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

MEETING OF NEGOTIATING GROUP OF 20 JULY 1990

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

Note by the Secretariat

1. The purpose of the meeting was to consider the profile to be submitted by the Chairman to the GNG and to consider arrangements for the work of the Group in the autumn. The Group had before it an informal document dated 18 July 1990 containing the text of the Chairman's profile, entitled "Status of Work in the Negotiating Group; Report of the Chairman to the GNG".

2. Introducing his profile, the Chairman said that he had attempted to simplify the draft composite text, while making as clear as possible the major options and the major differences of position that would have to be the subject of the negotiations in the Autumn. He underlined a number of points about the profile. First, the profile was being submitted exclusively on the Chairman's responsibility and did not commit any delegation. Second, as was made clear on the covering page, no point in the text was presented as having been agreed by all participants or even by all those participants who associated themselves with the A or B approaches referred to. The covering page explained why the Chairman had felt it would be inappropriate to attempt to identify those issues which had been the subject of objection; namely, that this might carry a misleading impression that other points were the subject of agreement. Third, the text in no way limited the scope for participants to raise points in the further negotiations. Fourth, the text was not being presented as a draft agreement, but simply as a compilation of the options for legal commitments under examination in the Group and therefore as a basis for further negotiation. He added that, since circulating the text, some small inaccuracies had been identified; these would be rectified in the version to be submitted to the GNG. He mentioned one unintentional omission: it had been his intention to include on the covering page a statement that further consideration would be given in the Autumn to the appropriateness of the technique of incorporating commitments by making a reference to existing international intellectual property conventions.

3. A participant, speaking on behalf of the fourteen delegations sponsors of the proposal contained in document NG11/W/71, suggested that, in order to ensure that the Chairman's text had a balanced structure, the principles proposed in the second part of NG11/W/71 be incorporated in Part II of the Chairman's text, and not in the annex as at present. This would put all proposals made on basic principles on an equal footing.

4. A number of the participants sponsors of document NG11/W/71 expressed appreciation for the efforts

reflected in the Chairman's text to retain a distinction between the two basic approaches to the negotiations, including the fundamental difference in views on structure. They expressed the hope that this differentiation in approach and structure would be retained during the remaining negotiating phases up to the Ministerial Meeting in Brussels. Some other delegations expressed the view that the text could make clearer the difference of view on structure, for example by combining the proposals of some countries on border enforcement measures with those contained in Part I of NG11/W/71 on trade in counterfeit and pirated products, and also by dividing the profile into two distinct parts along the lines of the division in NG11/W/71. Some of these participants also considered that the text should reflect more fully the range of views expressed in the informal consultations. They were concerned that many of the paragraphs lacked precision and might be misinterpreted as implying that no divergences existed.

5. Some participants reiterated their opposition to the inclusion of trade secrets, which in their view did not fall within the mandate of the Negotiating Group since they were not a category of intellectual property. A participant said that the fact that trade secrets was dealt with under a particular model law on unfair competition was not proof that they were an intellectual property right. His delegation was willing to discuss unfair competition in relation to intellectual property rights under the heading of enforcement but had serious reservations about discussing it in the context of standards.

6. A participant emphasised that the exercise in which the Group was engaged would only be meaningful if participants showed unquestionable commitment to abide by multilateral rules and disciplines and to avoid the use of unilateral measures to settle bilateral disputes in the field of intellectual property rights. The respect for multilateral rules, as embodied in the GATT and in the international conventions on intellectual property, was essential for a successful outcome to the TRIPS negotiations.

7. Some participants indicated that there were specific points on which they were not happy with the Chairman's text, either because it omitted points to which they attached considerable importance or because they felt that it had not reflected their position to their satisfaction. However, they indicated that they would desist from making suggestions for changes to the text, given that, as indicated clearly on the covering page, the text was not being presented as agreed in any element and further that it did not limit the scope for participants to raise such points in the further negotiations. Some of these participants indicated that in this light they could accept the text as a basis for further negotiations and urged the Chairman to pursue the negotiating process that he had initiated in recent weeks.

8. The Chairman said that he had taken note of the comments made and would consider what changes might be made to his report to the GNG in the light of them. He indicated that he had already decided that it would be appropriate to move the proposals on principles contained in NG11/W/71 into Part II of the text.

9. The Group also considered the arrangements for its further work in September. It agreed to hold a formal meeting on 10 September and another on 21 September, on the understanding that the period in between would be devoted to a continuation of the informal consultations, with some time also being made available for bilateral and plurilateral meetings. The following broad programme of work was established for this two-week period. First, further consideration of Part III of the profile concerning standards, starting with copyright and continuing with industrial property, aimed at exploring possible formulations for narrowing the differences. Second, a similar process in respect of basic principles, enforcement and trade in counterfeit and pirated goods. Time would also be found during this period for a first reading of the Parts of the composite draft text that were now contained in the Annex to the Chairman's profile.

10. The Chairman did not put to the Group specific suggestions concerning the subsequent meeting programme for the Autumn. However, he informed the Group of his view that, if clear texts were to be ready for the Ministers by the time of the Brussels meeting, delegations would have to envisage a more or less continuous process of negotiation throughout the Autumn, allowing time of course for periods of consultation in capitals.