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

SYNOPTIC TABLES SETTING OUT EXISTING INTERNATIONAL STANDARDS AND PROPOSED STANDARDS AND PRINCIPLES

Prepared by the Secretariat

Revision

1. At its meeting of 11-12 May 1989, the Negotiating Group requested the secretariat to prepare synoptic tables setting out in a comparative manner the proposals tabled in the Group on standards and principles concerning the scope, availability and use of trade-related intellectual property rights and corresponding provisions of existing international treaties. This is a revision of the synoptic tables issued in response to that request. It takes into account the additional specific proposals made since the first version was prepared (by Australia, the Nordic countries, India and Switzerland).

2. The following tables are attached to this note:

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3. The first column in each table sets out existing international standards on the matters on which specific proposals have been made. The content of this column has been prepared drawing on the document prepared by the International Bureau of WIPO on the Existence, Scope and Form of Generally Internationally Accepted and Applied Standards/Norms for the Protection of Intellectual Property (MTN.GNG/NG11/W/24/Rev.1). The following points about the scope of the information contained in this column should be borne in mind:

- Only standards contained in multilateral treaties have been included. Regional or bilateral treaties have not been referred to.

- The information given refers to the most recent revision of the treaty in question, unless otherwise indicated.

- In order to enable the information to be presented synoptically, it has been necessary in many instances to present the existing standards in summary form. References have been included to the articles of the treaties in question where the full text of existing international standards can be found.

- Under each entry, a reference is made to the corresponding Part and Section of document MTN.GNG/NG11/W/24/Rev.1 prepared by WIPO, e.g. (III (1)) refers to Part III (on trademarks), Section (1) (on subject matter to which right applies/does not apply). It will be recalled that this document not only contains information on existing standards in international treaties, but also information on standards suggested in model legislations, on WIPO activities and on national provisions and practices. Where there is a second reference in brackets, this refers to the records of any discussion of that point in the Group (e.g. 7/17; 7/20 refers to paragraphs 17 and 20 of MTN.GNG/NG11/7).

- The national treatment standard, as laid down in the Paris, Berne, Universal Copyright, Rome or Integrated Circuits Conventions, is widely relevant to the matters referred to in the tables. It has only been mentioned explicitly in the tables where a specific standard of this nature has been proposed in relation to a particular intellectual property right. It will be recalled that various proposals have been made for general national treatment obligations, in connection with item I(A) of the Group's agenda.

4. The other columns of the tables set out in full the specific proposals made by the United States (MTN.GNG/NG11/W/14/Rev.1), Japan (MTN.GNG/NG11/W/17/Add.1), the European Communities (MTN.GNG/NG11/W/26), Australia (MTN.GNG/NG11/W/35), Norway on behalf of the Nordic countries (MTN.GNG/NG11/W/36), India (MTN.GNG/NG11/W/37) and Switzerland (MTN.GNG/NG11/W/38). Where there is a reference in brackets below an entry in these columns, this refers to the records of the meeting of the Group at which that point was discussed.

5. Written submissions of a more general nature presenting views on questions of standards and principles concerning the scope, availability and use of trade-related intellectual property rights have also been circulated by Thailand, Mexico and Brazil. The Thai statement (MTN.GNG/NG11/W/27) inter alia emphasises that the two fundamental goals pursued by governments when granting intellectual property protection are the stimulation or encouragement of intellectual property creation and the accord of proper and legitimate protection of the public interest; the former must not put an undue burden on or adversely affect the latter. The statement by Mexico (MTN.GNG/NG11/W/28) inter alia says that the negotiating objective regarding the improvement of intellectual property rights should not become a barrier to access by developing countries to technologies produced in developed countries. Any results obtained in the Group would therefore necessarily have to include more flexible elements for the use of such technology by developing countries, since countries with different levels of development cannot respond in the same way to each of the trade and intellectual property aspects. Mexico also advocates examination of Articles IX, XX and XXIII of the General Agreement and says that the provisions of the General Agreement should not be used to modify legal regimes governing intellectual property rights, but should aim, in the best of cases, at recommendations to reduce distortions in international trade and barriers to that trade which may derive from the application and protection of intellectual property rights. The Brazilian paper (MTN.GNG/NG11/W/30) says that the originality of the Group's work lies in the need to keep in view both the trade-related and developmental aspects of intellectual property rights, distinguishing it from more legal discussion being held in other fora. It advocates priority attention in the Group to:

i) The extent to which rigid and excessive protection of intellectual property rights impedes access to the latest technological developments, restricting therefore the participation of developing countries in international trade. In this context, it emphasises the importance of specific exclusions from the protection of intellectual property rights.

ii) The extent to which abusive use of intellectual property rights gives rise to restrictions and distortions in international trade. Practices which have this effect should be subject to adequate multilateral discipline. An illustrative list of such practices is given in paragraph 25 of the paper.

iii) The risks that a rigid system of protection of intellectual property rights implies for international trade.

Attentive consideration should be given to cases where the protection and enforcement of intellectual property rights become a barrier or harrassment to legitimate trade, including where it is used as an excuse to implement protectionist and discriminatory measures.

It will be recalled that a number of other delegations have also submitted, in documents MTN.GNG/NG11/W/7 and addenda, their analyses of the trade problems that the Group should, in their view, consider.

6. Many participants have, of course, expressed their views orally at meetings of the Group. Since the April 1989 TNC decision, the views expressed on the approach that the Group should take to work on standards and principles are recorded in MTN.GNG/NG11/12, paragraphs 5, 6 and 9; MTN.GNG/NG11/13, paragraph 5; and MTN.GNG/NG11/14, paragraphs 3-18. The views expressed relating to specific intellectual property rights are recorded in MTN.GNG/NG11/14, paragraphs 20-91.

7. It might be noted that the suggestions of the United States, the European Communities, Japan, Australia, India, Switzerland (MTN.GNG/NG11/W/25) and the Nordic countries (MTN.GNG/NG11/W/29) address the relationship between the outcome of the work of the Group and standards in existing treaties. The European Communities' and Japanese proposals also suggest obligations regarding adherence to existing international treaties (the European Communities' and Japanese proposals would require adherence to the Berne and Paris Conventions in their latest revisions; the European Communities would also invite adherence to other existing intellectual property conventions). The European Communities' proposal further suggests commitments regarding participation in the work of other international organizations, notably in regard to the development of standards in response to new forms of technology and creativity, while the proposal of Switzerland (MTN.GNG/NG11/W/25) would require a TRIPS committee to cooperate with WIPO and other international organizations particularly with a view to developing and adjusting international law related to intellectual property to the needs of unimpaired international trade. The proposals of the United States, European Communities, Japan, Switzerland and Australia envisage provision for the evolution of standards and principles provided for in a TRIPS agreement.

8. The following are the full titles of the various international treaties referred to in column one of the tables:

(a) Industrial Property

- Paris Convention for the Protection of Industrial Property (WIPO) (1883, revised 1900, 1911, 1925, 1934, 1958 and 1967, and amended 1979);

- Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (WIPO) (1891, revised 1911, 1925, 1934 and 1958; Additional Act 1967);

- Lisbon Agreement for the Protection of Appellations of Origin and Their International Registration (WIPO) (1958, revised 1967, and amended 1979);

- Nairobi Treaty on the Protection of the Olympic Symbol (WIPO) (1981);

- Patent Cooperation Treaty (PCT) (WIPO) (1970, amended 1979 and modified 1984);

- Madrid Agreement Concerning the International Registration of Marks (WIPO) (1891, revised 1900, 1911, 1925, 1934, 1957 and 1967, and amended 1979);

- Treaty on Intellectual Property in Respect of Integrated Circuits (WIPO, 1989).[1]

(b) Copyright

- Berne Convention for the Protection of Literary and Artistic Works (WIPO) (1886, completed 1896, revised 1908, completed 1914, revised 1928, 1948, 1967 and 1971, and amended 1979);

- Universal Copyright Convention (Unesco) (1952, revised 1971).

(c) Neighbouring Rights

- Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (ILO, Unesco, WIPO) (1961);

- Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (WIPO, in cooperation with ILO and Unesco for matters relating to their respective fields of competence) (1971).

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1Not yet in force.

TABLE I: COPYRIGHT

(1) RELATION TO BERNE CONVENTION OBLIGATIONS

Existing International Standards

(Part II)
(7/17)

United States
(MTN.GNG/NG11/W/14/Rev.1)

(14/23.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Participants shall accede to and frame national laws based upon the Paris Act of the Berne Convention for the Protection of Literary and Artistic Works.
(9/12, 14/23.1)

Australia
(MTN.GNG/NG11/W/35)

Rights in the copyright field should be protected in accordance with the existing provisions of the most broadly subscribed acts of relevant international conventions; including the Berne Convention for the Protection of Literary and Artistic Works (1886).
(14/6; 14/23.1)

Nordics
(MTN.GNG/NG11/W/36)

(14/4)

Switzerland
(MTN.GNG/NG11/W/38)

(14/3; 14/23.1)

(2) SUBJECT MATTER FOR PROTECTION

Existing International Standards

The Berne Convention obliges the countries which are party to it to protect all literary and artistic works. The Convention contains a non-exhaustive list of such works which includes, inter alia, books and other writings; dramatic or dramatico-musical works; choreographic works; musical compositions with or without words; cinematographic works and works expressed by a process analogous to cinematography; works of drawing, painting, architecture and sculpture; photographic . works. The obligation of the countries party to the Convention also extends to the protection of so-called derivative works (translations, adaptations, arrangements of music) (Article 2).

The word "work" is not defined separately. The records of the diplomatic conferences adopting and revising the Convention indicate, however, that it has always been considered evident that "works" are original, intellectual creation. That meaning of "works" is made clear also in the text of the Convention in respect of collections such as encyclopaedias and anthologies, where it is stated that the condition of protection is that such collections should be "intellectual creations".

The Berne Convention provides that it is a matter for legislation in countries party to the Convention to determine the extent of the application of their laws to works of applied art and industrial designs, as well as the conditions under which such works and designs are protected. The Convention makes it clear, however, that such productions should always be protected, either by copyright or by special industrial design law or by both (Article 2).

(II (1))
(7/17)

Under the Universal Copyright Convention, each Contracting State undertakes to provide for the adequate and effective protection of the rights of authors and other copyright proprietors in literary, scientific and artistic works, including writings, musical, dramatic and cinematographic works, and paintings, engravings and sculpture (Article I).

United States
(MTN.GNG/NG11/W/14/Rev.1)

Copyright protection shall extend to all forms of original expression regardless of the medium in which the work is created, expressed, or embodied or the method by which it is communicated or utilized. Such works include literary works (including all types of computer programmes expressed in any language, whether application programmes or operating systems, and whether in source or object code); musical works (including accompanying lyrics); dramatic works, cinematographic and audiovisual works; sound recordings; pictorial, graphic and sculptural works; choreography and pantomime; compilations (whether of protected or unprotected materials and whether in print, in a machine-readable data base or other medium); derivative works (without prejudice to any rights in pre-existing material upon which they are based); and works created with the use of computers, as well as works in forms yet to be developed.

(14/24.1)

Australia
(MTN.GNG/NG11/W/35)

(14/24.4)

Switzerland
(MTN.GNG/NG11/W/38)

"Work" means any original intellectual creation, of literary or artistic character, irrespective of its value or purpose.

Computer software shall be considered to be a work within the meaning of the preceding definition.

(14/24.3)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

A production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic or musical domain is "work" that is entitled to copyright protection.

Computer data bases which, by reason of the selection or systematic construction of information contained therein, constitute intellectual creations shall be protected as independent works.

The copyright protection of computer programme works shall be given appropriate considerations in accordance with their nature which include the following:

(i) The protection shall not extend to any programming language, rule or algorithm used for making such works.

(ii) The owner of a copy of a programme work may make copies or adaptations of that work if and to the extend deemed necessary for the purpose of exploiting that work in a computer by himself.

(9/12-14; 14/24.2)

Nordics
(MTN.GNG/NG11/W/36)

An author of literary or artistic works, a work being an original intellectual creation or an expression thereof, shall enjoy copyright protection.

The expression "literary and artistic work" shall include every production in the literary, scientific and artistic domain whatever may be the mode or form of its expression such as works in writing, including computer programmes, works consisting of words and expressed orally, musical works with or without words, dramatic or dramatico-musical works, audiovisual works, including cinematographic works, pantomimes and choreographic works, works of fine and applied art.

In no case copyright protection shall extend to ideas, procedures, systems or methods.

(14/4; 14/24.3)

(3) CONDITIONS FOR OBTAINING PROTECTION

Existing International Standards

Under the Berne Convention, the enjoyment and exercise of copyright must not be subject to a formality (Article 5). The Convention leaves it to the legislation of member States to determine whether protection of works, in general, or any specified categories of works, should be conditional on those works having been fixed in some material form.
(II (2))

Under the Universal Copyright Convention, all formalities with which compliance is required as a condition of copyright must be regarded as satisfied if from the time of the first publication all the copies of the work published with the authority of the author or other copyright proprietor bear the symbol c accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright. (These provisions do preclude any Contracting State from requiring formalities or other conditions for the acquisition and enjoyment of copyright in respect of works first published outside its territory and the author of which is not one of its nationals (Article III.1). However, they do not preclude any Contracting State from requiring formalities in respect of works first published in its territory or works of its nationals wherever published) (Article III.2).

Each Contracting State is also required to provide legal means of protecting without formalities the unpublished works of nationals of other Contracting States (Article III.4).

United States
(MTN.GNG/NG11/W/14/Rev.1)

Copyright protection shall vest automatically upon the creation of a work ans shall subsist whether or not the work is published, communicated, or disseminated. The enjoyment and exercise of rights under copyright shall not be subject to any formality.

Parties that have afforded no effective copyright protection to foreign works shall provide copyright protection for pre-existing works that are not in the public domain in the country of origin of the work.
(14/25)

Australia
(MTN.GNG/NG11/W/35)

Switzerland
(MTN.GNG/NG11/W/38)

Copyright protection shall begin automatically, upon the creation of the work.

The exercise of the exclusive right shall not be subject to any formality.

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Copyright protection shall attach automatically upon creation of the work and the exercise of the rights shall not be subject to any formality.

Nordics
(MTN.GNG/NG11/W/36)

The protection shall commence upon creation of the work and the exercise of the rights shall not be subject to any formality.
(14/25)

(4) RIGHTS CONFERRED

Existing International Standards

The exclusive rights to authorize certain uses of works that must be granted by countries party to the Berne Convention are the following:

- the right of reproduction of works in any

United States
(MTN.GNG/NG11/W/14/Rev.1)

A. Parties shall extend to copyright owners at a minimum, the exclusive rights to do or to authorize doing of the following:

(a) to copy or to reproduce the work by any means or process, in whole or in

Japan
(MTN.GNG/NG11/W/17 and Add.1)

The author shall enjoy the moral rights and the economic rights to his work as stipulated in the Berne Convention.

manner or form (Article 9(1));

- the right of public performance of dramatic, dramatico-musical and musical works, the right of recitation of literary works and the right of communication to the public of works performed or recited (Article 11(1) and 12(1));

- the right of broadcasting of works or communication thereof to the public by other wireless means, and the right of communication to the public by wire (e.g., by cable) or by rebroadcasting of works broadcast as well as the right of public communication by loudspeaker and similar means of works broadcast (Article 11bis(1));

- the right of translation of works (Article 8);

- the right of adaptation, arrangement or other alteration of works, (Article 12);

- the right of authorizing cinematographic adaptation of works and of authorizing the reproduction and distribution to the public of the works thus adapted or reproduced and the cinematographic works - as original works - themselves, as well as the right of authorizing the public performance and communication to the public of the works thus adapted or reproduced and of the cinematographic works themselves (Article 14(1) and 14bis(1)).

The recognition of the "droit de suite", which is a right to an interest in the sale of original works of art and of original manuscripts, is not an obligation under the Convention; it is only optional and can be made conditional on reciprocity (Article 14ter).

(4) RIGHTS CONFERRED (contd.)

Existing International Standards

The Berne Convention also contains provisions on the protection of the so-called moral rights; it provides that the author, independently of his economic rights, shall

part, and whether identically or in substantially similar fashion;

(b) to translate, revise, and otherwise adapt and prepare derivative works based on the protected work;

(c) to distribute copies of the work by sale, rental, or otherwise, and to import copies; and,

(d) except in the case of sound recordings, to communicate publicly the work, directly or indirectly (e.g., perform, display, exhibit, broadcast, transmit and retransmit) whether "live" or from a fixation, by any means or process, (.e.g. by electronic network, by terrestrial links, broadcast signals, satellites, or otherwise) and regardless of whether the signal emanates from beyond national borders.

B. Restrictions of exclusive rights to "public" activity (e.g., the right of public performance) shall not apply to the reproduction or adaptation right; and with respect to the communication right, "public" or "publicly" shall mean:

(a) places open to the public of any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; and

(b) communications of works in any form or by means of any device or process, regardless of whether the members of the public capable of receiving such communications receive them in the same or separate places and at the same time or at different times.

United States
(MTN.GNG/NG11/W/14/Rev.1)

C. Economic rights under copyright shall be freely and separately exploitable and transferrable; transferees (assignees and exclusive licensees) shall be entitled to

Australia
(MTN.GNG/NG11/W/35)

Switzerland
(MTN.GNG/NG11/W/38)

The author shall enjoy the rights to his work as stipulated in the Berne Convention for the Protection of Literary and Artistic Works as revised in 1971.

The copyright shall confer the right on its owner to prevent third parties not having his consent from:

- copying or reproducing the work in any form, such as printed matter, phonograms, videograms, or data carriers;

- offering to the public, selling, or otherwise distributing copies of the work;

- performing publicly the work, directly or indirectly by any means or process, live or in a place other than that of the performance;

- broadcasting the work by radio wave, by cable or other devices;

- retransmitting the transmitted work by technical means or processes, including cables or other devices, the exploitation of which is not made by the initial broadcaster;

- communicating broadcasts or retransmitted broadcasts.

The rights under copyright shall be assignable and transferable.

have the right to claim authorship of his work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the work which would be prejudicial to his honour or reputation (Article 6bis).
(II (4))

Under the Universal Copyright Convention, each Contracting State must provide for the adequate and effective protection of the rights of authors and other copyright proprietors. These rights must include the basic rights ensuring the author's economic interests, including the exclusive right to authorize reproduction by any means, public performance and broadcasting. This requirement extends to works protected under the Convention either in their original form or in any form recognizably derived from the original. The rights shall also include the exclusive right of the author to make, publish and authorize the making and publication of translations of works protected under this Convention (Articles IVbis.1, V.1).

(5) LIMITATIONS/EXEMPTIONS/COMPULSORY LICENSING

Existing International Standards

The Berne Convention allows, in some restricted and precisely determined cases, certain limitations to the exclusive rights of authors. Such limitations are of two types free uses (that is, uses of protected works without the obligation to ask for authorization and to pay any remuneration) and compulsory licences. Free uses are only allowed for some strictly defined purposes, such as for quotations, illustration for teaching purposes, reporting current events and, in respect of the right of reproduction, in certain special cases, provided that such a limitation does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of authors (Articles 9(2), 10, 10bis).

Compulsory or legal licences (non-voluntary licences) are allowed in the following cases and under the following conditions:

- in respect of the right of broadcasting of works and the communication to the public of works broadcast (Article 11bis(2));

- in respect of the right of recording but onl of musical works and any words pertaining thereto, if the copyright owner has already

full enforcement of their acquired rights in their own name.
(14/26)

United States
(MTN.GNG/NG11/W/14/Rev.1)

Any limitations and exemptions to exclusive economic rights shall be permitted only to the extent allowed and in full conformity with the requirements of the Berne Convention (1971) and in any event shall be confined to clearly and carefully defined special cases which do not impair actual or potential markets for, or the value of, copyrighted works.

Compulsory licences shall not be adopted where legitimate local needs can be met by voluntary actions of copyright owners. Implementation, where necessary, of compulsory licences shall be strictly limited to those works and those uses permitted in the Berne Convention (1971); shall be implemented in accordance with relevant treaty standards; shall preserve all material interests of authors and copyright owners; and shall be accompanied by detailed laws and regulations that provide strong safeguards, including notification of the copyright owner and effective opportunity to be heard, mechanisms to ensure prompt payment and remittance of royalties consistent with those that would be negotiated on a voluntary basis, and workable systems to prevent exports.
(14/27.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Limitations on copyright shall follow the line of the Berne Convention.
(14/27.2)

Nordics
(MTN.GNG/NG11/W/36)

Any limitations and exemptions to the economic rights shall be restricted to those allowed under the Berne Convention (1971).

authorized a previous recording
(Article 13);

- in respect of the right of reproduction of works, in certain special cases, provided that such reproduction does not conflict with a normal exploitation of the work and does not not unreasonably prejudice the legitimate interest of the copyright owner
(Article 9(2));

- exclusively in developing countries, in respect of the rights of translation of works published in printed or analogous forms of reproduction and the right of reproduction of works published in printed or analogous forms of reproduction and of audiovisual fixations prepared and published for the sole purpose of being used in connection with systematic instructional activities, for teaching, scholarship or research, under several conditions; the copies produced under such licences must not be exported (Appendix).

(14/27.2)

Australia
(MTN.GNG/NG11/W/35)

Switzerland
(MTN.GNG/NG11/W/38)

Limitations and exemptions to rights, including compulsory licensing, may be made in accordance with the Berne Convention.

Limitations made to the rights in favour of private use shall not apply to computer software.

(5) LIMITATIONS/EXEMPTIONS/COMPULSORY LICENSING(contd.)

Existing International Standards

In addition to the limitations explicitly mentioned in the text of the Convention, there is one more possibility for certain exceptions about which there was express agreement at various revision conferences, namely the possibility of "minor exceptions" to the right of public performance (a concept which is close to the notion of "fair use" or "fair dealing".

(II (4) and (7))
(7/17)

Under the Universal Copyright Convention, any Contracting State may, by its domestic legislation, make exceptions, that do not conflict with the spirit and provisions of the Convention, to the basic rights ensuring the author's economic interest referred to in (4) above. Any State whose legislation so provides, must nevertheless accord a reasonable degree of effective protection to each of the rights to which exception has been made (Article IVbis.2).
Under the Universal Copyright Convention, any Contracting State may, subject to several conditions, restrict the right of translation of writings referred to in (4) above by making provision for non-exclusive compulsory licences to translate if, after the expiration of a period of 7 years from the date of first publication, a translation has not been published in a language in general use in that State.

(Article V.2). The Universal Copyright Convention also contains special provisions for developing countries allowing (i) greater flexibility to grant compulsory licences, for the purpose of teaching, scholarship or research, in respect of the rights of translation of works published in printed or analogous forms of reproduction and (ii), subject to a number of conditions, allowing the grant of compulsory licences in respect of the right of reproduction of works published in printed or analogous forms of reproduction and the right of reproduction of audio-visual fixations prepared and published for the sole purpose of being used in connection with systematic instructional activities; the copies produced under such licences must not be exported (Articles Vter, Vquater).

(6) TERM OF PROTECTION

Existing International Standards

The Berne Convention obliges the countries party to it to protect literary and artistic works for the lifetime of the author and for 50 years after his death. The protection of anonymous and pseudonymous works expires, as a rule, 50 years after the work has been lawfully made available to the public In respect of cinematographic works, it may be provided that the 50-year term of protection. be calculated from the making the work available to the public or, failing such an event, from the making of the work (Articles 7, 7bis).

There are only two categories of works, namely photographic works and works of applied art, in respect of which the minimum term of protection prescribed by the Berne Convention is shorter: 25 years from the making of such works (Article 7(4)).

The Berne Convention exempts the term of protection from the obligation of extending national treatment to foreigners. The term is governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term does not exceed the term fixed in the country of origin of the work

United States
(MTN.GNG/NG11/W/14/Rev.1)

The minimum term of copyright protection shall be the life of the author plus fifty years; and for anonymous and pseudonymous works and works of juridical entities (works made for hire), shall be at least fifty years from publication with the consent of the author, or, failing such an event within fifty years from the making of a work, fifty years after the making.

(14/28)

Australia
(MTN.GNG/NG11/W/35)

Japan
MTN.GNG/NG11/W/17 and Add.1)

The term of protection of works shall be in principle, the life of the author and fifty years after his death in accordance with the Berne Convention.

(14/28)

Nordics
(MTN.GNG/NG11/W/36)

The term of protection shall be life of the author and fifty years after his death or, in the case of anonymous or pseudonymous authors, fifty years after the work has been lawfully made available to be public.

(Article 7(8)).
(II (5))
(5/21; 7/17)

Under the Universal Copyright Convention, the basic requirement is that the term of pro-on tection should not be less than the life of the author and 25 years after his death. However, exceptions are provided for Contracting States which at the time of accession computed the duration of protection from the date of first publications of a work or from the date of its registration prior to publication; these States must provide a term of no less than 25 years from the date in question (Article IV).

Switzerland
(MTN.GNG/NG11/W/38)

The duration of protection shall amount to the life-span of the author and 50 years in addition. Other terms of protection may be granted to certain categories of works in conformity with the Berne Convention.

The term of protection of computer software shall be 50 years from the date of creation.

(6) TERM OF PROTECTION (contd.)

Existing International Standards

In all Contracting States that protect photographic works or works of applied art as artistic works, the term of protection must not be less than 10 years for these classes of works (Article IV.3).

With regard to the term of protection, the Universal Copyright Convention exempts Contracting States from the obligation of extending national treatment to foreigners: Contracting States are not obliged to provide for a term in excess of that fixed in the country of which the author is a national in the case of unpublished works and in the country of the first publication in the case of published works (Article IV.4).

TABLE II: NEIGHBOURING RIGHTS

(1) RELATION TO ROME CONVENTION

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

(14/30)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Participants shall provide protection for performances, phonograms and broadcasts based upon the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention) as follows.
(9/13; 14/29)

Australia
(MTN.GNG/NG11/W/35)

Neighbouring rights should be protected in accordance with the existing provisions of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961) and the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of their Phonograms (1971).
(14/6)

Nordics
(MTN.GNG/NG11/W/36)

(14/4; 14/32)

Switzerland
(MTN.GNG/NG11/W/38)

(14/29; 14/32)

(2) RIGHTS CONFERRED

- PERFORMERS

Existing International Standards

Under the Rome Convention, the protection provided for performers must include the possibility of preventing

- the broadcasting and the communication to the public, without their consent, of their live performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation;

- the fixation, without their consent, of their unfixed performance;

- the reproduction, without their consent, of a fixation of their performance, if the original fixation itself was made without their consent, if the reproduction is made for purposes different from those for which the performers gave their consent, or if the original fixation was made in accordance with those provisions of the Convention which allow exceptions to neighbouring rights (see (4) below) and the reproduction is made for purposes different from those referred to in those provisions (Article 7).

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

The protection provided for performers shall include the possibility of preventing the broadcasting of their performance, the fixation of their unfixed performance, and the reproduction of a fixation of their performance, without their consent.

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

The protection provided for performers shall include the possibility of preventing:

- the broadcasting and the communication to the public of their live performance;

- the fixation of their unfixed performance;

Switzerland
(MTN.GNG/NG11/W/38)

The performer shall have the right to prevent all third parties not having his consent from:

- producing his performance in a place other than that of the performance;

- broadcasting the performance by any technical means or process, such as by radio wave, or by cable;

- affixing his performance on phonograms, videograms or data carriers, and from reproducing such fixations;

- offering to the public, selling, or otherwise distributing copies of the fixation containing his performance.

- the reproduction of a fixation of their performance.

Performers shall enjoy protection including moral rights.
(14/32)

(2) RIGHTS CONFERRED (contd.)

- PRODUCERS OF PHONOGRAMS

Existing International Standards

Under the Rome Convention, the producers of phonograms have the right to authorize or prohibit the direct or indirect reproduction of their phonograms (Article 10).

Under the Phonograms Convention, each member State must protect producers of phonograms who are nationals of other member States against the making of duplicates without the consent of the producer and against the importation of such duplicates, provided that any such making or importation is for the purpose of distribution to the public, and against the distribution of such duplicates to the public (Article 2).

The means by which the Phonograms Convention is implemented is a matter for the domestic law of each Contracting State but it must include one or more of the following: protection by means of the grant of a copyright or other specific right; protection by means of the law relating to unfair competition; protection by means of penal sanctions (Article 3).

United States
(MTN.GNG/NG11/W/14/Rev.1)

Australia
(MTN.GNG/NG11/W/35)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.
(9/13-14)

Nordics
(MTN.GNG/NG11/W/36)

Producers of phonograms shall have the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

Producers shall enjoy protection including moral rights.

Switzerland
(MTN.GNG/NG11/W/38)

The producer of a phonogram or a videogram shall have the right to reproduce it, and to put on the market, to sell, or to otherwise distribute copies thereof and to prevent all third parties not having his consent from undertaking such acts.
(14/32)

(2) RIGHTS CONFERRED (contd.)

- BROADCASTING ORGANIZATIONS

Existing International Standards

Under the Rome Convention, broadcasting organizations have the right to authorise or prohibit:

- the rebroadcasting of their broadcasts;

- the fixation of their broadcasts;

- the reproduction of fixations, made without their consent, of their broadcasts or of fixations of their broadcasts made for purposes in respect of which the Convention permits exceptions, if the reproduction is made for other purposes;

- the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee (Article 13).
(VII (C) (4))

United States
(MTN.GNG/NG11/W/14/Rev.1)

Australia
(MTN.GNG/NG11/W/35)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Broadcasting Organizations shall enjoy the right to authorize or prohibit the rebroadcasting and the fixation of their broadcasts, and the reproduction of fixations of their broadcasts.

Nordics
(MTN.GNG/NG11/W/36)

Broadcasting organizations shall have the right to authorize or prohibit:

- the fixation of their broadcasts;

- the reproduction of fixations;

- the rebroadcasting of their broadcasts and the communication to the public of their television broadcasts.

Broadcasting organizations shall enjoy protection including moral rights.
(14/32)

Switzerland
(MTN.GNG/NG11/W/38)

The broadcaster shall have the right to prevent all third parties not having his consent from:

- retransmitting his broadcast;

- communicating it;

- affixing it on phonograms, videograms or data carriers, and from reproducing such fixations;

- putting on the market, selling, or otherwise distributing copies of the broadcast.

(3) TERM OF PROTECTION

Existing International Standards

The Rome Convention obliges countries party to it to protect performers, phonograms and broadcasts for at least twenty years computed from the end of the year in which:

(a) the fixation was made - for phonograms and for performances incorporated therein;

(b) the performance took place - for performances not incorporated in phonograms;

(c) the broadcast took place - for broadcasts (Article 14).
(VII (A) (5), (B) (5) and (C) (5))
(8/39)

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

The term of protection for performances, phonograms and broadcasts shall last at least until the end of a period of 20 years computed from the end of the year in which the fixation was made or the performance or broadcast took place.

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

The term of protection granted to producers of phonograms, performers and broadcasting organizations shall last until the end of period of 50 years computed from the end of the year in which the fixation was made or the performance or broadcast took place.
(14/4; 14/32)

Switzerland
(MTN.GNG/NG11/W/38)

The term of protection shall be no less than 20 years from the date of the performance, of the production of the phonogram or video-

gram, and of the broadcast.
(14/32)

(4) EXCEPTIONS TO RIGHTS CONFERRED

Existing International Standards

The Rome Convention provides for possible exceptions to the protection guaranteed to neighbouring rights owners. Exceptions are permitted as regards:

- private use,

- use of short excerpts in connection with the reporting of current events,

- ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts,

- use solely for the purposes of teaching or scientific research (Article 15(1)).

In addition, any member State may, in its domestic law, provide for the same kinds of limitations with regard to the protection of neighbouring rights as it provides for, in its domestic law, in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention (Article 15(2)).

The right of broadcasting organizations under the Rome Conventions to authorize or prohibit the communication to the public of their television broadcasts in certain cases is restricted in two ways. First, it is a matter for the domestic law of the State where protection of this right is claimed to determine the conditions under which it may be exercised (a term which is generally interpreted as a possible basis also for compulsory licences). Second, member States may make a declaration that they do not recognize that right (Articles 13 and 16). Under a provision of the Rome Convention concerning both the rights of performers and the rights of producers of phonograms, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public (what are called "secondary uses" of phonograms), an equitable remuneration in the form of one single sum must be paid by the user to the performers, or to the producers of phonograms, or to both. (This is equivalent to compulsory licensing.)

United States
(MTN.GNG/NG11/W/14/Rev.1)

Australia
(MTN.GNG/NG11/W/35)

Switzerland
(MTN.GNG/NG11/W/38)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Exceptions to the protection of the neighbouring rights shall follow the line of the Rome Convention.

Nordics
(MTN.GNG/NG11/W/36)

Any limitations and exemptions to the protection by these neighbouring rights shall be restricted to those allowed under the Rome Convention.

(4) EXCEPTIONS TO RIGHTS CONFERRED (Contd.)

Existing International Standards

Domestic law may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration (Article 12). The Convention, however, allows various reservations in respect of that right to equitable remuneration (Article 16).

Under the Phonograms Convention, any member State which affords protection by means of copyright or other specific right, or protection by means of penal sanctions may, in its domestic law, provide with regard to the protection of producers of phonograms the same kinds of limitations as are permitted with respect to the protection of authors of literary and artistic works. However, no compulsory licences may be permitted unless all of the following conditions are met:

- the duplication is for use solely for the purpose of teaching or scientific research;

- the licence is valid for duplication only within the territory of the member State whose competent authority has granted the licence and does not extend to the export of duplicates;

- the duplication made under the licence gives rise to an equitable remuneration fixed by the said authority taking into account, inter alia, the number of duplicates which be made (Article 6).
(VII (A) (4) and (7), (B) (4) and (7), and (C) (4) and (7)).

TABLE III: TRADEMARKS

(1) DEFINITION

Existing International Standards

The Paris Convention obliges its member States to protect trademarks, service marks and collective marks (Articles 6sexies, 7bis). Paris Union member States are free to determin which kind of signs (visible, audible, three-dimensional, etc.) may serve as trademarks. e The Paris Convention however, provides that registration of a trademark in a Paris Union member State establishes a right in all other member States to the effect that registration of the trademark in those other member States be refused only on certain grounds which are specified in the Paris Convention, namelycan infringement of existing rights, lack of distinctive character, violation of morality or public order or deceptive character of the mark (Article 6quinquies). The Paris Convention

United States
(MTN.GNG/NG11/W/14/Rev.1)

A trademark may consist of any sign, word, design, letter, number, colour, shapes of goods or of their packaging, or any combination thereof, capable of distinguishing the goods of one undertaking from those of other undertakings.

The term "trademark" shall include service mark and certification mark.

The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.
(14/43.2-3)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

A trademark shall include at least such that consists of letters, figures, signs or any combination thereof, or any of their combination with colours, and that is capable of distinguishing the goods of one undertaking from those of other undertakings.

Service marks shall be protected at least to the extent that business interests of the user are not harmed.
(14/43.1, 14/43.3)

Australia

Nordics

and (iv) in conflict with earlier rights.

prohibits the registration and use of State emblems and official hallmarks as trademarks (Article 6ter). According to the Paris Convention, the nature of the goods to which a trademark is to be applied may not form an obstacle to the registration of the mark (Article 7).

The Nairobi Treaty on the Protection of the Olympic Symbol of 1981 obliges its member States to protect the Olympic symbol (five interlaced rings) against registration and use as a mark.

(Part III, (1))

(7/18-19; 14/36-37)

Registration should not be dependent upon any special requirements for the use of a

(MTN.GNG/NG11/W/35)

Protection should be available for all marks for goods and services.

A mark is any visible sign serving to distinguish goods or services and should include any device, brand, heading, label, ticket, name, signature, word, letter or numeral, or any combination thereof.

Only marks capable of distinguishing the goods or services of one undertaking from those of another undertaking should be registered.

Switzerland

(MTN.GNG/NG11/W/38)

mark in combination with another mark.

Registration should be denied to trade marks

which are:

- incapable of ever having any distinctive character;

- contrary to law or which contain scandalous matter;

- of such a nature as to deceive or cause confusion to the public as to the nature, quality or origin of the goods or services; or

- in conflict with earlier existing exclusive rights.

(14/43.1)

from those of another enterprise.

(14/43.2)

(MTN.GNG/NG11/W/36)

A trademark may consist of any sign, word, design, letter, number, shapes of goods or of their packaging, or any combination thereof, capable of distinguishing the goods of one undertaking from those of other undertakings.

The term "trademark" shall include service marks and collective marks.

(14/43.1-2)

separate legislation for service marks or whether service marks should be protected

A trademark is a sign capable of distinguishing the products of one enterprise

(14/43.3)

It may in particular consist of words, letters, numerals, graphical representations, three-dimensional shapes, colours, or any combination of these elements.

The term "trademark" shall include service marks, collective and certification marks.

A system for the registration of trademarks without exclusion of any product shall be provided.

(2) DERIVATION OF RIGHTS

Existing International Standards

The Paris Convention leaves the conditions for the filing and registration of trademarks to be determined in each member State by its domestic legislation. However, an application for the registration of a mark filed by a national of another member State may not be refused, nor may a registration be invalidated, on the ground that filing, registration, or renewal, has not been effected in the country of origin. The Paris Convention requires that a mark duly registered in a member State shall be regarded as independent of marks registered in the other member States, including the country of origin (Article 6).

United States

(MTN.GNG/NG11/W/14/Rev.1)

Use of the trademark may be a prerequisite to registration. Trademark rights may derive from use or registration or a combination thereof.

(14/44)

Australia

(MTN.GNG/NG11/W/35)

Protection should be available for all marks

Japan

(MTN.GNG/NG11/W/17 and Add.1)

Exclusive rights of trademarks shall derive from either registration or use. Use of a trademark prior to registration shall not be a condition for registration.

(9/12)

Nordics

(MTN.GNG/NG11/W/36)

Protection of a trademark may be acquired by

Nevertheless, the Paris Convention provides that the registration of a trademark in a member State establishes a right in all other member States to the effect that the registration of the trade-mark in other member States can be refused only on certain grounds specified in the Paris Convention (see (1) above) (Article 6quinquies).

The Paris Convention requires that trademarks that are well known in a member State be protected in that state even if not registered there (Article 6bis).

(III (1) and (2))
(7/18-20)

for goods and services on the basis either of registration or local use resulting in a reputation of the mark.

Where national legislation provides for registration use of a mark should not be required before it may be validly registered.

Protection or the right to use a mark should not be denied on the ground that the mark is used in another country or is rendered in a foreign language.

registration or by use. Use of a trademark prior to registration shall not be a condition for registration.

(14/4)

Switzerland
(MTN.GNG/NG11/W/38)

Trademark rights may derive from registration or from use. Actual use of the trademark prior to the application for registration shall not be required.

Protection shall be denied to signs which are in conflict with rights acquired by third parties on trademarks, or in conflict with well-known trademarks.

(3) RIGHTS CONFERRED

Existing International Standards

(III (4))
(7/18-19)

United States
(MTN.GNG/NG11/W/14/Rev.1)

The owner of a trademark shall have the exclusive right to use that mark and to prevent others from using the same or a similar mark for the same or similar goods or services where such use would result in a likelihood of confusion.

Japan
(MTN.GNG/NG11/W/17 and Add.1)

The owner of a trademark shall have the exclusive right to use the registered trade-mark for goods for which the trademark is registered, and to prevent third parties not having his consent from using identical or similar trademarks for identical or similar goods.

(14/45)

trademark is registered. In case of the use

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

The registration of a mark should confer on the owner of the mark the right to prevent third parties, not having the owner's consent, from using in the course of trade the same or a confusingly similar mark in respect of the same goods or services.

(14/45)

The owner of a protected trademark shall have the right to prevent third parties not having his consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those for which the trademark is registered where such use would result in a likelihood of confusion.

Switzerland
(MTN.GNG/NG11/W/38)

India
(MTN.GNG/NG11/W/37)

The registered trademark shall confer the right on its owner to prevent all third parties not having his consent from using in the course of trade any sign which is identical with, or similar to, the trademark in relation with the same or similar products where such use would result in a likelihood of confusion.

(4) PROTECTION OF WELL-KNOWN MARKS/MARKS WITH A REPUTATION

Existing International Standards

Member States of the Paris Convention undertake, ex officio if their legislation so permits, or at the request of an interested party, to refuse or to cancel the registration, and to prohibit the use, of a trademark which constitutes a reproduction, an imitation, or a translation, liable to create confusion, of a mark considered by the competent authority of the country of registration or use to be well known in that country as being already the mark of a person entitled to the benefits of this Convention and used for identical or similar goods. These provisions also apply when the essential part of the mark constitutes a reproduction of any such well-known mark or an imitation liable to create confusion therewith. A period of at least five years from the date of registration must be allowed for requesting the cancellation of such a mark. Member States may provide for a period within which the prohibition of use must be requested. No time limit shall be fixed for requesting the cancellation or the prohibition of the use of marks registered or used in bad faith (Article 6bis).
(7/20)

United States
(MTN.GNG/NG11/W/14/Rev.1)

A country shall refuse or cancel the registration and prohibit the use of a trademark likely to cause confusion with a trademark of another which is considered to be well known either in that country or internationally well known. A period of at least five years from the date of registration shall be allowed for requesting the cancellation or prohibition of use of such a trademark. No time limit shall be fixed for requesting the cancellation or the prohibition of the use of trademarks registered or used in bad faith.
(14/46.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Protection shall be provided for well-known marks. Protection shall be extended inter alia against the use of a well-known mark for goods which are dissimilar to original goods, where the use of the mark for such dissimilar goods is liable to create confusion as to the origin of the goods.
(9/12)

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

Such protection shall be extended to prevent third parties from using, without due cause, a trademark which has a reputation in a way which takes advantage of or is detrimental to that reputation, even where the goods or services for which the trademark is registered are not identical or similar.

As regards the question of protection of such

Switzerland
(MTN.GNG/NG11/W/38)

Protection shall be denied to signs which are in conflict with well-known trademarks.

(14/46.2)

(14/46.2)

accordance with the trademark law of the host

(14/46.1)

(5) EXCEPTIONS TO RIGHTS CONFERRED

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

Rights shall be subject to exhaustion only in the country or customs union where granted.

Japan
(MTN.GNG/NG11/W/17 and Add.1)

(14/45)

of the legitimate interests of the proprietor

(8/38)

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

India
(MTN.GNG/NG11/W/37)

Switzerland
(MTN.GNG/NG11/W/38)

(6) NATIONAL REGISTRATION SYSTEMS

Existing International Standards

In regard, to the registration of trademarks see (2) above. Member States of the Paris Convention are not required to provide for the registration of service marks (Article 6sexies).

The Paris Convention requires that, if the

United States
(MTN.GNG/NG11/W/14/Rev.1)

A system for the registration of trademarks shall be provided. Regulations and procedures shall be transparent and shall include provisions for written notice of reasons for refusal to register and access to records of registered trademarks. Each trademark shall be published within 6 months after it is

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Opposition shall be institutionalised against the grant of the registration or the registration of the trademark.

Administrative procedures related to the opposition shall at least ensure that all parties concerned be given an opportunity to

agent or representative of the person who is the proprietor of a mark in a member State applies, without such proprietor's authorization, for the registration of the mark in his own name, in one or more member State, the proprietor shall be entitled to oppose the registration applied for or demand its cancellation or, if the law of the country so allows, the assignment in his favour of the said registration, unless such agent or representative justifies his action. Under the same conditions, the proprietor of the mark shall also be entitled to oppose the use of his mark by his agent or representative if he has not authorized such use (Article 6septies).

(III (1) and (3))
(7/18-19)

approved for registration or is registered and owners of the same or similar trademarks and other interested parties shall be afforded a reasonable opportunity to challenge such registration.

(14.47)

present their views and that rulings be made, on the basis of equal and clear criteria, as to grounds pleaded by the opponent.

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

A system for the registration of trademarks shall be maintained.

Switzerland
(MTN.GNG/NG11/W/38)

A system for the registration of trademarks shall be provided.

(7) TERM OF PROTECTION

Existing International Standards

(III(5))
(7/18-19)

initely for further terms of no less than ten years when conditions for renewal have been set.

(14/48)

United States
(MTN.GNG/NG11/W/14/Rev.1)

A trademark shall be registered for no less than ten years and shall be renewable indefinitely where conditions for renewal are met.

(14/48)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

A trademark shall be registered for no less than ten years and shall be renewable indefinitely.

(14/48)

Australia
(MTN.GNG/NG11/W/35)

(14/48)

Nordics
(MTN.GNG/NG11/W/36)

The registration of a mark should be allowed to be renewed indefinitely.

indefinitely for further terms of no less

(14/48)

India
(MTN.GNG/NG11/W/37)

The terms of registration shall be no less than ten years and shall be renewable and its subsequent renewal. Each country than ten years.

Switzerland
(MTN.GNG/NG11/W/38)

Trademarks shall be registered for no less than 10 years from the filing date and may be renewed indefinitely for further terms each of them of no less than 10 years.

(8) USE REQUIREMENTS

(i) FOR MAINTENANCE OF PROTECTION

Existing International Standards

The Paris Convention provides that if, in any country, use of a registered mark is compulsory the registration may be cancelled on the grounds of failure to use only after, a reasonable period and then only if the person concerned does not justify failure to use (Article 5C).
(III (2))
(7/18-19)

(14/49.1 and 3)

United States

Japan
(MTN.GNG/NG11/W/14/Rev.1)

Where use of a registered trademark is required, the registration may be cancelled only after five years of continuous non-use, and then only if the person concerned does not justify the non-use. Justified non-use shall include non-use due to import prohibitions or other government laws, regulations, policies, or practices. Authorized use of a trademark by a third party shall be considered use by the trademark owner for purposes of meeting use requirements.

(8/38; 14/49.1)

European Communities
(MTN.GNG/NG11/W/17 and Add.1)

In a country where use of a registered trademark is required to maintain trademark rights, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless legitimate reasons for non-use exist.

for non-use.

Australia
(MTN.GNG/NG11/35)

(14/49.3)

Nordics
(MTN.GNG/NG11/W/36)

The registration should be capable of being cancelled if, at any time after registration, and immediately prior to the commencement of any action for cancellation, an uninterrupted period of at least three years has occurred during which there had been no use in good faith of the mark and no legitimate reasons for the non-use exist.

restrictions on products protected by the

India
(MTN.GNG/NG11/W/37)

If use of a registered mark is required, the registration may be cancelled only after an uninterrupted period of at least five years of non-use, unless legitimate reasons for non-use exist. Circumstances arising independently of the will of the owner of a trademark which constitute a serious obstacle to the use of the mark, such as e.g. import

trademark, are sufficient to constitute legitimate reasons for non-use.

"Registered User" by the competent authority in accordance with the provisions of the

Switzerland
(MTN.GNG/NG11/W/38)

If use of the registered trademark is compulsory, the registration may be cancelled only after the trademark has not been used during an uninterrupted period of not less than 5 years, and provided that such

non-use cannot be justified. Justified non-use shall include non-use due to import restrictions on products protected by the trademark or other governmental laws, regulations, policies or practices.

(8) USE REQUIREMENTS (continued)

(ii) OTHER USE REQUIREMENTS

Existing International Standards
(MTN.GNG/NG11/W/14/Rev.1)

(14/49.2)

United States
(MTN.GNG/NG11/W/17 and Add.1)

A country shall not impose any special requirements for the use of a trademark such as size or use in combination with another trademark.

Japan
(MTN.GNG/NG11/W/26)

European Communities

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

India
(MTN.GNG/NG11/W/37)

Switzerland
(MTN.GNG/NG11/W/38)

The use of a trademark shall not be encumbered by any special requirements, such as use in a special form or use which reduces the indication of source or use with another trademark.

trademark (as for example, the use of a foreign trademark in conjunction with a

(9) LICENSING AND ASSIGNMENT

Existing International Standards

The Paris Convention requires that if the law of a member State considers, the assignment of a mark valid only if it takes place at the same time as the transfer of the business or a goodwill to which the mark belongs, it shall suffice for the recognition of such validity that the portion of the business or goodwill located in that country be transferred to the assignee, togetherwith the exclusive right to manufacture in the said country, or to sell therein, the goods bearing the mark assigned (Article 6quater).

(III (7))
(7/18-19)

United States
(MTN.GNG/NG11/W/14/Rev.1)

No compulsory licensing of trademarks shall be imposed and assignment of trademarks shall be permitted.
of a trademark shall be imposed. Assignment

Japan
(MTN.GNG/NG11/W/17 and Add.1)

A state shall not impose undue or discriminatory restrictions on a voluntary licence of a trademark owner. No non-voluntary licensing undertaking to which they belong.
of trademarks shall be permitted.

Australia
(MTN.GNG/NG11/W/35)

(14/50)

Nordics
(MTN.GNG/NG11/W/36)

The compulsory licensing of a mark should not be permitted. Voluntary licensing should be permitted without restrictions, other than those necessary for the preservation of a connection with the owner of the mark. Assignment of marks should be available with or without the transfer of goodwill of the business concerned.

India
(MTN.GNG/NG11/W/37)

Compulsory licensing of a trademark shall not be permitted.
(14/4)

should be declared by law to be null and

Switzerland
(MTN.GNG/NG11/W/38)

The compulsory licensing of a trademark shall not be permitted.

Trademarks may be assigned with or without the transfer of the enterprise to which they belong.

(14/50)

(10) NON-DISCRIMINATORY TREATMENT

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

The Paris Convention obliges each of its member States to grant to nationals and residents of the other member States, under the national treatment principle, the rights it grants to its own nationals (Articles 2-3).
(III (2) and (4))

The United States proposal calls for general questions of national and mfn treatment to be addressed.

Equal and non-discriminatory treatment shall be guaranteed in the requirements for filing a trademark application, and obtaining or maintaining the registration.

The Japanese proposal also includes suggestions for the application of general national treatment and mfn principles.

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

Formal procedures should not be imposed which are, whether by direct or indirect legal or practical effect, such as to render the obtaining or maintaining of registration of a mark more difficult for foreign applicants or owners than is the case for local applicants or owners.

Australia also suggests that a TRIPS agreement should embody the basic GATT principles of non-discrimination and national treatment.

India
(MTN.GNG/NG11/W/37)

The Nordic countries advocate the inclusion in a TRIPS agreement of key GATT principles and call for particular attention in this context to inter alia the non-discrimination and national treatment principles (NG11/W/22).

Switzerland
(MTN.GNG/NG11/W/38)

The application of basic principles of GATT, in particular non-discrimination in terms both of mfn and national treatment, is essential.
(14/3)

(11) INTERNATIONAL REGISTRATION SYSTEMS

Existing International Standards

The Madrid Agreement (Marks) provides for the possibility of international registration of trademarks and service marks. The international registration has effect in the member States according to the request of the applicant, unless such effect is refused by a designated State within a certain time limit.
(III (3))

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

India
(MTN.GNG/NG11/W/37)

Switzerland
(MTN.GNG/NG11/W/38)

TABLE IV: GEOGRAPHICAL INDICATIONS INCLUDING APPELLATIONS OF ORIGIN

(1) PROTECTABLE SUBJECT MATTER

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

The Paris Convention provides that indications of source or appellations of origin are among the objects of industrial property. In one of its provisions the Paris Convention obliges member States to apply certain remedies and sanctions in cases of direct or indirect use of a false indication of the source of goods. (Member States which are not bound by Acts subsequent to 1934 are obliged to apply the said remedies and sanctions in cases where goods falsely bear as an indication of source the name of a specified locality or country, when such indication is joined to a trade name of a fictitious character or used with fraudulent intention.) (Articles 1,10)

(14/56)

(14/56)

Geographical indications are, for the purpose

The Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods obliges its member States to apply certain remedies and sanctions, in cases where goods bear a false - or, in the case of member States bound by Acts subsequent to 1925, a false or deceptive - indication by which one of the member States, or a place situated

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

Geographical indications including appellations of origin.

therein, is directly or indirectly indicated as being the country or place or origin (Article 1).

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration obliges its member States to protect appellations of origin of products of the other member States, recognized and protected as such in the country of origin and registered at the International Bureau of WIPO.
(VI (1))

Article IX:6 of the GATT requires contracting parties to cooperate with each other with a view to preventing the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of such distinctive regional or geographical names of products of a territory of a contracting party as are protected by its legislation.
(14/53-57)

Switzerland
(MTN.GNG/NG11/W/38)

A geographical indication is any designation, expression or sign which aims at indicating that a product is originating from a country, a region or a locality.

The norms on geographical indications also relate to services.
(14/59)

(2) PROTECTION AGAINST UNFAIR USE

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

(14/56)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

As regards the Paris Convention, see item (1) above.

As regards the Madrid Agreement (Indications of Source), see item (1) above. In addition, a provision of that Agreement obliges member States bound by Acts subsequent to 1925 to prohibit the use, in connection with the sale or display or offering for sale of any goods, of all indications in the nature of publicity capable of deceiving the public as to the source of goods, and appearing on signs, advertisements, invoices, wine lists, business letters or papers or any other commercial communication (Article 3bis). Furthermore, under the said Agreement the vendor is not prevented from indicating his name or address upon goods coming from a country other than that in which the sale takes place; but in such case the address or the name must be accompanied by an exact indication in clear characters of the country or place of manufacture or production, or by some other indication sufficient to avoid any errors as to the true source of the wares (Article 3).

Australia
(MTN.GNG/NG11/W/35)

Geographical indications including appellations of origin should be protected at least to the extent necessary to ensure consumer protection and to avoid consumers being misled, confused or deceived.

The Lisbon Agreement obliges its member States to protect internationally registered appellations of origin against any usurpation or imitation, even if the true origin of the product is indicated or if the appellation

Switzerland
(MTN.GNG/NG11/W/38)

Geographical indications shall be protected against use which is likely to mislead the

Nordics
(MTN.GNG/NG11/W/36)

is used in translated form or accompanied by terms such as "kind", "type", "make", "imitation", or the like (Article 3).
(VI (4))

public as to the true origin of the products. Shall notably be considered to constitute such use:

- any direct or indirect use in trade in respect of products not originating from the place indicated or evoked in the geographical indication in question;

- any evocation, even where the true origin of the product is indicated or the designation is used in translation or accompanied by expressions such as "kind", "type", "style" or "imitation";

- the use of any means in the designation or presentation of the product likely to suggest a link between the product and any geographical area other than the true place of origin.

(3) PROTECTION AGAINST USE AS A GENERIC TERM

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

The Madrid Agreement (Indications of Source) obliges its member States to protect indications of source but the courts of a member State can decide that an indication of source is to be considered on the territory of that State as a generic term. However, regional appellations concerning the source of products of the vine cannot be considered as generic terms (Article 4).
(VI (2))

(14/61)

Appropriate measures shall be taken under

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

The standards in both the Madrid and Lisbon Agreements are considered excessive because they require protection to be afforded to names that have truly become generic and thus no significant consumer confusion or deception is involved in the use of the name.
(14/61)

Switzerland
(MTN.GNG/NG11/W/38/

Appropriate measures shall be taken so as to prevent a geographical indication from developing into a designation of a generic character as a result of the use in trade for products of a different origin.
(14/61)

(4) PROTECTION AGAINST USE AS A TRADEMARK

Existing International Standards
(VI (1))

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Australia
(MTN.GNG/NG11/W/35)

See (2) above.

Nordics
(MTN.GNG/NG11/W/36)

Switzerland
(MTN.GNG/NG11/W/38)

The registration of a trademark which contains or consists of a geographical or other indication designating or suggesting a country, region or locality with respect to products not having this origin shall be refused or invalidated, if the use of such indication is likely to mislead the public as to the true geographical origin of the product.
(14/62)

(5) INTERNATIONAL REGISTRATION

Existing International Standards

The Lisbon Agreement obliges its member States to protect appellations of origin which have been internationally registered. Appellations of origin which are protected as such in a member State can be registered internationally (by WIPO) at the request of the member State concerned, and such registration has effect in other member States except in any State which, within one year after registration, notifies WIPO of its refusal of the said effect.
(VI (2))

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1

Australia
(MTN.GNG/NG11/W/35)

See (3) above.

Nordics
(MTN.GNG/NG11/W/36)

Switzerland
(MTN.GNG/NG11/W/38)

TABLE V: INDUSTRIAL DESIGNS

(1) SUBJECT MATTER AND CONDITIONS FOR PROTECTION/
RELATION TO PARIS CONVENTION

Existing International Standards

The Paris Convention provides that industrial designs are one of the objects of industrial property (Article I). In one of its provisions, which binds member States parties to Acts subsequent to 1934, the Paris Convention obliges member States to protect industrial designs. Nothing is said in that provision about the means of providing such protection, so that countries may comply with the provision not only through special legislation for the protection of industrial designs, but also through the grant of such protection, for example, in their laws on copyright or their provisions against unfair competition (Article 5quinquies).

The Paris Convention provides that the protection of industrial designs shall not, under any circumstances, be subject to any forfeiture, either by reason of failure to work or by reason of the importation of articles corresponding to those which are protected (Article 5B).

See also Table I on Copyright.
((V) (1) and (2))

United States
(MTN.GNG/NG11/W/14/Rev.1)

(14/63)

Australia
(MTN.GNG/NG11/W/35)

Industrial designs should be protected in accordance with the existing provisions of the Paris Convention.

Protection should not be denied solely on the ground that the design has a functional effect.

Switzerland
(MTN.GNG/NG11/W/38)

Protection of designs shall be granted, upon registration, if they are new.

The system of registration of designs shall be efficient, expeditious and available at reasonable cost.

Protection shall not extend to features required by technical reasons.

Such protection shall be granted without prejudice to the protection under the copyright law or other laws.

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Designs which are novel and original.
(14/64)

Nordics
(MTN.GNG/NG11/W/36)

An industrial design is the model for the appearance of an article or an ornament.

Industrial designs which are novel or original shall be protected.

Protection of an industrial design may be acquired by registration. In such a case, a system for the registration of industrial designs should be maintained.

(2) RIGHTS CONFERRED

Existing International Standards

See (1) above.
((V) (4) and (7))

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

A design right shall confer on its owner the right to prevent third parties not having his consent from at least the following acts:

- acts of manufacturing, using, assigning, leasing or importing the article which is the subject matter of the registered design;

- acts of displaying, for the purpose of assignment or lease, the article.

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

The owner of a protected industrial design shall have the right to prevent third parties not having his consent from exploiting the design in the course of trade by producing, importing, offering, assigning or hiring out articles the appearance of which does not differ substantially from that of the protected design.
(14/64)

Switzerland
(MTN.GNG/NG11/W/38)

The owner of the design right is entitled to prevent third parties not having his consent from manufacturing, offering, putting on the market or importing for these purposes, goods which infringe his design right.

(3) TERM OF PROTECTION

Existing International Standards
(V) (5))

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

The term of protection shall be at least 10 years.

Australia
(MTN.GNG/NG11/W/35)

The total duration of protection, including any renewal period, should be not less than ten years.

Nordics
(MTN.GNG/NG11/W/36)

The term of registration shall be five years from the date of application with a possibility of renewal for two consecutive periods of five years each.
(14/64)

Switzerland
(MTN.GNG/NG11/W/38)

The term of registration shall be 5 years from the date of application with a possibility of renewal for two consecutive periods of 5 years each.
(14/64)

(4) COMPULSORY LICENSING/FORFEITURE

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

Switzerland
(MTN.GNG/NG11/W/38)

The compulsory licensing of a design shall not be permitted.

The protection of designs shall not be subject to any forfeiture by reason of failure to exploit.
(14/64)

(5) NON-DISCRIMINATORY TREATMENT

Existing International Standards

The Paris Convention obliges each of its member States to grant to nationals and residents of the other member States, under the national treatment principle, the rights it grants to its own nationals (Articles 2-3).
((V) (2) and (4))

United States
(MTN.GNG/NG11/W/14/Rev.1)

The United States proposal calls for general questions of national and mfn treatment to be addressed.

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Equal and no-discriminatory treatment shall be guaranteed in the requirements for filing a design application, and obtaining or maintaining the registration.

The Japanese proposal also includes suggestions for the application of general national treatment and mfn principles.

Australia
(MTN.GNG/NG11/W/35)

Australia suggests that a TRIPS agreement should embody the basic GATT principles of non-discrimination and national treatment.

Nordics
(MTN.GNG/NG11/W/36)

The Nordic countries advocate the inclusion in a TRIPS agreement of key GATT principles and call for particular attention in this context to inter alia the non-discrimination and national treatment principles (NG11/W/22).

Switzerland
(MTN.GNG/NG11/W/38)

The application of basic principles of GATT, in particular non-discrimination in terms both of mfn and national treatment, is essential.
(14/3)

TABLE VI: PATENTS

(1) PATENTABLE SUBJECT MATTER

Existing International Standards

The Paris Convention obliges its member States to protect inventions by patents; this obligation flows from a number of provisions of the Paris Convention, for example, those dealing with the right of priority . (Article 4). In one of its provisions, the Paris Convention prevents a member State from

United States
(MTN.GNG/NG11/W/14/Rev.1)

Patents shall be granted for all products and processes which satisfy the criteria or conditions for patentability. Examples of items which do not meet these criteria are: materials consisting solely of printed matter, scientific principles, methods of doing business, and algorithms and mathematical

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Patents shall be granted for inventions with the exceptions of inventions contrary to public order, morality or public health, and of inventions of substances manufactured through nuclear transformation.
(9/13-14; 14/79.6)

refusing the grant of a patent or invalidating a patent on the ground that the sale of the patented product or of a product obtained by means of a patented process is subject to restrictions or limitations resulting from the domestic law (Article 4quater). The Paris Convention does not prevent member States from excluding from patentability particular classes of subject matter.
(I(1) and Annex II)
(7/9)

formulas per se, including those incorporated in computer programmes. A patent application or a patent, however, may be withheld from publication if disclosure of the information contained therein would be detrimental to the national security.

Australia
(MTN.GNG/NG11/W/35)

Patents should be available for inventions in all fields of technology. However, inventions which could be described as:

- discoveries, scientific theory or mathematical methods to the extent that they do not constitute industrially applicable products or processes;
- aesthetic creations;
- schemes, rules or methods of performing a mental act, playing a game or doing business;
- the presentation of information; or
- contrary to public order or morality;

may be excluded from patent protection.

(14/4; 14/79.7)

Nordics
(MTN.GNG/NG11/W/36)

Patents shall be available for inventions in all fields of technology, except for:

- inventions the publication or exploitation of which would be contrary to "ordre public" or morality;
- plant or animal varieties or essentially biological processes for the production of plants or animals; this provision does not apply to microbiological processes or the products thereof;
- human beings.

As regards biotechnological inventions, further limitations should be allowed under national law.
critical importance to them such as food,

Switzerland
(MTN.GNG/NG11/W/38)

A patent shall be granted for any invention which meets the conditions of patentability.

An invention may relate to a product or a process.

Patents shall be available for inventions in all fields of technology.

(14/79.4)

(2) CONDITIONS FOR PATENTABILITY

Existing International Standards

The Patent Cooperation Treaty (PCT) contains definitions of novelty, inventive step (or non-obviousness) and industrial applic--ability (Article 33).
(I (2))

United States
(MTN.GNG/NG11/W/14/Rev.1)

A patent shall be granted for any patentable subject matter that is new, useful and unobvious. In this regard the terms "useful" and "unobvious" encompass or are synonymous with the terms "capable of industrial application" and "inventive step."

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Patents shall be granted for inventions of products and processes which are industrially applicable and novel and which involve an inventive step.
(9/12)

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

Patents should be available under the first to file principle.

Patents should be available for inventions which are novel and which involve an inventive step (be non-obvious).

Novelty should be judged against a prior art base which takes into account publication in a document anywhere in the world prior to the invention. The prior art base should also take into account at least local use.

An invention shall be considered to involve an inventive step if having regard to the prior art base it is not obvious to a person skilled in the art.

India
(MTN.GNG/NG11/W/37)

Patents shall be granted for inventions which are susceptible of industrial application, which are new and which involve an inventive step.

(14/80.1)

Switzerland
(MTN.GNG/NG11/W/38)

A patent shall be granted for any invention if it is new, involves an inventive step and is industrially applicable.

(3) TERM OF PROTECTION

Existing International Standards

Under the Paris Convention, patents applied for during the period of priority are independent as regards their normal duration (Article 4bis (1)-(2). Under another n provision of that Convention, patents obtained with the benefit of priority must have a duration equal to that which they would have, had they been applied for or granted without the benefit of priority (Article 4bis(5)).
(I (5) and Annex VI)
(7/11)

United States
(MTN.GNG/NG11/W/14/Rev.1)

A patent shall have a term of at least 20 years from filing. Extension of patent terms to compensate for delays in marketing occasioned by regulatory approval processes is encouraged.
(14/81.1)

(9/13; 14/81.3)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

The term of a patent shall be 20 years from the filing date of the patent application. In the case of a divisional or continuing application, the term shall be calculated from the filing date of the earliest application. Extension may be granted to the term of a patent provided that it is not unduly long, where and to the extent that the patented invention is deterred from working by the government's regulatory review.

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

The term of a patent should be a minimum of fifteen years from the date of filing of the

India
(MTN.GNG/NG11/W/37)

The term of patent shall be 20 years from the date of filing of the patent

application.

(14/81.2)

(14/4; 14/81.6)

application.

accordance with their own developmental,

Switzerland
(MTN.GNG/NG11/W/38)

system of developing countries, they should be free to link duration of a

application.

The term of a patent shall be for no less than 20 years from the filing date of the

(14/81.4)

An extension of the patent term should be provided for in order to compensate for delays regarding the exploitation of the patented invention due to regulatory approval procedures.

(4) RIGHTS CONFERRED

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

A provision of the Paris Convention provides that, where the law of a member State confers rights with respect to a product manufactured by a patented process, that State is obliged to grant to the owner of the patent the same rights if such a product is imported into it as those it grants in the case where such a product is manufactured on its territory (Article 5quater).

A patent shall provide the right to exclude others from the manufacture, use or sale of the patented invention and, in the case of a patented process, the right to exclude others from the importation, use or sale of at least the direct product thereof, during the patent term.

(14/82)

A patent shall confer on its owner the right to prevent third parties not having his consent from at least the following acts:
where the subject matter of the patent is an invention of a product,
(i) acts of manufacturing, using, assigning, leasing or importing the product,
(ii) acts of displaying, for the purpose of assignment or lease, the product;
where the subject matter of the patent is an invention of a process,
or importing or stocking for these purposes the
where the subject matter of the patent is an invention of a process of manufacturing a product,
(i) acts of using the process,
(ii) acts of using, assigning, leasing, or importing the product directly manufactured by the process,
(iii) acts of displaying, for the purpose of assignment or lease, the product directly manufactured by the process.

(9/13)

The Paris Convention provides that the rights under a patent do not extend to the use of the patented invention on vessels, aircraft or land vehicles temporarily or accidentally entering the waters, airspace or land of a member State (Article 5ter).

(I (4) and Annexes IV-V)
(7/10)

Australia

acts of using the process;

(MTN.GNG/NG11/W/35)

The owner of a patent should be entitled to prevent third parties, not having his consent, from exploiting the invention. Exploitation should cover at least the following acts:

- where the invention is a product, the making, importing, distributing, offering for sale, selling and using of the product or the stocking of the product for such purposes;

Nordics

- where the invention is a process, the use

(MTN.GNG/NG11/W/36)

of the process or the doing, in respect of a product obtained by means of the process, of any of the acts referred to above in connection with a product

The exclusive right conferred by a patent shall imply that no one but the owner of the patent may, without his consent, exploit the

invention.

Switzerland
(MTN.GNG/NG11/W/38)

A patent shall confer on its owner the right to prevent third parties not having his

for such purposes;
- using or offering to use a process protected

obvious under the circumstances that the use of the process is prohibited without the consent from making, offering, putting on the market or using a product which is the subject matter of the patent, or importing or stocking the product for these purposes.

If the subject matter of the patent is a process, the patent confers on its owner the right to prevent third parties, not having his consent, from using that process, and from offering, putting on the market, using or importing or stocking for these purposes at least the product obtained by that process.

(14/82)

invention by:
- producing, offering, putting on the market or using a product protected by the patent, or by importing or possessing the product

by the patent or, while knowing or if it is

India
(MTN.GNG/NG11/W/32)

consent of the owner of the patent, offering the process for use;
- offering, putting on the market or using a product made by a process protected by the patent, or importing or possessing the product for such purposes.

The exclusive right shall not include:
- exploitation for non-commercial purposes;
- exploitation by experiment relating to the subject matter of the invention;
- preparation in a pharmacy in individual cases of a medicine in accordance with a prescription, or acts carried out with a medicine so prepared.

(5) COMPULSORY LICENSING/LICENCES OF RIGHT/EXPLOITATION FOR GOVERNMENT PURPOSES/FORFEITURE

Existing International Standards

The Paris Convention allows each of its member States to take legislative measures providing for the grant of compulsory licences to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work. Under the Lisbon (1958) Act and the Stockholm (1967) Act of the Convention, a compulsory licence may not be applied for on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period expires last; it must be refused if the patentee justifies his inaction by legitimate reasons; such a compulsory licence must be non-exclusive and is not transferable, even in the form of the grant of a sub-licence except with that part of the enterprise or goodwill which exploits such (Article 5A).

(I (7))
(5/21; 7/13)

United States
(MTN.GNG/NG11/W/14/Rev.1)

A compulsory licence may be given solely to address, only during its existence, a declared national emergency or to remedy an adjudicated violation of antitrust laws. Patents may also be used non-exclusively by a government for governmental purposes. In the case of a licence to address a national emergency or in the case of use by a government for governmental purposes, a patent owner must receive compensation commensurate with the market value of a licence for the use of the patented invention. A compulsory licence must be non-exclusive. All decisions to grant compulsory licences as well as the compensation to be paid shall be subject to judicial review. A patent shall not be revoked because of non-working.

(14/83.2 and 5)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

In granting a non-voluntary licence, reasonable compensation shall be provided to the patentee.

Judicial review shall be available in the following cases:

(i) the granting of non-voluntary licences such as those on the grounds of failure to work or insufficient working, in respect of dependent patents, or in the public interest, and compensation therefor; and

(ii) forfeiture of a patent where applicable.

(9/13-14; 14/83.5-6)

without undue delay. The patent law should

(MTN.GNG/NG11/W/35)

Australia
(MTN.GNG/NG11/W/36)

Compulsory licences should be available to remedy adjudicated anti-competitive practices. Such licences shall in all circumstances be non-exclusive.

Government exploitation of patents in the national interest should be permitted.

Nordics
of a process, the use of the process.

The granting of compulsory licences for lack or insufficiency of exploitation, compulsory licences in respect of dependent patents, official licences, and any right to use patented inventions in the public interest shall, in particular in respect of compensation, be subject to review by a court of law.

Compulsory licences and government exploitation of patents should be subject to payment of proper compensation and the grant of such licences and the payment of compensation should be capable of independent review by a distinct higher authority.

(14/4; 14/83.1 and 6)

Forfeiture of a patent on the grounds of failure to work or insufficient working should occur only if the grant of a non-voluntary licence has not prevented anti-competitive behaviour.

(14/83.5 and 7)

(5) COMPULSORY LICENSING/LICENCES OF RIGHT/EXPLOITATION FOR GOVERNMENT PURPOSES/FORFEITURE (continued)

Existing International Standards
(MTN.GNG/NG11/W/38)

Switzerland

(MTN.GNG/NG11/W/37)

Compulsory licences shall be non-exclusive.

Compulsory licences may be given in the event that the acts of manufacturing, selling or importing of the patented product or using of the patented process and the performance of any of these acts regarding the products obtained by the process do not suffice to satisfy the basic needs of the local market before the expiration of a period of 4 years from the date of the patent application, or 3 years from the date of the grant of the patent, whichever period expires last, and provided that the owner of the patent had refused to grant a contractual licence on terms that are in line with normal commercial practices.

Where the exploitation of the patented invention is required by reason of an overriding public interest, the possibility of exploitation of the patented invention by the government, or by third persons authorised

by it, may be made available by means of a

(14/83.3)

compulsory licence at any time, provided that the owner of the patent had refused to grant a contractual licence on terms that are in line with normal commercial practices.

Where the invention claimed in a later patent cannot be exploited without infringing an earlier patent, a compulsory licence may be given to the extent necessary to avoid infringement of the patent, provided that the invention claimed in the later patent involves an important technical advance in relation to the invention claimed in the earlier patent or serves an entirely different purpose.

Compulsory licences shall be granted to permit local manufacture only.

Given the possibilities of compulsory licensing, there shall be no revocation of the patent, except for invalidity.

Any decision relating to the grant of a compulsory licence or to the exploitation for governmental purposes, including the amount of the payment commensurate with the value of the invention to which the owner of the patent is entitled, shall be subject to judicial review.

(14/3; 14/83.5)

(6) VOLUNTARY LICENSING

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

A State shall not impose undue or discriminatory restrictions on a patentee's voluntary licence.

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

India
(MTN.GNG/NG11/W/37)

(14/5; 14/84.1)

Switzerland
(MTN.GNG/NG11/W/38)

(7) NON-DISCRIMINATORY TREATMENT

Existing International Standards
(MTN.GNG/NG11/W/14/Rev.1)

The Paris Convention obliges member States to grant to nationals and residents of other member States, under the national treatment principle, the rights it grants to its own nationals (Articles 2-3).
(I (2) and (4))

United States
(MTN.GNG/NG11/W/17 and Add.1)

The United States proposal calls for general questions of national and mfn treatment to be addressed.

Japan
(MTN.GNG/NG11/W/26)

Equal and non-discriminatory treatment shall be guaranteed in the requirements for filing a patent application, and obtaining or maintaining a patent.

The Japanese proposal also includes suggestions for the application of general national treatment and mfn principles.

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

Formal procedures should not be imposed which are, whether by direct or indirect legal or practical effect, such as to render the obtaining or maintaining of patent protection more difficult for foreign applicants or patent owners than is the case for local applicants or owners.

Australia also suggests that a TRIPS agreement should embody the basic GATT principles of non-discrimination and national treatment.

India
(MTN.GNG/NG11/W/37)

The Nordic countries advocate the inclusion in a TRIPS agreement of key GATT principles and call for particular attention in this context to inter alia the non-discrimination and national treatment principles (NG11/W/22).

Switzerland
(MTN.GNG/NG11/W/38)

The application of basic principles of GATT, in particular non-discrimination in terms both of mfn and national treatment, is essential.
(14/3)

TABLE VII: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS

(1) RELATION TO TREATY ON INTELLECTUAL PROPERTY IN RESPECT OF INTEGRATED CIRCUITS

Existing International Standards

(IV)
(7/21; 14/86-88)

(14/86)

United States
(MTN.GNG/NG11/W/14/Rev.1)

(14/86)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

The following principles will be reviewed and

Australia
(MTN.GNG/NG11/W/35)

Integrated circuit layout designs should be protected in accordance with the existing provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits done in Washington, May 1989.

Nordics
(MTN.GNG/NG11/W/36)

(14/4; 14/86)

Switzerland
(MTN.GNG/NG11/W/38)

(2) SUBJECT MATTER FOR PROTECTION

Existing International Standards

Under the Treaty on Intellectual Property in Respect of Integrated Circuits, each Contracting Party shall have the obligation to secure, throughout its territory, intellectual property protection in respect of layout-designs (topographies) in accordance with the Treaty. The right of the holder of the right in respect of an integrated circuit applies whether or not the integrated circuit is incorporated in an article. The Treaty contains a definition of the term "integrated circuit" and of the term "layout-design (topography)". Notwithstanding that definition of the term "integrated circuit", any Contracting Party whose law limits the protection of layout-designs (topographies) to layout-designs (topographies) of semi-conductor integrated circuits shall be free to apply that limitation as long as its law contains such limitation.

The obligation to ensure intellectual property protection applies to layout-designs (topographies) that are original in the sense that they are the result of their creators' own intellectual effort and are not commonplace among creators of layout-designs (topographies) and manufacturers of integrated circuits at the time of their creation. A layout-design (topography) that consists of a combination of elements and interconnections that are commonplace is protected only if the combination, taken as a whole, fulfills these conditions (Articles 2-3).
(IV (1) and (2))

United States
(MTN.GNG/NG11/W/14/Rev.1)

Protection shall be granted to any original layout-design incorporated in a semi-conductor integrated circuit chip, however the layout-design may be fixed or encoded.

Protection shall not extend to layout-designs that are commonplace in the integrated circuit industry at the time of their creation or to layout-designs that are exclusively dictated by the functions of the integrated circuit to which they apply. (iii) layout that is exclusively dictated by

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Semi-conductor integrated circuit layouts, except: however fixed or encoded, shall be protected

(i) layout that is not produced as the result of a creator's intellectual effort;

(ii) layout that is already commonplace in the semi-conductor integrated circuit industry at the time of its creation; and

the function of semi-conduct circuit to which it applies.

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

The original layout-design of an integrated circuit, however fixed or encoded, shall be protected by exclusive rights.

Switzerland
(MTN.GNG/NG11/W/38)

Protection shall be granted to any three-dimensional disposition of an integrated circuit (topography), irrespective of the manner by which such disposition is fixed or encoded, and provided that it is not commonplace.

Such protection shall not prevent protection under other laws.

(3) CONDITIONS FOR OBTAINING PROTECTION

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Any Contracting Party of the Treaty on Intellectual Property in Respect of Integrated Circuits is free not to protect a layout-design (topography) until it has been ordinarily commercially exploited, separately or as incorporated in an integrated circuit, somewhere in the world. Any Contracting Party is also free not to protect a layout-design (topography) until the layout-design (topography) has been the subject of an application for registration, filed in due form with the competent public authority, or of a registration with that authority; it may be required that the application be accompanied by the filing of a copy or drawing of the layout-design (topography) and, where the integrated circuit has been commercially exploited, of a sample of that integrated circuit, along with information defining the electronic function which the integrated circuit is intended to perform; however, the applicant may exclude such parts of the copy or drawing that relate to the manner of manufacture of the integrated circuit, provided that the parts submitted are sufficient to allow the identification of the layout-design (topography). Where the filing of an application for registration is required, the Contracting Party may require that such filing be effected within a certain period of time from the date on which the holder of the right first exploits ordinarily commercially anywhere in the world the layout-design (topography) of an integrated circuit; such period shall not be less than two years counted from the said date. Registration may be subject to the payment of a fee (Article 7).

(IV (2))

Protection may be conditioned upon fixation or registration of the layout-designs. The applicant for a registration shall be given at least two years from first commercial exploitation of the layout-design to apply for registration. Also, if deposits of identifying material or other material related to the layout-design are required, the applicant for registration shall not be required to disclose sensitive or confidential information unless it is essential to allow identification of the layout-design.

Australia
(MTN.GNG/NG11/W/35)

Switzerland
(MTN.GNG/NG11/W/38)

Registration may be required.

Protection may be conditioned upon registration of layout. In the case that commercial exploitation precedes registration, the registration shall be completed within 2 years from the first date of the commercial exploitation.

Nordics
(MTN.GNG/NG11/W/36)

Protection may be conditioned upon registration of the layout-design.

The applicant for registration shall be given two years from the first commercial exploitation of the layout-design to apply for registration. If deposits of identifying material are required, the applicant shall only be required to disclose information to the extent necessary to allow identification of the layout-design.

(4) RIGHTS CONFERRED

Existing International Standards

Under the Treaty on Intellectual Property in Respect of Integrated Circuits, any Contracting Party must consider unlawful the following acts if performed without the authorization of the holder of the right:

(i) the act of reproducing, whether by incorporation in an integrated circuit or otherwise, a protected layout-design (topography) in its entirety or any part thereof, except the act of reproducing any part that does not comply with the requirement of originality;

United States
(MTN.GNG/NG11/W/14/Rev.1)

Subject to the provisions herein, and without prejudice to other intellectual property rights, the owner of a layout-design shall have the exclusive right to:

(a) reproduce the layout-design;

(b) incorporate the layout-design in a semi-conductor integrated circuit chip;

or leasing, and to import such semi-

(c) import or distribute a semi-conductor integrated circuit chip incorporating the layout-design; and

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Exclusive rights for semi-conductor integrated circuit layout shall include;

(i) the right to manufacture semi-conductor integrated circuit from such circuit layout;

(ii) the right to transfer, to lease, to exhibit for the purpose of transferring

conductor integrated circuit or products containing the circuit; and

(ii) the act of importing, selling or otherwise distributing for commercial purposes a protected layout-design (topography) or an integrated circuit in which a protected layout-design (topography) is incorporated (Article 6(1)(a)).

Contracting States are free to consider unlawful also acts other than those specified above if performed without the authorisation of the holder of the right (Article 6(1)(b)).

(IV) (4))

(d) authorize others to perform any of the above acts.

Australia
(MTN.GNG/NG11/W/35)

(iii) the right to authorize others to do the same as in (i) and (ii) above.

Nordics
(MTN.GNG/NG11/W/36)

The owner of a layout-design shall, without prejudice to any other intellectual property rights, have the exclusive right to do or to authorize the following:

- reproduce, whether by incorporation in an integrated circuit or otherwise, the layout-design;

- import or distribute for commercial purposes a protected layout-design.

Switzerland
(MTN.GNG/NG11/W/38)

The owner of the topography right shall have the right to prevent third parties not having his consent from:

- copying the topography by any means or in any form;

- putting on the market, offering to the public, selling, renting, lending, importing, or otherwise distributing the topography or copies thereof.

(5) LIMITATIONS ON RIGHTS CONFERRED

Existing International Standards

Contracting Parties of the Treaty on Intellectual Property in Respect of Integrated Circuits must not consider unlawful the performance, without the authorization of the holder of the right, of the act of reproduction referred to in paragraph (i) of (4) above where that act is performed by a third party for private purposes or for the sole purpose of evaluation, analysis, research or teaching. An original layout-design (topography) created by that third party on the basis of such evaluation or analysis must not be regarded as infringing the rights of the holder of the right in the first layout-design (Article 6(2)(a) and (b)).

United States
(MTN.GNG/NG11/W/14/Rev.1)

A layout-design may be reproduced for the purposes of teaching, analysis or evaluation in the course of preparation of a layout-design that is itself original.

It shall not be unlawful to import or distribute semi-conductor integrated circuit chips incorporating a protected layout-design in respect of such chips that have been sold by or with the consent of the owner of the layout-design. Any Party may provide that there shall be no liability with respect to the importation or distribution of a semi-conductor integrated circuit chip incorporating a protected layout-design by a person who establishes that he or she did not know, and had no reason-

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Manufacturing another semi-conductor integrated circuit utilizing the layout of original circuit for the purpose of analysis or evaluation is permitted.

The holder of the right may not exercise his right in respect of an identical original layout-design (topography) that was independently created by a third party. (Article 6(2)(c)).

Member States are not obliged to consider unlawful the performance of any of the acts referred to in paragraph (ii) of (4) above in respect of an integrated circuit incorporating an unlawfully reproduced layout-design (topography) where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the said integrated circuit, that it incorporates an unlawfully reproduced layout-design (topography) (Article 6(4)).

Any Contracting Party may consider lawful the performance, without the authorization of the holder of the right, of any of the acts referred to in paragraph (ii) of (4) above where the act is performed in respect of a protected layout-design (topography), or in respect of an integrated circuit in which such a layout-design (topography) is incorporated, that has been put on the market by, or with the consent of, the holder of the right (Article 6(5)).

able grounds to believe, that the layout-design was protected; however, there shall be a right to a reasonable royalty for such acts after notice is received.

Australia
(MTN.GNG/NG11/W/35)

Switzerland
(MTN.GNG/NG11/W/38)

It is lawful to reproduce topographies for the purposes of research and teaching.

Further developments of the topography may be exploited independently, provided that they are not commonplace.

Nordics
(MTN.GNG/NG11/W/36)

The reproduction for private purposes or for the sole purpose of evaluation, analysis, research or teaching shall be permitted.

The reproduction shall be permitted where, on the basis of the analysis and evaluation, a new original layout-design is created ("reverse engineering").

No contracting party shall be obliged to consider unlawful the importation or distribution of an integrated circuit incorporating an unlawfully reproduced layout-design where the person performing such acts did not know and had no reasonable ground to know that it incorporates an unlawfully reproduced layout-design; however, there shall be a right to an equitable remuneration for such acts after notice is received.

Any contracting party may consider lawful the importation or distribution of a layout-design that has been put on the market by, or with the consent of, the holder of the right.

(6) COMPULSORY LICENSING

Existing International Standards

Any Contracting Party of the Treaty on Intellectual Property in Respect of Integrated Circuits may, in its legislation, provide for the possibility of its executive or judicial authority granting a non-exclusive licence, in circumstances that are not ordinary, for the performance of any of the acts referred to in (4) above by a third party without the authorization of the holder of the right ("non-voluntary licence"), after unsuccessful efforts, made by the said third party in line with normal commercial practices, to obtain such authorization, where the granting of the non-voluntary licence is found, by the granting authority, to be necessary to safeguard a national purpose deemed to be

United States
(MTN.GNG/NG11/W/14/Rev.1)

A compulsory licence may only be given to address, only during its existence, a declared national emergency or to remedy an adjudicated violation of antitrust laws. Semi-conductor integrated circuit layout-designs may also be used non-exclusively by a government for governmental purposes. In the case of a licence to address a national emergency or use by a government, a semi-conductor integrated circuit layout-design owner must receive compensation commensurate with the market value of the licence. A compulsory licence must be non-exclusive. All decisions to grant compulsory licences as well as the compensation to be paid shall be subject to judicial review.

Japan
(MTN.GNG/NG11/W/17 and Add.1)

vital by that authority; the non-voluntary licence shall be available for exploitation only in the territory of that country and shall be subject to the payment of an equitable remuneration by the third party to the holder of the right. Any such non-voluntary licence shall be revoked when the conditions referred to above cease to exist.

The provisions of the Treaty do not affect the freedom of any Contracting Party to apply measures, including the granting, after a formal proceeding by its executive or judicial authority, of a non-voluntary licence, in application of its laws in order to secure free competition and to prevent abuses by the holder of the right.

The granting of any non-voluntary licence must be subject to judicial review (Article 6(3)).
(IV) (7))

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

Switzerland
(MTN.GNG/NG11/W/38)

(7) TERM OF PROTECTION

Existing International Standards

Under the Treaty on Intellectual Property in Respect of Integrated Circuits, protection must last at least eight years (Article 8).
(IV (5))

United States
(MTN.GNG/NG11/W/14/Rev.1)

The term of protection shall be at least ten years from the date of first commercial exploitation or the date of registration, if required, whichever is earlier.

Japan
(MTN.GNG/NG11/W/17 and Add.1)

The duration of protection shall be at least 10 years from the date of registration or from the first date of commercial exploitation.

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

The term of protection shall be ten years from the date of the first commercial exploitation or the date of the filing of the application for registration, if required, whichever is earlier.
(14/86)

Switzerland

(MTN.GNG/NG11/W/38)

Topographies shall be protected for a term of no less than 10 years from the filing date or from the date of the first commercial exploitation, whichever is earlier.

If registration is required by law, and no application is filed, the protection of the topography shall lapse after 2 years from the date of the first commercial exploitation.

Notwithstanding the preceding, protection shall lapse 15 years after the creation of the topography.

(14/86)

TABLE VIII: TRADE SECRETS/ACTS CONTRARY TO HONEST COMMERCIAL PRACTICES

GENERAL

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

(14/89)

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

(14/4)

Switzerland
(MTN.GNG/NG11/W/38)

Proposals related to proprietary information protection will be submitted at a later stage.

(1) SUBJECT MATTER FOR PROTECTION

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

Trade secret protection should be broadly available and cover items such as any formula, device, compilation of information, computer programme, pattern, technique or process that is used in one's business or that has actual or potential economic value from not being generally known. Protection should be accorded both to technical information, such as technical drawings or operational specifications, and commercial information, such as price or customer lists or business methods, regardless of whether the trade secret is in a tangible form, such as a machine or written record, or is maintained without tangible means, for example, by memory.
(9/11)

Japan
(MTN.GNG/NG11/W/17 and Add.1)

(5/22)

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

Trade and business secrets.

Switzerland
(MTN.GNG/NG11/W/38)

(2) RIGHTS CONFERRED

Existing International Standards

Member States of the Paris Convention must assure to nationals of other member States effective protection against unfair competition. The Paris Convention deems any act of competition contrary to honest practices in industrial or commercial matters an act of unfair competition (Article 10bis).

United States
(MTN.GNG/NG11/W/14/Rev.1)

Trade secrets must be protected from actual or threatened misappropriation, and the owner shall be entitled to full compensation for misappropriation. In assessing liability for misappropriation involving use or disclosure of a trade secret disclosed by mistake or by one who had misappropriated it, authorities may take into consideration whether the recipient

Japan
(MTN.GNG/NG11/W/17 and Add.1)

has in good faith paid value for the secret or changed position to his detriment as a result of its receipt.

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

Trade and business secrets shall be protected by law by providing their proprietor the right to prevent these secrets from becoming available to, or being used by, others in a manner contrary to honest commercial practices.

Switzerland
(MTN.GNG/NG11/W/38)

(3) TERM OF PROTECTION

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

A trade secret should be protected so long as it is not public knowledge, general knowledge in an industry, or completely disclosed by the results of a use of the trade secret.

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

Switzerland
(MTN.GNG/NG11/W/38)

(4) MAINTENANCE OF RIGHT

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

To maintain legal protection, the owner of a trade secret may be required to make efforts reasonable under the circumstances to maintain such secrecy but need not show that no one else possesses the trade secret. Without losing the requisite secrecy, the owner may communicate a trade secret to employees involved in its use, communicate a trade secret to others pledged to secrecy or make any other communications required by law or as a condition for marketing.

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

Switzerland
(MTN.GNG/NG11/W/38)

(5) DEFINITION OF MISAPPROPRIATION

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

Misappropriation means the acquisition, disclosure or use of trade secret without a privilege to acquire, disclose or use it. Misappropriation includes discovery of the trade secret by improper means; use or disclosure of a trade secret in breach of a confidence; acquisition of a trade secret from a third person with notice that it was a secret and that the third person misappropriated it; acquisition, disclosure, or use of a trade secret with notice that its disclosure was made by mistake; or use or

Japan
(MTN.GNG/NG11/W/17 and Add.1)

disclosure of a trade secret after receiving notice that it was disclosed by mistake or by one who had misappropriated it.

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

Switzerland
(MTN.GNG/NG11/W/38)

(6) CONDITIONS ON GOVERNMENT USE

Existing International Standards

United States
(MTN.GNG/NG11/W/14/Rev.1)

Trade secrets submitted to governments shall not be disclosed or used for the benefit of third parties except in compelling circumstances involving major national emergencies posing an imminent unreasonable risk to health or the environment, or to facilitate required health and safety registrations. Government use or disclosure on the basis of a national emergency may only be made where other reasonable means are not available to satisfy the need for which the government seeks to disclosure or use the trade secret, and the government may use it only for the duration of that emergency. Government use or disclosure to facilitate required health and safety registrations may only be made if the trade secret has not been submitted within the previous ten years and full compensation is made for the use or disclosure. In any case, a government shall not use or disclose a trade secret to an extent greater than required to achieve one of the above needs without providing the submitter with a reasonable opportunity to oppose the proposed use or disclosure, including the opportunity to secure judicial review, or without providing for the payment of full compensation as in the case of personal property.

Japan
(MTN.GNG/NG11/W/17 and Add.1)

Australia
(MTN.GNG/NG11/W/35)

Nordics
(MTN.GNG/NG11/W/36)

Switerland
(MTN.GNG/NG11/W/38)