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

MEETING OF NEGOTIATING GROUP OF 10-21 SEPTEMBER 1990

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

Note by the Secretariat

1. The Group adopted the agenda proposed in GATT/AIR/3074 and Corr.1.

2. As agreed at the Group's meeting of 20 July 1990, the Group met in formal session on 10 and 21 September, leaving the period in-between for informal consultations. The Group dealt with agenda items I and II on 10 September and with agenda items III and IV on 21 September.

3. The purpose of the meeting of 10 September was to give any participant an opportunity to raise, for the record, any matter that it wished to concerning the work of the Group.

4. A participant, while expressing his appreciation for the transparency of the negotiating process, stressed that, as indicated by the Chairman of the TNC, reports on the status of work in any Negotiating Group were presented under the responsibility of its Chairman. He also said that the minority views in the Group, which could have intrinsic or tactical value, should be taken into consideration in the further negotiations.

5. When the Group reconvened on 21 September, the Chairman reported on the informal consultations he had held since 10 September on the basis of document NG11/W/76. He said that Part III dealing with standards had been addressed in those consultations as well as Part V dealing with acquisition, Part IV on enforcement including, in conjunction with Section 4 of that Part relating to border enforcement, a large part of Part IX on trade in counterfeit and pirated goods, and Part II dealing with basic principles. Of those Parts contained in the Annex to document NG11/W/76, which simply reflected the corresponding paragraphs of the earlier Composite Draft Text, Part III dealing with transitional arrangements had also been discussed. Discussions would continue directly after the formal meeting, so that Part VI on dispute settlement and prevention, Part I dealing with preambular provisions and objectives, and Part VIII on institutional arrangements and final provisions, would have been covered as well. Also some provisions in Part IX had not yet been fully covered. He said that the consultations had been useful and fruitful and thanked participants for their co-operation and constructive contributions. The discussions had clarified the issues and the major difficulties had been identified in a rather clear fashion. He said that, while no breakthroughs had been made, he felt that that there had been progress. He continued, however, to be concerned that the time available for further negotiations was short, considering the amount still to be done. As regards the further work of the Group, he said that he would, with the help of the secretariat, prepare a new draft, which he hoped would serve as a basis for the negotiations at the next meeting of the Group. He would attempt to find a way forward in that draft on as many points as deemed possible. However, it was clear that the draft would have to continue to reflect the major divergences that

persisted, both with regard to the overall approach and on some specific points. The draft would be prepared on his responsibility. The Group would meet again for a two-week period as from 8 October on the same basis as for the present meeting. A formal meeting would be held on 8 October and a further one in the week of 15 October, with informal consultations in the intervening period.

6. On behalf of several developing countries, a participant said that the discussions over the last two weeks had brought out the positive as well as the controversial aspects of the negotiations. While there had been more understanding on some areas, in some other areas differences remained wide. He emphasised that all participants should bear in mind the commitment made in Punta del Este, that developed contracting parties should not seek, nor should less-developed contracting parties be required to make, concessions inconsistent with, inter alia, their development needs. Again in April 1989, in the context of the TRIPS negotiations, it had been agreed that consideration should be given to the underlying public policy objectives of the national systems governing IPRs, including developmental and technological objectives. The demands of some participants should be seen in this light and there was a need to integrate these concerns into the agreement itself. He also expressed serious reservations about what he considered to be an expansion of the mandate to include trade secrets. He further said that several participants had expressed, in the recent informal discussions, their inability to agree to the level of detail on enforcement issues being demanded by some other participants. He suggested that the "B" text might give an indication of the appropriate direction to take in the area of enforcement. He expressed concern about a tendency to deal with intellectual property matters as if they were trade matters, without regard to the technological and industrial aspects of IPR systems, and treating IPRs as merchandise in respect of which participants could exchange concessions.

7. Another participant said that his delegation was of the view that, first, any text agreed upon by this Group should be confined to general principles and should not contain any regulatory aspects, in order not to take away the right of States to draw up their own legislation. Secondly, for political reasons as well as reasons of efficiency, the results of the negotiations should be divided into two parts: a set of general standards which would establish the level of protection of intellectual property to be respected by GATT contracting parties; and a set of standards with greater detail, though not being regulatory, within the framework of WIPO, and with its own system for dispute settlement. Elaborating on these two points, this participant put emphasis on the lack of certainty about the legal framework in which an agreement along the lines of document NG11/W/76 would be placed. If the agreement was to regulate each and every aspect of intellectual property, as industrial countries seemed to believe, one might wonder why some aspects were dealt with in a very detailed regulatory manner, while other aspects were barely mentioned. Furthermore, regulating all aspects in very great detail would have the undesirable effect of forcing countries to modify the very structures of their legal systems, which was excessive if compliance with international intellectual property obligations would be the sole reason for such restructuring; besides it would be incompatible with the nature of an agreement providing minimal standards, as had been proposed. Another inconsistency lay in the incorporation in the GATT of an agreement establishing how intellectual property should be protected, while the General Agreement treated intellectual property as being among the legitimate exceptions to its free trade regime. It would, therefore, be more appropriate for the text that might evolve from these negotiations to be implemented in WIPO after having been completed there so as to produce a homogeneous international system for the protection of intellectual property. Finally, he stressed that the dispute settlement system of GATT was not appropriate for dealing with matters of intellectual property, since that system included sanctions to address situations that were typically commercial. An agreement on standards would require in any event a different dispute settlement regime, of a more legal nature with appropriate sanctions.

8. A participant expressed support for both previous speakers. In addition, he said that the informal meetings had been very useful in that they had increased understanding about the practical implications of the various proposals. The negotiations were no longer aiming at harmonization but rather at an agreement providing for a minimum level of protection. Unfortunately, the proposed minimum level still was too ambitious. He also expressed his concerns about the imbalance that continued to exist between the momentum in this Negotiating Group and the stagnation in other Negotiating Groups which were of vital importance to his

delegation, in particular, the market access Groups. In this regard, he stressed that the results in this Group were dependent upon results in other areas of negotiations. He reminded the Group of his delegation's statement at the last TNC meeting, that just as the industrial countries had needed the presence of developing countries in order to launch the Uruguay Round, they also needed them to terminate it. Finally, he pointed out that to his delegation the text of document NG11/W/76 was still largely in square brackets, and contained major parts that would remain in square brackets and could not be seriously discussed until the Brussels meeting.