RESTRICTED
MTN.GNG/NG11/5
14 December 1987
Special Distribution

Original: English

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

MEETING OF THE NEGOTIATING GROUP OF 23-24 NOVEMBER 1987

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

Note by the Secretariat

1. The Negotiating Group adopted the agenda as set out in GATT/AIR/2511.

First indent of the initial phase: trade-related aspects of intellectual property rights

2. The Negotiating Group continued its initial examination of the specific suggestions by participants for achieving the negotiating objective. The Group had two additional suggestions before it, presented by the European Communities (MTN.GNG/NG11/W/16) and by Japan (MTN.GNG/NG11/W/17).

3. A participant reiterated her view that the Group should assess whether the existing GATT provisions were sufficient to prevent distortions or restrictions of international trade which might result from undue or insufficient use of intellectual property legislation. Elaborating on the approach to this task put forward by her delegation at the Group's last meeting (MTN.GNG/NG11/4, paragraph 27), she suggested that, as a first step, the provisions of the General Agreement identified in document MTN.GNG/NG11/W/6 should be examined to consider to what extent they were sufficient to deal with the trade-related aspects of intellectual property rights generally and, in particular, with those issues raised in the compilation prepared by the secretariat (MTN.GNG/NG11/W/12) that were truly trade-related. She also made a suggestion concerning documentation that WIPO might be asked to prepare (see paragraph 37 below for the results of the discussion on this matter).

4. The representative of the European Communities, introducing the guidelines proposed by his delegation (MTN.GNG/NG11/W/16), said that they had been presented in such a way as to permit a global approach to the work of the Group, even if Community thinking was more advanced on some points than on others. They were to be seen as a first contribution that could be deepened, completed or modified as the negotiations progressed. With

respect to the main elements of the Community guidelines for the negotiations, he referred to the coverage of all intellectual property rights, the inclusion of the general principles and mechanisms of the GATT, the provision for enforcement at the border and internally, the Community's present stage of thinking on

substantive norms for intellectual property rights, and the importance attached to technical co-operation. In regard to international co-operation, he said that the field was wide open and further thought was required; mention has been made of certain elements, which would need to be completed by others.

5. The representative of Japan, introducing his country's suggestion (MTN.GNG/NG11/W/17), said that it remained subject to future modification. His delegation had a high regard for the harmonization work of WIPO, and the paper was designed to address the trade-related aspects of the improvement of the protection of intellectual property rights that should be dealt with in GATT. His country's basic position was that ineffective or inadequate protection of intellectual property rights had trade distortive or restrictive effects and that there was need for a broad understanding on rules and structures for the protection of such rights in order to create satisfactory conditions for the development of trade. He then referred to the different elements of the Japanese suggestion, which had two main pillars, norms and enforcement. In suggesting norms, account has been taken of the requirement in the negotiating objective that "the negotiations shall be without prejudice to other complementary initiative that may be taken in the World Intellectual Property Organization and elsewhere to deal with this matter". This was reflected in paragraph (3) of Section 2 which referred to the need to take "the present international treaties into consideration". The proposed norms had been drafted so as to be of a general nature capable of being addressed by all participants in the negotiation.

6. A participant said that his country believed that the overall objectives of the work on trade-related intellectual property in the MTN should be to increase the volume of trade in goods, services and know-how protected by intellectual property rights and to strengthen confidence and participation in the international trading system. There should be a balanced approach focusing on trade issues important to both exporters and importers. In regard to enforcement, his delegation supported the view that legal or administrative procedures applying only to imports could act as barriers to legitimate trade: defendants may not have access to the same defences or counter-laims as available to domestic defendants before the courts; strict deadlines may result in imports being prohibited even though the status of similar domestic goods had not yet been litigated before the domestic courts; and the existence of two different legal procedures created the possibility of a double standard to the detriment of trade and of a double jeopardy for imported goods. All this could result in greater cost and difficulty in defending the validity of imported goods than of domestic goods, thereby discouraging trade. In regard to customs enforcement, although seizure by customs authorities was sometimes the best means of protection against imports of infringing goods, customs
enforcement action which resulted in a treatment of imported goods less favourable than that accorded to domestic goods could act as an impediment to non-infringing trade, for example if customs seizures could be effected under administrative authority whereas domestic seizures required a court order, or if only domestic interests could request customs intervention.
The Group should also discuss, in the context of dispute settlement, the appropriate scope for the use of unilateral trade measures in the context of trade-related intellectual property; the increasing threat and use of such measures was a matter of concern to his delegation. Trade problems were also arising from inadequate procedures and remedies for the effective enforcement of intellectual property rights. Enforcement problems posed by the circulation of pirated works and counterfeit goods were particularly acute and must be addressed in the negotiations in a manner which did not compromise trade in non-infringing goods. Enforcement procedures should be efficient as well as effective. High cost and unnecessarily long procedures discouraged trade, especially for small entities seeking to protect market interests in foreign jurisdictions.

7. Concerning the availability and scope of intellectual property rights, this participant said that the Negotiating Group should strive to define clear, adequate but not excessive standards of international protection which would attract wide participation by contracting parties. This would lead to increased trade in non-infringing goods, by encouraging the creation of new tradeable goods and services, by facilitating the development of exports by all participants, and by reducing the tendency for some countries to introduce trade restrictive measures to protect their own intellectual property owners. There was need to build upon present international standards of protection whether directly in the Negotiating Group or, by reference, in WIPO. Given the need for greater international participation in the provision of intellectual property protection, rules

and disciplines in each area of intellectual property should carefully balance the interests of both net exporters and net importers of goods, services and know-how protected by intellectual property. They should provide, for example, well-defined rights for inventors and users, yet be sensitive to national objectives with respect to health, economic development, competition and security. In regard to the granting of intellectual property rights, the Negotiating Group should consider means of encouraging greater participation by all parties in obtaining rights in foreign jurisdictions, by eliminating discrimination and reducing costs and inefficiencies in national rights granting systems. Such systems must not discriminate between domestic and foreign activity, in particular by favouring domestic inventive or productive activity which discouraged non-resident ownership and, thereby, trade. International harmonization of rules and procedures could act to reduce procedural barriers, and the substantial costs and time lags associated with obtaining foreign rights, thus promoting greater use of the system by all participants.

8. In regard to the use of intellectual property rights, this participant said that, drawing where possible on national and regional experience, the Negotiating Group might delineate the appropriate scope for the exercise of the private rights over international trade in goods, services and technology that stemmed from exclusive market rights accorded under

national intellectual property laws. International standards in this regard were not precisely defined; for example, policies concerning parallel importations of trade-marked goods were not uniform. The negotiations should also result in greater trade know-how, both by providing security to innovators through adequate and effective national rights and through provisions encouraging the voluntary transfer of know-how and designed to deal with the risk that the restrictive nature of intellectual property rights could be used to preclude access to know-how. In conclusion, this participant urged that the issues raised in the compilation, MTN.GNG/NG11/W/12, be addressed on a multilateral level in order to define clear international standards of protection and enforcement, eliminate barriers to trade and increase participation in both the obligations and the benefits of the international intellectual property system. The Group must seek to find on a multilateral scale a balance between the inadequacies in the availability and scope of intellectual property rights and the excesses in the use of such rights, and between their inadequate enforcement and discriminatory unilateral actions, all of which created distortions to and limitations on trade.

9. A participant informed the Group of the first results of a survey, undertaken in business and governmental circles in his country, of attitudes towards the issues raised in the Group. Relatively few practical difficulties in other countries had been experienced by his country's enterprises. Most of those mentioned related to licensing arrangements with enterprises in countries maintaining government control of technology transfer; sluggish procedures, difficulties with the transfer of licence fees and royalties, and exaggerated transfer of technology disclosure requirements had been mentioned. Some, but fewer, complaints related to shortcomings in patent law and their implementation: e.g. lack of protection of certain products groups or of certain production processes; too rapid imposition of compulsory licences; and too short duration of protection. No complaints had been made concerning his own country's practices. Where developments required an extension and reinforcement of protection, such as in the field of semi-conductors or combatting counterfeiting, his country's approach was to consider necessary steps in the regional context. In general, his authorites favoured full utilization and, where necessary, improvement of existing international treaties and national laws before new agreements and laws were introduced. The main focus of GATT work should be to ensure that this did not lead to the creation of new non-tariff barriers to trade. On the question of counterfeiting and piracy, the need for controlling this world-wide phenomenon was accepted. There was much sympathy with the reasoning that the existing legal protection of intellectual property rights was the appropriate basis for further improvements. His country's intellectual property experts saw merits in working out a WIPO convention requiring the adaptation of existing laws on the protection of trade marks by building on the rules concerning blatant infringements of trade marks by identical or virtually indistinguishable marks. By not asking too much, such a convention could be attractive to many countries. In a second stage, international efforts could address the difficult cases where decisions on the similarity of two products were required. Co-operation in uncovering illegal trade flows and in seizure of counterfeit goods could also be envisaged for this stage.

10. In commenting on the new suggestions, participants generally said that their views were preliminary and they would wish to comment in detail at a later stage. Participants also made further comments on the suggestions tabled by the United States and Switzerland at the Group's October meeting (MTN.GNG/NG11/W/14 and 15).

11. Some participants said that the Group must take account of the need for a proper balance between, on the one hand, the adequate protection of creative ideas so as to provide a reward and incentive to creators and innovators and, on the other, ensuring access to such ideas and not stifling competition. There was also a need for a balance between the interests of countries' net exporters of technology and other creative ideas and those which were net importers. In the field of enforcement, some participants said that there was a similar need for a balance between, on the one hand, ensuring effective procedures and remedies and, on the other, safeguarding against the possible misuse of such procedures and remedies as a means of impeding or harassing legitimate trade.

12. Some participants said that examination of the suggestions tabled had reinforced their view that many of the matters raised in the Group did not fall within its mandate. The Group had not been asked to draw up rules for the protection of intellectual property rights or to increase their protection through strengthening enforcement procedures. The negotiating mandate also did not call for a transposition within the GATT legal system of rules for the protection of intellectual property rights that enjoy wide international recognition. Some of these participants recalled the statements that their delegations had made on this matter at Punta del Este after the adoption of the Ministerial Declaration (MIN(86)/SR/7). One of these participants said that, since no dissenting statements had been made, her delegation had understood that these views had been shared by all. Another participant said that such statements had a recognized status under the GATT and were not to be equated with unilateral declarations of view made outside GATT meetings.

13. These participants said that furthering the protection of intellectual property was the responsibility of other international organizations, chiefly WIPO, and not that of GATT. Most of the proposals would involve duplication of and possible conflict with the work of WIPO. It was also said that some of the proposals appeared to have too little regard for the achievements of existing international property law. In this regard, a participant expressed support for the views expressed in paragraph 15 of the Report of the Group of Experts on Trade in Counterfeit Goods (L/5878) and stressed the conclusion of paragraph 16 that the present international law contained important principles for guiding action against trade in counterfeit goods. He also disagreed with the statement in MTN.GNG/NG11/W/14 that the Berne and Paris Conventions had never been intended to be used as enforcement mechanisms for intellectual property rights.

14. These participants were of the view that the submissions and suggestions did not take into account that intellectual property was protected in countries in order to achieve a number of national policy objectives. In developing countries, intellectual property protection was designed to serve, among other goals, national development objectives, by stimulating investment, industrialization and internal trade. Intellectual property protection had been used in the same way by the present industrialized countries at earlier stages of their development. The present international law allowed for diversity in rules and practices for the protection of intellectual property, depending on how each country perceived its interests and on its own economic and social system. Many of the submissions made appeared to seek a uniformity that would be in the interests of the technologically-advanced countries and which would serve as a support for a new international division of labour based on their control of advanced technologies. This might in itself generate distortions in the structure of production, trade and investment.

15. In regard to the enforcement of intellectual property rights at the border, the need to take account of the differing legal, procedural and constitutional requirements and practices was mentioned by some delegations.

One issue raised was the relative rôles to be accorded to the courts and administrative bodies, such as the customs, in receiving applications for action against infringing imports and in determining the action that should be taken. Some participants mentioned that in their countries it would not be possible to give customs authority to seize such goods without a prior court order. It was suggested that, while action by a judicial authority may take more time, it would offer greater guarantees of the respect of the rights of the defence and of the avoidance of obstacles to legitimate trade. It would also foreclose the possibility of governments becoming directly involved in the settling of disputes between private parties and perhaps being held liable for failure to act. It was suggested that the degree of discretion to be given to administrative authorities and the appropriate enforcement mechanisms might vary according to the type of intellectual property right in question. A participant said that disputes about patents tended to be more complex than those involving trade marks on copyright, both as regards the establishment of the validity of the basic right in question and the determination of infringement. Another factor to be taken into account in assessing the appropriate scope for customs intervention was the practical constraints on customs in terms of the resources and skills available to them and the customs techniques used for the clearing of importations. In both these regards, constraints varied among countries. Some participants felt that the Group should profit from the work of the CCC on the customs enforcement of intellectual property rights. Some participants also asked those countries whose customs had experience in this matter to share their experience with the Group.

16. Some participants stressed the need for border enforcement procedures to include adequate safeguards against their possible misuse as obstacles to legitimate trade. In regard to possible administrative action by customs at the request of an intellectual property right holder, among the ideas mentioned were that the complainant should be obliged to put up an appropriate security, and to provide sufficient evidence that he is the owner of the intellectual property right in question, of the validity of that right, and that the goods in question infringe the right and are not, for example, parallel imports; that there should be provision for a time-limit on the period during which the goods can be detained before the infringement finding is verified and confirmed, for right of appeal, and for compensation in the event of a groundless allegation of infringement; and that differential treatment of imported compared to domestically-produced goods should be avoided. It was also suggested that, in cases where a component part of a product was found to infringe a patent, sanctions against the product as a whole should depend on establishing that the producer of that product had reason to know that the component infringed the patent.

17. Some participants supported the view that, for disciplines on enforcement to be effective, internal as well as border procedures and remedies would need to be dealt with. The point was also made that ensuring that border procedures did not provide less favourable treatment than that accorded under domestic procedures would also require an examination of domestic procedures.

18. Some participants expressed support for exploring the formulation of a dispute settlement mechanism in the Group. Such a mechanism in GATT would be useful in filling a gap in the existing international law regarding intellectual property rights. In working on this, the Group should draw on the deliberations of the Negotiating Group on Dispute Settlement. It was suggested that the precise form that a dispute settlement mechanism should take, and the extent to which normal GATT procedures might need to be adapted, could only be determined at a later stage in the light of the substantive commitments likely to be adopted. Some participants, however, raised questions about the relationship between private domestic actions for the enforcement of intellectual property rights and international dispute settlement. Concern was expressed that a dispute settlement system could lead conflicts between individuals to be raised to the level of or treated as conflicts between governments. A participant was of the view that questions of the validity of an intellectual property right would have to be determined under domestic procedures before GATT dispute settlement proceedings were initiated; the respective areas of jurisdiction of the two enforcement levels would have to be clearly defined. Dispute settlement procedures should also provide for compensation for damage caused by groundless threats of infringement proceedings.

19. Some participants, referring to the suggestions made on norms or standards for the protection of intellectual property rights, said that trade problems were arising both from inadequacies and from excesses or discriminatory practices in such norms or standards, and supported the view that these were proper subjects of discussion in the Group. No options

should be excluded at this stage. A number of possible approaches were mentioned, possibly in conjunction with each other: the recognition of existing standards; their adaptation, where necessary, to the needs of trade; the negotiation of new standards where other approaches were not satisfactory. Some participants stressed the desirability of maximum use of existing standards and the need to ensure the consistency between what was done in the Group and elsewhere. A participant said that a cautious approach should be adopted, aimed at the minimum standards necessary in a GATT context. Some participants said that the question of substantive standards would have to be addressed because, if commitments on enforcement were to be included in a GATT agreement, it would be necessary to specify what was to be enforced.

20. Another participant questioned the consistency with the Group's mandate of the suggestions on standards or norms, and the technical and legal feasibility of negotiating the incorporation of standards or norms into the GATT. He proposed that the Group should study how countries of some importance in world trade, but not yet members of existing conventions, could be motivated by and in GATT to enact and apply effective intellectual property protection.

21. Some participants made specific comments on the suggested norms. A participant questioned the appropriateness, for the design of purely functional articles, of a term of copyright protection of the life of the author plus 50 years. Another participant indicated the desire of his country to retain the right to grant compulsory licences of patented inventions, for example in cases where an inventor had come up with a further development of a patented invention. Compensation should be granted on a case-by-case basis; if the patent holder had not used the invention, automatic compensation might not be justified.

22. In regard to the coverage of intellectual property rights in a set of GATT commitments, a participant, noting the differences between the suggestions, said that the Group should adopt the working hypothesis of a broad coverage of rights. Another participant suggested that a GATT agreement should allow for possible amendment or revision to take account of new technologies as they emerged, without binding signatories to enter into such a process of amendment or revision. Responding to questions, the representative of Japan said that the absence of trade secrets from his country's suggestion reflected divergences of view among countries on the notion of trade secrets and on their appropriate treatment. Neighbouring rights had not been mentioned since domestic policy was under examination by an advisory body scheduled to report to the Government early in 1988. As regards the coverage of services, the representative of Japan said that his country's suggestion addressed trade in goods only; how those aspects of intellectual property rights that involved trade in services were treated would depend on the development of the Uruguay Round as a whole.

23. Some participants offered support for exploring the inclusion of a set of basic principles - most-favoured nation or non-discrimination, national treatment and transparency - in a GATT agreement. In response to a question, the representative of Japan said that, in his country's proposal, the principle of mfn treatment meant no discrimination based on nationality.

24. Some participants supported the suggestions on technical co-operation. In their view, this was one of the effective ways of promoting adequate protection of intellectual property rights.

25. Responding to a number of questions, the representative of the European Community said the "structure" suggested in Section II(vii) of the EC paper was an institutional structure that would come into being after the end of the negotiations to carry out duties assigned to it. The possibility for ex officio action for enforcement at the border was left open in the EC paper; but in any event, appropriate proceedings should be

opened upon complaint by a holder of an intellectual property right (Section IV(iii), fourth indent). As regards the respective rôles of the courts and administrative authorities, the EC paper called for this to be closely defined. In regard to Section VII, International Co-operation, he said that certain countries had bilateral arrangements for co-operation among judicial, police and customs authorities. One aim was to provide for such co-operation, between head offices of the respective authorities, on a multilateral basis. In answer to a question on "due process" of law, the representative of the European Communities said that this was a reference to the various elements of an equitable legal procedure, notably the rights of the defence. Some of these elements were explicitly mentioned in the EC paper. The representative of Japan said that this concept was explained in Section 2(4)(i) of the Japanese suggestion. The specific elements to be laid down in order to guarantee "due process" would need to be defined in further discussion. The participant who had asked this question said that he would like to know if the concept of "due process" existed in GATT or in international law as a whole, in particular in WIPO.

26. The representative of Switzerland emphasized the open nature of his country's suggestion (MTN.GNG/NG11/W/15); it was, for example, sufficiently open to encompass the various suggestions tabled by other delegations as well as other possibilities. Some participants said that they were prepared to work along the lines in the Swiss paper, although some of them had reservations about the second sentence of the second element.

27. Some participants were concerned that the Group had not adequately dealt with certain basic questions before it. It was stated, for example that the points made by some participants at the Group's previous meeting, as reflected in paragraphs 11,12, 18 and 22 of MTN.GNG/NG11/4, had not been responded to. Some participants felt that the Group needed to work towards giving greater precision to the proper scope of its work and to the possible approaches to such work; to this end, it needed to define the trade-related aspects of intellectual property rights, to identify and examine further the relevant GATT provisions and to give further consideration to initiatives in other fora. It was also suggested that the Group should examine the likely impact on trade, if the specific suggestions tabled were implemented.

28. The Chairman noted the interest of some participants in further discussion of the relevant GATT provisions and, drawing attention to the secretariat document on this matter, MTN.GNG/NG11/W/6, offered the floor to participants wishing to speak in this regard. In response, the following points were made: that the issues that were really trade-related were ones that could be raised under existing GATT provisions including Article XXIII; that the compilation, MTN.GNG/NG11/W/12, set out the various views of participants on the relevant GATT provisions; that the GATT only dealt with issues of excessive enforcement that might give rise to obstacles to legitimate trade, and that, if something were to be done under the first paragraph of the negotiating mandate, it should be in this direction; that the issue was not one of the adequacy or otherwise of GATT provisions but whether the Group would stay, as it should do, in the framework of what was covered by the General Agreement; and that the Group's examination should take place on the basis of detailed and substantive views on the adequacy and effectiveness of existing rules on intellectual property.

Second Indent of Initial Phase: Trade in Counterfeit Goods

29. Some participants clarified the reflection of their views in paragraph 29 of the note on the Group's previous meeting (MTN.GNG/NG11/4). Some of these participants said that, while they supported work taking place on the basis of the 1982 draft agreement (MTN.GNG/NG11/W/9) and the report of the Group of Experts (L/5878), they did not see trade in counterfeit goods as an area where more rapid progress might be made. Another participant said that, while the Group could perhaps proceed more rapidly with work under this item,

since it was a better understood and prepared area, work should take into account equally documents MTN.GNG/NG11/W/9, L/5878, the proposal regarding the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (MTN.GNG/NG11/W/11) and the ongoing work in the WIPO Committee of Experts on the Protection Against Counterfeiting (MTN.GNG/NG11/W/5 and Addenda 3-4).

30. These participants and some others reaffirmed the importance they attached to treating the issues in the first and second paragraphs of the Group's Negotiating Objective separately. The subject matter, nature of the undertaking and method of work required were different. The point was made, for example, that the first paragraph, unlike the second one, contained no commitment to seek to negotiate a multilateral framework. These participants were concerned about the tendencies in some of the suggestions tabled to amalgamate the two issues and also about the apparently lesser attention being paid by the Group to the question of trade in counterfeit goods. A participant said that there was no basis in the Negotiating Objective for treating trade in counterfeit goods as a component part of the trade-related aspects of intellectual property rights, nor was there any requirement to take a comprehensive approach to the work of the Group.

31. In response, some participants said that discussions under the first agenda item and the suggestions put forward in that connection had dealt in detail with measures and procedures against trade in counterfeit goods, in the context of the enforcement of intellectual property rights generally, both at the border and internally. These suggestions also dealt with the need to ensure that such measures and procedures did not give rise to obstacles to legitimate trade. The question of trade in counterfeit goods was one of the trade-related aspects of intellectual property rights, which their suggestions aimed at addressing comprehensively in a way that they considered most coherent and likely to be productive in dealing with the problems before the Group.

32. In the discussion, the following specific points were made: the Group should build on and respect the activities of other international fora dealing with trade in counterfeit goods (in this regard, support was expressed for the views described in the fourth indent of paragraph 21 of L/5878); the need to consider further the coverage of intellectual property rights (one participant reaffirmed his willingness to consider extending the work to copyright; some other participants supported consideration of the counterfeiting of the geographical origin of goods; another participant wished the work to be confined to trade marks); parallel imports were not counterfeit and should not be subject to customs intervention; the existing framework for intellectual property protection must provide the underpinning to the work of the Group, in particular as to the definition of what was counterfeit; and there was need for further discussion of possible modalities, which had not been examined in detail by the Group of Experts.

33. A participant said that a possible approach would be to revise Article IX:6, with perhaps the addition of explanatory notes. He put forward this suggestion partly because experience with the code approach in GATT had not been happy, and partly because a revision of the General Agreement would mean that contracting parties generally, rather than possibly only a limited number, would be bound by the new disciplines and that the existing GATT mechanisms for consultation and dispute settlement would automatically apply, thus obviating any need to draw up new ones.

Third Indent of the Initial Phase: Consideration of the Relationship Between the Negotiations in this Area and Initiatives in Other Fora

34. A participant said that he saw the Swiss contribution (MTN.GNG/NG11/W/15) as relevant to this agenda item, since it was cautious, exploratory and did not intend work to overlap with that of WIPO. He was less clear how the proponents of the other suggestions had taken the third paragraph of the Negotiating Objective into account. The representative of the European Communities said that the EC had taken the third paragraph of the Negotiating Objective into account in its suggestion; this was indicated in section II(vii), III and VI of the EC paper (MTN.GNG/NG11/W/16), all of which referred to WIPO. The representative of the United States said that the suggestions in the US paper (MTN.GNG/NG11/W/14) were for action to complement work in other fora, and did not prejudice such work. In introducing the paper, his delegation had

emphasised that as work proceeded the Group should continue to look at the ongoing work of other international organizations and consider incorporating results into the work of the Group. The representative of Japan said that his country's suggestion took into account the third paragraph of the Negotiating Objective. It stated, in regard to norms, that the present international treaties should be taken into account; work being undertaken in other international fora should also be taken into account. A participant asked the United States and Japanese delegations where and under what circumstances they envisaged their specific suggestions on duration of the patent term and semi-conductor chip layout design would be negotiated and implemented. The representatives of the United States and Japan said that they saw these suggestions as complementary to and fully consistent with work in WIPO and in no way prejudicial to such work.

35. Some participants stressed the importance they attached to co-operation with other relevant international organizations, in particular WIPO, and receiving factual information from such organisations. Some participants said that the Group should avoid duplication of work with that in WIPO. A participant said that the issue was not one of duplication of work; the only requirement in the Negotiating Objective was that the work in the Group should be without prejudice to that in other organizations. Work in the Group should not be inconsistent with that in WIPO.

36. The representative of the World Intellectual Property Organization reaffirmed the readiness of WIPO to see developed positive co-operation between WIPO and the Group and to respond to requests for information. He also informed the Group of developments with regard to the work of WIPO's Committees of Experts on the Protection Against Counterfeiting and on the Harmonisation of Certain Provisions in laws for the Protection of Inventions. The representative of the Customs Co-operation Council informed the Group of developments in regard to the drawing up of model legislation to give customs powers to implement trade mark and copyright legislation. A working party had submitted a complete draft to the CCC Permanent Technical Committee at its meeting of 23-27 November 1987. Once the model legislation had been approved by this Committee, he would communicate it to the Group. Its final approval would be given by the Council of the CCC, which next met in June 1988.

Other Business, including Arrangements for the Next Meeting of the Group

37. After discussion of various suggestions for documentation for its next meeting, the Group agreed to:

1. Authorize the Chairman to invite the WIPO Secretariat:

   (A) to prepare with respect to conventions administered by WIPO a factual statement providing a reference to provisions of existing international conventions providing protection for types of intellectual property included in MTN.GNG/NG11/W/12 (Section II, sub-paragraphs (i) through (vi));

   (B) to prepare the same kind of factual information as asked for in paragraph 1(A) as far as ongoing work in WIPO is concerned for updating the Note for the Chairman on "Activities in Other International Organizations of Possible Interest in Relation to Matters Raised in the Group".

2. Authorize the Chairman to invite Unesco:

   to prepare with respect to conventions administered by Unesco a factual statement providing a reference to provisions of existing international conventions providing protection for types of intellectual property included in MTN.GNG/NG11/W/12 (Section II, sub-paragraphs (i) through (vi)).

3. Request the GATT secretariat to finalize its work on the informal paper on enforcement

provisions (Section I of document MTN.GNG/NG11/W/12) on the basis of comments received from WIPO, UPOV and Unesco.

38. The Chairman said that he would attempt to see that all four documents would be available, as documents for the Group, well in advance of the next meeting of the Group.

39. The Chairman made the following statement:

> Looking back over the first year of our work, it seems to me that the Group has undertaken in a constructive and positive way the tasks that were expected of it. I also think that the meeting which is about to end has contributed, at least to my satisfaction, to the work, and I would like to take this opportunity to thank all participants of the Group for their constructive co-operation. It is clear, of course, that the Group will need to continue its examination of the specific suggestions - and this is provided for in the Negotiating Plan. I would expect that in this work a number of issues that have loomed large in our discussions this year will continue to figure prominently, such as the various views on the proper scope of the work of the Group, as well as the questions of the relevant GATT provisions, the previous work on trade in counterfeit goods and the relationship between our negotiations and initiatives in other fora.

40. The Group agreed to recommend that its next meeting be held in the week of 22 February 1988, it being understood that the decision on this matter would be taken by the GNG.