrase the Washington Treaty led to language that seemed looser than that of the Washington Treaty. Another participant reiterated his view that the Washington Treaty was adequate to address the concerns in this area. A further participant said that the proposed provisions were rather unclear as to which commercial transactions involving commodities in which infringing integrated circuits were incorporated should be considered lawful and which unlawful. The representative of Switzerland, responding to a comment with regard to Article 239, said that his delegation was of the view that it simply reflected existing principles in contract law.

45. In regard to the sub-section on acts contrary to honest commercial practices, a participant supported the basic approach, and expressed his preference for an additional qualifier on the acts to be deemed illegal similar to that in the Community draft: "in a manner contrary to honest commercial practices". The representative of the European Communities said that his delegation had preferred the formulation "undisclosed information" to "proprietary information" since it was less likely to generate confusion. The difference was also important substantively, for example in relation to Article 241(2) of the Swiss draft. In relation to paragraph (1)(ii), a participant asked how "potential commercial value" would be defined. Another participant questioned the necessity of dealing with information submitted to government regulatory agencies, since this could open up a whole new area of negotiation, which did not in any case deal directly with the granting or enforcing of IPRs.

46. In relation to section three of the Swiss text, on the enforcement of IPRs, the representative of India said that it attempted to harmonise national legal systems. He reiterated his delegation's position, as indicated to the Group in document W/40, that all that needed to be done in this area was to provide for some general principles. Another participant supported this and said that the section was much too complex, extensive and paternalistic. Specific points on individual Articles of the Swiss proposal on enforcement were as follows:

- Article 302: Evidence of Proof. A participant said that in his view the subject matter concerned should be dealt with elsewhere, on the basis of already existing international rules, like the Hague conventions, which took account of different national traditions. Another participant said that rules of evidence were a matter that should be left to national legislation to deal with.

- Article 304: Judicial Review. A participant said that the proposed text was an improvement compared to the Community draft, since not only final administrative but also initial judicial decisions should be subject to a right of appeal in a court.

- Article 307: Other Remedies. Responding to a question on paragraph (3) as to what were to be considered "infringing goods", the representative of Switzerland said that it was difficult to address issues in the enforcement area without appropriate standards to refer to. A participant agreed that standards and enforcement should be seen in tandem, and said that the Group should be mindful to avoid creating any gap between the two. With regard to paragraph (4), this participant said that the Group should not run the risk of removing the discretion of the courts.

- Article 308: Right of Information. Responding to a comment, the representative of Switzerland said that, unlike the United States text, his delegation's proposal was optional, thus reflecting the differences in legal systems and without any obligation to provide for the concerned right of information.

- Article 315: Duration of Suspension. A participant doubted the appropriateness of specifying the maximum number of days for which suspension could take place.

- Article 318: Ex Officio Action. In response to comments, the representative of Switzerland said that paragraph (2) was optional. Customs authorities would have a discretion to intervene, which allowed

them to take into account resources available to them.

- Sub-section E: Criminal Procedures. A participant said that the proposal was not acceptable to his delegation since it extended beyond counterfeit and piracy. It could, for example, create an obligation to make infringements of moral rights liable for criminal sanctions.

47. Commenting on section four of the Swiss proposal, Transitional Arrangements for Developing Countries and Technical Cooperation, a participant welcomed Article 400 on developing countries as a useful way of achieving the fullest participation by participants. Referring to paragraph (1), a participant said that his delegation very much liked the proposal for a standstill commitment on signatories. Another participant wondered what specific timeframes Switzerland had in mind. The representative of Switzerland, responding to questions, said that the phrase "a duly motivated request" in paragraph (2) had been taken from the Community text. Developing countries would have to provide a statement of reason for filing the request. The phrase "duly motivated" had been left out in Article 401, since less elaborate procedures were appropriate for least developed countries, taking into account their different stage of development and the resources they could allocate with regard to their commitments. With regard to paragraph (3), a participant called it an interesting idea that a contracting party in transition would not enjoy the benefits of Articles 101 and 102, if it would fail to honour its obligations at the end of the day. However, his delegation was not sure as to the status of such a contracting party: would it still be considered as a full member of the TRIPS Committee, or be able to participate in any dispute settlement process? Another participant was surprised to see this possibility for unilateral action without a decision by the CONTRACTING PARTIES, especially as in the area of intellectual property it would often not be clear whether a country was meeting its obligations or not. He also wondered why the provision of paragraph (3) should only be applicable with respect to developing countries that failed to meet their obligations. In response, the representative of Switzerland said that it was accepted within the framework of the General Agreement that other remedial measures, such as countervailing and anti-dumping duties, could be imposed unilaterally. Switzerland thought that it was fair that contracting parties would have the possibility to cut privileges other parties had been benefiting from during the transitional arrangement period, if these other parties at the end of the day, and perhaps even after an extended period, failed to comply with their obligations in the TRIPS area. Of course, contracting parties would only be allowed to take such measures in the area of TRIPS, i.e. by reducing the level of protection with regard to the country failing to comply.

48. On Sections Five, Six and Seven dealing with transparency, dispute prevention and dispute settlement, institutional provisions, and final provisions, the following comments were made:

- Article 500: Transparency. A participant suggested that, instead of a requirement of publication, there should be an obligation either to publish or to make publicly available. Referring to paragraph (4), a participant wondered whether the term "enquiry point" had been taken directly from the GNS. If so, he wondered whether Switzerland could explain the scope and the appropriateness of the term in the present context.

- Article 501: Dispute Prevention. A number of participants expressed their concerns about provisions that would envisage prior consultations at the legislative stage, because this was not permissible under their legal and constitutional systems. Some of these participants said that sovereignty and political, administrative and legal traditions should not be interfered with. In response, the representative of Switzerland said that his delegation, representing a country which was highly dependent on international trade and where basic public policy decisions were increasingly being taken internationally, believed that having a mutual right to prior notification was beneficial to sovereignty, would increase treaty making capacities, and would prevent potential disputes.

- Article 502: Dispute Settlement. Some participants reiterated preference for the Chilean proposal contained in document NG11/W/61. With regard to paragraph (3) a participant said that the Swiss proposal was not ambitious enough, and expressed his preference for the Community text in this respect.

- Article 600. The Committee on Trade-Related Aspects of Intellectual Property Law. A participant expressed his concerns about the large number of far-reaching tasks attributed to the Committee. He wondered whether Switzerland was contemplating a review body for intellectual property along the lines discussed in the FOGS Negotiating Group. His delegation also had great difficulties in accepting the establishment of a body whose work would not only interfere with the work of WIPO, but even, by duplicating or replacing work already done or being done by WIPO, transform WIPO into a mere registration office. In response, the representative of Switzerland confirmed that his delegation was of the view that the Group should discuss the idea of having objective factual reports on the situations in the different countries. If the general trade review mechanism did not cover this, the Committee to be established under a TRIPS agreement should deal with it.

- Article 602: Joint Groups of Experts. A participant said that his delegation was not opposed to the establishment of a WIPO/GATT Joint Expert Group, but preferred at least at the initial stage, a practical approach, i.e. not an institutionalized or standing body but, for example, an ad hoc body.

- Article 701: Amendments. A participant expressed his support for the use of the phrase "higher levels of protection", which he considered a clearer formulation than "more extensive rights" used by some other participants.

49. Commenting on the Communities, United States and Swiss texts together, a participant said that his delegation could accept a majority of the proposed elements and provisions. In his country new legislation on patents and on copyright had been introduced recently, by which the level of protection had been raised in such a manner that a positive view could be taken towards all three proposed texts. However, some reservations remained. First, where exemptions from mfn treatment were allowed, it might be appropriate to apply these on the basis of reciprocity. Secondly, compulsory licensing should be preserved as a right of users and importers to protect themselves against monopolies. Therefore, his delegation had difficulties with the United States text in this respect. Thirdly, the Washington Treaty sufficiently covered the problems related to the protection of integrated circuits. Inclusion in any TRIPS agreement was not really necessary. Fourthly, trade secrets protection should be left to national law. Fifthly, the proposed provisions on enforcement were too complicated and detailed. More flexibility should be left to national governments to regulate enforcement in accordance with national law and their financial possibilities. A TRIPS agreement should only provide for the general line and general principles to be followed by national law. He shared the view that border measures should be limited to copyright and trademarks. Sixthly, he stressed the importance of transitional arrangements. He disagreed with the inclusion of a provision as proposed in Article 400 (3) of the Swiss text. Seventhly, he said that probably the most difficult question for a majority of delegations concerned the implementation of the agreement. His delegation was of the view that in principle the results of the negotiations should be implemented in WIPO, which was the specialized agency for intellectual property matters. However, it would not put obstacles to any solution that attracted a consensus in the Group.

(v) Communication from Japan (NG11/W/74)

50. Presenting the paper submitted by his delegation, the representative of Japan said that it was not a complete proposal but concentrated on general principles and standards. Regarding enforcement, the Japanese delegation believed the text submitted by the European Communities constituted a good basis for further discussions, although some aspects, notably border measures, needed further study by his authorities. Regarding a future TRIPS committee, the Japanese delegation took the view that the Community proposal was a good basis for further work, particularly as regards the mutually supportive relationship with the WIPO. On standards, the Japanese proposal provided for the protection of seven types of rights, as geographical indications were now covered. With respect to the remaining category, undisclosed information and trade secrets, he informed the Group that his Government recognised the importance of such protection, was seriously considering this matter and a final position in this regard would be made known at a later stage. On the

question of recourse to unilateral measures, he said his delegation shared the Communities' concerns as stated in their proposal.

51. Commenting on more specific issues, he drew the attention of the Group to the footnotes to Article 1, which defined the nationals of non-participating countries eligible to benefit from national treatment. On the question of MFN and non-discrimination, he said that his country's approach was close to that of the United States, but referred to "treatment" rather than to "any advantage, favour, privilege or immunity" and had more concrete procedures for the extension of treatment under special arrangements to nationals of countries outside such arrangements. Exceptions in extraordinary circumstances, such as on high security grounds, could be envisaged. In respect of transparency, the principle was in line with Article X of the General Agreement, but some flexibility had been added where publication was not practicable. With respect to copyright and neighbouring rights, the proposal was not only "Berne plus", but also "Rome plus". Further, rental rights had been provided for, and computer programs and databases explicitly protected. In respect of the term of protection of neighbouring rights, the Japanese Government supported a term of 50 years but, given the present stage of national procedures, was not in a position to state this in the paper. In the area of trademarks, geographical indications, industrial designs and patents, he said that since the Paris Convention did not provide for high enough standards, particularly in the field of term of protection, scope of rights and compulsory licences, the proposal put forth certain elements to complement this Convention. In the case of geographical indications, his delegation believed that the Madrid Agreement constituted a good basis for protection but was willing to consider the various views on this subject. As regards integrated circuits, the representative of Japan stated that the fact that one third of the proposal dealt with lay-out designs of integrated circuits demonstrated the importance attached thereto by his country. He underlined in particular the importance of protecting lay-out designs incorporated in goods. Some exceptions had been made for innocent infringers, but not for compulsory licensing which should not be permitted in this area.

52. In commenting on the proposal, a number of speakers said they would not repeat comments made on proposals discussed earlier, which applied to this proposal as well in areas where it resembled previously submitted drafts. The following records the specific questions asked and comments made on the individual provisions of the Japanese draft:

- 1.1 National Treatment. A delegation wondered if the phrase "or may hereafter accord" was necessary. Concerns were voiced regarding the attribution of rights to nationals of non-participating countries. The representative of Japan reiterated that limitations had been provided for as indicated in the footnotes to this Article.

- 1.2 Most Favoured Nation/Non-Discrimination/Special Arrangements. A participant commented that he had some hesitations, as in the case of the United States proposal, because accession to bilateral agreements did not necessarily remedy discrimination resulting from such agreements. Another participant said that his delegation preferred the Swiss proposal, partly because paragraph 2.2, read in conjunction with the following one, seemed to create too wide an exception, with the extension of rights dependent on a process of consultation, rather than granted immediately. A participant asked whether Article 2.2 would constitute a permanent grandfather clause. In reply, the representative of Japan said that the proposal tried to remain flexible, while maintaining a non-discriminatory approach. The proposal attempted to cover not only future, but also existing arrangements and further to set forth a detailed mechanism for the extension of special treatment to parties not members of special arrangements.

- 4. Transparency. A participant said it welcomed the flexibility afforded by this Article. Answering a query, the representative of Japan said that the type of notification envisaged under paragraph 2 had to be further elaborated. Another participant expressed support for the principle of notification but wondered if the obligation should be limited to notification of the main points rather than the full text, which could be burdensome.

- 6. Consultation, Dispute Settlement. Some participants said that, while they fully supported the objectives of this Article, they thought that it should not only prevent the unilateral suspension of obligations under a TRIPS agreement but also other unilateral actions.

- Annex, Section I, Part 1: Copyright. A participant welcomed the support for a "Berne plus" approach but believed that Articles 19 and 20 of the Berne Convention should be considered substantive provisions of the Berne Convention. A participant wondered why scientific and musical works had been specifically mentioned in paragraph (1), as he believed they were covered by the two other categories. In answer to a query, the representative of Japan said that the limitations referred in paragraph (3)(iii) would apply to rental rights as well as to rights provided for in the Berne Convention.

- 2. Neighbouring Rights. A participant welcomed the fact that all three traditional categories of neighbouring rights holders were covered and agreed with the inclusion of rental rights.

- Part 2. Trademarks, Geographical Indications, Industrial Designs, Patents. A participant expressed the view that the list of substantive provisions of the Paris Convention should include Articles 2 and 3.

- 1. Trademarks. A participant agreed with the proposed exclusion of use as a precondition for registration but said that some exceptions, such as in the case of personal names, might be needed. Answering another question, the representative of Japan said that well-known trademarks would be defined in the same way as in Article 6bis of the Paris Convention, i.e. well-known in the country where protection was sought. A participant wondered what would be the status of parallel imports under the Japanese proposals on trademarks and also on industrial designs and patents.

- 2. Geographical Indications. A participant said that, while this provision constituted a step forward, it did not go far enough, since the Madrid Agreement mainly dealt with indications of source, rather than appellations of origin.

- 3. Industrial Designs. The representative of Japan said that designs which were either original or novel or both should be protected, the choice as to cumulation of both criteria being left to national law. In response to a view that the proposed design rights were rather extensive, he said that in the Japanese view there should be a parallelism between the protection of industrial designs and the protection of patents - which was why Japan advocated relatively strict conditions for the protectability of industrial designs.

- 4. Patents. In response to a query as to why there was no commitment to a first-to-file system, the representative of Japan replied that his delegation agreed that this should be the sole principle to be adhered to internationally. The Japanese proposal intended to cover concerns in relation to this matter by the obligation to avoid de facto discrimination provided for in paragraph 1.3 on national treatment. A participant asked for clarification of the scope of the exception regarding public health in paragraph (3). Asked if he could define the expression "critical peril to life of the general public or body thereof" used in connection with non-voluntary licences, he said that it might apply to a medicine without which the life of the public as a whole would be endangered, for example in the event of a serious epidemic.

- Part 3. Integrated Circuits. Responding to a view that this Part was rather ambitious and detailed, particularly because extending protection to products containing integrated circuits could pose serious enforcement problems, the representative of Japan said that protection of integrated circuits embodied in products was essential, because most trade in integrated circuits took this form and without it protection would be ineffective.

Other business, including arrangements for the next meeting of the Negotiating Group

53. The Chairman recalled that, at its recent meeting, the Group of Negotiations on Goods had called on each of the Negotiating Groups either to submit in July negotiated agreements conditional on the final package in the Round as a whole or, if that were not possible, to aim to reach by that time the closest possible approximation of such an agreement, in the form a text, since only in this way could the final difficulties be identified. Given the fact that draft legal texts had now been submitted covering the full range of issues and that the July meeting of the TNC was only some two months away, he considered that the time was now ripe to start the preparation of a text. He therefore indicated his intention to prepare a composite text which would be based on the various proposals before the Group and which would provide a clear picture of the current state of the negotiations. It would not attempt to put forward compromise formulations where there were differences of substance between positions. The aim would be to circulate the text informally before the Group's next meeting, which would start on Monday 25 June and which would be scheduled for the whole of that week except Wednesday. He recalled that the Group had also scheduled a meeting for 9 and 11 July, and did not exclude the possibility that some further work might go on after the July meeting in the days up to the GNG meeting.