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

ACTIVITIES IN OTHER INTERNATIONAL ORGANIZATIONS OF POSSIBLE INTEREST IN RELATION TO MATTERS RAISED IN THE GROUP

Note by the Secretariat

1. This note summarizes some activities and initiatives in other international organizations of possible interest in relation to matters raised in the Group. It is not exhaustive. It is an updated version of the note prepared for the Chairman of the Group and made available informally to interested participants in September 1987. In response to the invitation of the Group at its November 1987 meeting (MTN.GNG/NG11/5, paragraph 37, sub-paragraph 1.(B)), the Secretariat of the World Intellectual Property Organization has supplied information for this updating. The GATT secretariat has also been in contact with the Secretariats of Unesco, the Customs Cooperation Council and UNCTAD concerning the parts dealing with the activities of those organisations.

A. World Intellectual Property Organization (WIPO)

(a) Counterfeiting/effective protection of industrial property

2. The WIPO Committee of Experts on Measures Against Counterfeiting and Piracy, established by the WIPO Governing Bodies in autumn 1985, had originally the mandate to determine the adequacy of the Paris Convention in providing for the efficient protection of industrial property titles and to recommend appropriate provisions to be incorporated in national legislations to strengthen the protection of industrial property titles. The Committee has met twice, in May 1986 and May 1987. At the second meeting, the Committee had two main documents before it: a document containing an analysis of the provisions of the Paris Convention bearing on counterfeiting, draft model provisions for national laws on the prevention and sanctioning of counterfeiting, and suggestions for regular meetings of member States of WIPO for the exchange of information on experience in combating counterfeiting (document PAC/CE/II/2); and a document containing provisions of the national laws of 50 countries on protection against counterfeiting (PAC/CE/II/3). The latter document deals essentially with marks, but also with provisions applicable to protection of the appearance of goods and the designs or lettering on goods.

3. In September 1987, the WIPO Governing Bodies decided that the Committee should continue its work and that its mandate should be extended to piracy of works protected by copyright. Consequently, the Committee

will have a further meeting in April 1988, during which it will consider draft model provisions for national laws on protection against counterfeiting and piracy as well as the relevant provisions of both the Paris and the Berne Conventions.

4. The documents of this Committee issued so far, including its reports, have been made available by WIPO to the Negotiating Group (see documents MTN.GNG/NG11/W/5 and Adds.3-4).

5. Symposium on the Effective Protection of Industrial Property Rights. WIPO held in Geneva on 15-16 June 1987 a symposium on the effective protection of industrial property rights. Presentations were made by 12 experts from different countries. It considered, in particular, the means by which the effective enforcement of industrial property rights might be strengthened. It is understood that a compendium of the presentations will be issued.

(b) Revision of Paris Convention

6. The preparatory work for the present diplomatic conference on the revision of the Paris Convention started in 1975. Four sessions of the conference have taken place, the first in 1980 and the most recent in February/March 1984. In the light of the deadlock on certain key issues at the end of the fourth session, a series of consultations are being held among the country groupings to assess whether a basis exists for calling a fifth session. Four such consultative meetings have been held so far. The spokesman of the three groups of countries and the representative of China will meet in March 1988 to decide the date and programme of the next consultative meeting.

7. The discussions on outstanding issues in the consultative meetings have centred on Article 5A of the Paris Convention and related matters, especially in connection with the possibility of according exclusive non-voluntary licences for the working of patented inventions. At the second consultative meeting, held in January/February 1987, the Group of Developing Countries advanced the idea, among others, that exclusive non-voluntary licences should not exclude the right of the patent owner to work his invention in the country, i.e. that the exclusivity should be "simple" or "relative" and exclude only parties other than the patent owner and the exclusive non-voluntary licensee. The implications of this idea were further explored at the third consultative meeting, in May 1987.

8. Related issues that have been explored in the consultations include the provisions to be incorporated in a revised Paris Convention on the obligation to work the invention, the relation between importation and working, the rights of countries to take legislative measures to prevent abuses, the possibility for countries to provide for the working of the invention at any time on public interest grounds, time limits for non-voluntary licences and revocation of patents, and the importation of products manufactured by a process patented in the importing country. Other outstanding issues discussed in consultative meetings include the way in which "inventors' certificates" should be recognised in the Paris Convention (Article 1), the protection of geographical indications including in situations where they might conflict with a trademark (proposed Article 10quater) and preferential treatment for nationals of developing countries in respect of fees and the terms of priority.

(c) Patent law harmonization

9. A WIPO Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions is considering the draft of some provisions of a possible new multilateral treaty aimed at greater uniformity among national laws. The treaty is envisaged as a "special agreement" under the terms of Article 19 of the Paris Convention, which recognises the right of a number of member countries to make agreements among themselves provided they do not contravene the provisions of the Paris Convention. The Committee, which first met in July 1985, held its fourth and most recent session in November 1987.

10. The draft treaty as submitted to the fourth session is contained in document HL/CE/IV/2. The table of

contents of this draft treaty, which indicates its possible scope and the working documents made available, can be found at the Annex to this note. Some developing countries are of the view that the proposed treaty should only deal with procedural matters, that substantive points of patent law, such as duration and exclusions, should not be covered and that the result of work on certain issues might better take the form of guidelines or recommendations than treaty commitments. The report of the fourth session of the Committee, which was attended by 36 countries, is document HL/CE/IV/6.

11. The Committee will hold its fifth session in June 1988.

(d) Trademark law

12. During the biennium 1988-89, work will begin on a draft treaty on the harmonisation of certain legislative provisions for the protection of trademarks, in particular the definition of trademarks and service marks, the formalities of applications for registration, the registration of service marks, the protection of well-known marks, the duration of the validity of the registration and renewals, the requirements of actual use of the mark, and the use of the international classifications of Nice and Vienna. Furthermore, efforts will continue towards working out the draft of a multilateral treaty for the centralized modification and renewal of national registrations as well as probably the centralised filing of applications for national registrations.

(e) Integrated circuits

13. The Committee of Experts on Intellectual Property in Respect of Integrated Circuits has examined at its three sessions a draft treaty, proposed by the International Bureau that would provide a system of international protection for the design or layout of integrated circuits. Their design or layout is generally not held to be eligible for protection under patent or copyright law and therefore not subject to the existing international conventions on these matters. The draft treaty would provide for national treatment and certain common or minimum rules on the rights protected, the duration of protection and the possible formalities. At the third session, whereas a number of the 37 States participating in general agreed with the draft, other delegations expressed reservations and one presented an alternative draft. Delegations of developing countries stressed the need for further analysis and study of a range of technical issues. (In an attempt to meet such concerns, the WIPO Secretariat had held in January 1987 technical consultations with experts of interested developing countries).

14. In September 1987, the WIPO Governing Bodies decided the following: the International Bureau of WIPO will prepare, in consultation with experts from developing countries, specific studies and analyses concerning legal matters relating to intellectual property in respect of integrated circuits; those studies and analyses will be distributed to Governments for comments; a consultative meeting of experts from developing countries will review and evaluate such comments; member States will meet to review the progress of the preparatory work; the fourth session of the Committee of Experts and subsequently the preparatory meeting for a diplomatic conference will be convened; after all the above steps have been accomplished and based on the outcome of the meeting of the Committee of Experts and of the preparatory meeting, the Director General of WIPO will convene a diplomatic conference during the biennium 1988-89 for the purpose of concluding a treaty on the protection of intellectual property in respect of integrated circuits; if possible, the diplomatic conference will be held in Washington (United States of America); otherwise, it will be held in Geneva. The International Bureau is preparing the above-mentioned studies and analyses in consultation with experts from developing countries. The consultative meeting of developing countries is scheduled to take place in May 1988, and the meeting of member States in May/June 1988.

(f) Biotechnological inventions

15. A Committee of Experts on Biotechnoligical Inventions and Industrial Property has held three sessions, the most recent in June 1987 (29 States represented). It has examined a report by the International Bureau,

"Industrial Property Protection of Biotechnological Inventions", which analyses the existing situation with respect to the legal protection of biotechnological inventions and presents suggested solutions on specific problems of industrial property protection of biotechnological inventions. Subject to the observations made, the suggested solutions were considered as suitable by the Committee as a basis for further discussion. At its second session, the Committee had agreed that divergences between countries in respect of the concept of invention should be overcome and that the fact that an alleged invention concerned living matter should not be an obstacle to its being recognised as an invention for the purposes of its protection under industrial property laws. The Committee of Experts will hold a fourth session in October 1988 in order to continue to examine possible solutions concerning industrial property protection of biotechnological inventions.

(g) Model provisions in the field of literary and artistic works

16. A Committee of Experts on Model Provisions for Legislations in the Field of Copyright will meet for the first time in November/December 1988. It will work out standards in the field of literary and artistic works for the purposes of national legislation on the basis of the Berne Convention.

(h) Impact of emerging technologies on the law of intellectual property

17. A WIPO Worldwide Forum on the Impact of Emerging Technologies on the Law of Intellectual Property will be convened in September 1988. It will have the task of considering the impact of new technology on intellectual property law, with special emphasis on biotechnology, computer technology, the new technology for the recording of sounds and images, new broadcasting technology (for instance by direct broadcasting satellite) and new technology for transmission of programmes by cable.

B. Unesco/WIPO

(a) Copyright/neighbouring rights

18. In the 1984/85 biennium, discussion in committees convened and serviced jointly by Unesco and WIPO, concentrated on the new uses (mainly cable television, private copying, rental and lending, direct broadcast satellites) of works protected by copyright and neighbouring rights. In September 1985 this work was redirected to examining specific questions by category of work (printed word, audio-visual works, phonograms, works of visual art, works of architecture, works of applied art, dramatic and choreographic works, musical works, photographic works). This work, in a series of committees of governmental experts, has been aimed at drawing up certain "principles" and accompanying comments intended to serve as guidance, without any obligation, for governments when they have to deal with these issues. In June/July 1988 a Committee of Governmental Experts will re-examine, perfect and consolidate the principles of protection.

(b) Computer software

19. This matter was last discussed in detail by a Group of Experts on the Copyright Aspects of the Protection of Computer Software, in February and March 1985. A range of views about the applicability of copyright and international conventions on copyright to computer software were expressed. In June 1985, the Executive Committee of the Berne Union and the Intergovernmental Copyright Committee of the Universal Copyright Convention, in joint sessions, asked the WIPO and Unesco Secretariats to follow developments in this field and report to them in the 1987 joint sessions. At their 1987 sessions, the Committees took note of a report on the development of law and practice connected with the protection of computer programmes, prepared by the Secretariats on the basis of answers received from governments to a circular letter. The Committees supported the plans of the Secretariats to continue to follow the development of law and practice in the field and to report to the next sessions of the Committees in 1989.

C. Unesco

Study on piracy

20. In 1985 the Unesco Secretariat issued a study on the phenomenon of the piracy of printed material, phonograms, audio-visual material, films, and radio and television programmes, based on responses to a questionnaire received from governments and specialized bodies. The aim was to carry out a global survey on the phenomenon of piracy, in order to measure its scope, identify the reasons for its existence, and find ways and means of ending it. This paper has been made available to the Negotiating Group by the Unesco Secretariat (see MTN.GNG/NG11/W/5/Add.2). Document MTN.GNG/NG11/W/19 also contains information on certain activities of Unesco.

D. Customs Cooperation Council (CCC)

21. The rôle of customs in implementing copyright and industrial property law is one of the priorities on the CCC work programme. The main CCC activity in this regard has been the drafting, by the CCC Permanent Technical Committee, of model legislation for countries wishing to enact legislation to give their customs competence in enforcing intellectual property law. After consideration at four Expert Group/Working Party sessions (in June 1986, November 1986, January 1987 and November 1987), the model legislation was approved by the Permanent Technical Committee at its November 1987 meeting. It will be presented to the annual CCC Council meeting for adoption in June 1988.

22. Other recent CCC work of possible interest to the Negotiating Group includes:

- in 1984, the CCC issued a study on the rôle of customs in implementing intellectual property law, based in part on replies to a questionnaire sent to member governments and international organizations. The study, inter alia, examines the need for enforcement by law enforcement authorities and the international instruments in this regard, enforcement by customs services, and international cooperation in customs enforcement of intellectual property law. The replies to the questionnaire are annexed to the report. Copies of this study were made available in 1985 by the CCC to members of the GATT Group of Experts on Trade in Counterfeit Goods (CCC documents 31.866, 31.867, 31.969).

- In June 1986, the CCC held a Workshop on Enforcement of Copyright and Industrial Property Law, which was attended by 52 customs officials and representatives of industry. The proceedings of this Workshop were issued as a CCC document (33.380).

23. Further details on the work of the CCC in this area, including the text of the model legislation, can be found in documents MTN.GNG/NG11/W/5/Adds.1 and 5.

E. UNCTAD

(a) Transfer of technology

24. Work on an International Code of Conduct on the Transfer of Technology began in 1974. The sixth and most recent session of the negotiating conference, in May-June 1985, could not conclude the Code of Conduct, despite coming close to agreement, and remitted the matter to the UN General Assembly. In pursuance of decisions by the General Assembly, consultations have been underway under the auspices of UNCTAD with governments and the country groupings to attempt to find a way forward. It has not been possible to finalise these consultations so far, but a number of suggestions have been made during them concerning the possible solution to the issues outstanding in the draft code of conduct. The United Nations General Assembly adopted a resolution (42/172) at its last session inviting the Secretary-General of UNCTAD and the President of the Conference on a Code of Conduct to complete their consultations, requesting a report to the General Assembly at its forty-third session if sufficient progress is made in these consultations, and recommending, in the light of the

consultations, any further action on the negotiations on a code of conduct, including the possible reconvening of the Conference.

25. The draft code of conduct is universally applicable in scope and is addressed to all parties to transfer of technology transactions and to all groups of countries, irrespective of their economic and political systems and levels of development. Nevertheless, the draft code pays special attention to the interests and concerns of developing countries. The draft code contains two broad categories of provisions, most of which have been agreed:

- provisions on the regulation of transfer of technology transactions and the conduct of parties to them, aimed at establishing generally agreed and universally applicable norms and standards (Chapter 4 dealing with the determination of practices to be avoided by parties and the circumstances under which they ought to be avoided; Chapter 5 on the responsibilities and obligations of parties to transfer of technology transactions; and Chapter 9 on applicable laws and dispute settlement);

- provisions relating to action to be taken by governments, either on account of their national policies or in order to meet their commitments to the code (Chapter 3 on the national regulation of transfer of technology transactions; Chapter 6 on special treatment for developing countries; Chapter 7 on international collaboration; and Chapter 8 on international institutional machinery);

26. The most difficult outstanding issue is the formulation of a chapeau to Chapter 4 concerning the characterisation of the practices to be avoided and the circumstances under which they should be avoided; the criteria to be followed in the determination of whether a practice is restrictive or not for the purpose of the code; the relationship between the code provisions and applicable national or regional legislation; and, most difficult of all, the applicability of Chapter 4 provisions to transfer of technology transactions between affiliated enterprises. A further major outstanding issue is the provisions of Chapter 9 on the choice of applicable law.

27. As regards other UNCTAD activities relevant to matters raised in the Group, the Committee on Transfer of Technology, at its most recent session in October/November 1986, invited the UNCTAD Secretariat to continue its work on the economic, commercial and developmental aspects of industrial property protection. It also invited the Secretary-General of UNCTAD, in consultation with regional groups, to convene, as appropriate, the UNCTAD Group of Governmental Experts on the Economic, Commercial and Developmental Aspects of Industrial Property in the Transfer of Technology to Developing Countries.

28. UNCTAD also undertakes work in the area of national legislation relating to the transfer and development of technology. A periodic report surveying national and international policy and legislative trends in this area is published; the latest report (TD/B/C.6/133) includes a survey of the current trends in the intellectual property protection of new technologies. The October/November 1986 session of the Committee on Transfer of Technology suggested that the secretariat's studies could include an analysis of the impact of national laws on transfer of technology and of the impact of technological and commercial changes on the legislation. It recommended that national laws and regulations conducive to the acquisition and development of technology should be studied in order to assist developing countries in elaborating a legal framework in this field. The Committee also noted recent national and international efforts to provide an adequate legal protection for rapidly evolving technological developments, and stated that attention should therefore continue to be given to the improvement of the legal environment for the development and transfer of technology.

29. Another area of UNCTAD's activities of relevance to matters raised in the Group is its work on policies for the promotion and encouragement of technological innovation; in this context, an examination has been and continues to be undertaken of the incentives to innovation provided by industrial property systems, particularly in developing countries (see, for example, document TD/B/C.6/139, Chapter II). The latest Committee on Transfer of Technology resolution provides that the UNCTAD Secretariat should continue its study of the promotion and encouragement of technological innovation, assessing in particular the rôle of research and development

activities, industrial property protection, and risk taking in promoting innovation and development, in particular in developing countries.

(b) Restrictive Business Practices

30. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, as adopted in 1980, is non-binding. It contains provisions concerning the conduct of enterprises, including transnational corporations; measures to be taken by States at the national, regional and sub-regional levels, as well as measures at the international level, by States and UNCTAD. A Review Conference was held in June 1985 for the 5-year review of the Set of Principles and Rules, as envisaged in the original decision in which they were adopted. The Conference did not reach agreement. In consequence, a further Review Conference is scheduled to take place in 1990.

31. The Intergovernmental Group of Experts on Restrictive Business Practices, which was established in 1981 pursuant to the Set, to monitor its application and implementation, held its sixth session in November 1987, at which it, inter alia, examined a revised secretariat study on tied purchasing (TD/B/RBP/18/Rev.1), which contains a section on tied purchasing based on intellectual property law. The Group adopted "agreed decisions and conclusions" which, inter alia, express concern at the continued existence of restrictive business practices, and request the UNCTAD Secretariat to embark on a study on the concentration of market power and its effects on international markets, in particular of developing countries. It further welcomes technical assistance in this feld and requests the secretariat to continue publication of the handbook on restrictive business practices and to revise the draft elements for the model law or laws on restrictive business practices.

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