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

MEETING OF THE NEGOTIATING GROUP OF 22 NOVEMBER 1990

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

Note by the Secretariat

1. The Chairman referred to the texts, circulated on 22 November in an informal document bearing the reference number 2909, which he had prepared in the light of the consultations held since 1 November. He indicated in detail the content of the covering note that he intended to attach to the texts when forwarding them to the TNC. This would make clear the status of the texts, which were put forward on his own responsibility and did not commit delegations to any provision, and indicate the main issues on which agreement still had to be reached.

2. A participant, speaking on behalf of a number of developing countries, said that all major differences of view should be explicitly designated in a consistent manner in the texts by the use of square brackets, and emphasised that the texts should not in any way prejudge final decision to be taken on any issue. He was supported by several other participants. One of them said that the use of brackets in the present texts was of a selective nature, and that many divergences were not reflected.

3. A participant said that, although his country provided a high level of protection in respect of intellectual property and could generally support the texts, some of the provisions in the texts posed problems to his delegation. He referred in particular to the protection of geographical indications and the related issue concerning acquired rights, to the issue of non-retroactivity and to the international implementation of the agreement which in his delegation's view should be outside the GATT framework. The provisions in the Section on patents, including in regard to exclusions from patentability, should reflect a well-balanced system. He called the present texts reasonably satisfactory, but stressed that a positive attitude of his delegation towards them would depend to a large extent on progress in other areas of the negotiations.

4. A participant said that the texts did not contain any provision on special and differential treatment as envisaged in the Declaration of Punta del Este. He pressed for the inclusion of such a provision. The Part on enforcement still caused many problems to his delegation and should reflect that the relevant provisions caused serious problems of implementation to several delegations.

5. A participant urged for some modifications of the provision of Article 69, paragraph 1 concerning least-developed countries. The bracketed part in the first sentence should be extended until the end of the second sentence, and the first sentence should reflect that least developed countries should not be required to apply the provisions of the agreement other than those of Articles 3 and 4, and those provisions of the agreement corresponding to obligations assumed by them under international intellectual property conventions. He was

supported by another participant, who emphasised the overall vulnerable position of least developed countries. The present texts took inadequate account of their special situation; the difficulties faced by least developed countries could not be overcome by merely providing for a fixed transitional period.

6. A participant said that the present texts were acceptable to his delegation as a basis for negotiation, although some of his delegation's concerns had not been taken care of.

7. A participant said that he would recommend the Chairman's draft text to his authorities as constituting an acceptable basis for further negotiations. His delegation was disappointed with the achievements so far in several key areas and with the apparent unwillingness of some participants to envisage changes in their national legislation. On the other hand, the growing interest and participation of developing countries was encouraging and should be built on in the final negotiations in Brussels. He emphasised that his delegation was committed to preventing discrimination in all fields of intellectual property and to incorporating strong commitments against unilateral measures. In the field of copyright, he welcomed the interest shown by developing countries in the protection of computer software and in the provision of rental rights notably for cinematographic works. Progress in the area of trademarks, another area of importance for developing countries, was heartening. In respect of geographical indications, he said that the emphasis given to the protection of wines and spirits did not correspond to the intentions of his delegation, which favoured a wider product coverage and was not unwilling to engage in negotiations on the protection of products of interest to developing countries, such as tea, coffee and tobacco. His delegation would certainly be prepared to envisage negotiations along these lines in Brussels. In the area of patents, although substantial differences remained, there were several positive features, including the support for strong and equivalent treatment of provisions relating to non-voluntary licensing and government use and for non-discriminatory treatment of inventive activity irrespective of its geographic location. In regard to the Section on abusive or anti-competitive practices, concerns regarding the implications of the proposals remained, but his delegation would be willing to examine them carefully and with an open mind. In the area of enforcement, the progress attained was very satisfactory. Finally, in relation to the presentation of the texts, he said that the approach chosen allowed the positions of participants to be safeguarded.

8. A participant said that his delegation insisted on the inclusion of a provision to the effect that a PARTY should be allowed to make reservations to any provisions of the agreement, such reservation being applicable from the date of entry into force of the agreement for that party with the consent of other parties. This would be helpful in bringing the negotiations to a successful end.

9. A participant expressed that his delegation still had difficulties in respect of many areas of the Part on standards. With regard to the Part on enforcement, he said that his delegation had problems in accepting, in particular, any obligation to provide for preventive injunctions.

10. Identifying some areas which caused his delegation great concern, a participant referred, in particular, to the duration of protection for industrial designs as well as the term of protection of computer programs. Furthermore, his delegation urged for the inclusion of provisions with respect to special and differential treatment in favour of developing countries.

11. A participant said that his delegation still had many difficulties with regard to the texts, notably in the areas of enforcement, layout-designs of integrated circuits and trade secrets, which were, however not unsurmountable. His delegation favoured a higher level of protection for geographical indications, particularly with respect to wines.

12. A participant, supported by several others, pointed out that some other participants had very high ambitions in the area of TRIPS and that the time had come to review the subject matter in the context of the Uruguay Round negotiations as a whole, particularly in relation to what was being offered in the more traditional areas of GATT.

13. A participant said that the TRIPS undertaking was ambitious in that for the first time international obligations on the protection and enforcement of a large number of intellectual property rights were being negotiated under a single umbrella. This was bound to create difficulties, especially for some developing countries. He urged participants to lower the level of ambition set for this Group, in the knowledge that there would be more negotiations in the future. The goal of higher intellectual property protection could only be attained through a cautious process of negotiation on subjects which were immensely complicated and which required a good deal of additional work.

14. A participant said that his delegation was, in particular, happy with the draft Sections on trademarks, industrial designs and enforcement. Given the content of the covering note as set out by the Chairman, the present texts were acceptable as a basis for negotiation in Brussels.

15. A participant indicated that the Chairman's list of the outstanding areas of difference broadly corresponded to that of his delegation, which might have added a few more. On the whole, his delegation could accept the document as the basis for further negotiations.

16. The Chairman shared the concerns expressed about the need for results in all areas of the Uruguay Round negotiations. He said that he had taken note of the concerns expressed about the presentation of the texts and would consider whether those concerns could be met by a judicious use of square brackets.