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Negotiating Group on Trade-Related Aspects
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BASIC PRINCIPLES OF THE MAIN MULTILATERAL TREATIES IN THE FIELD OF INTELLECTUAL PROPERTY

Paper Prepared by the International Bureau of the
World Intellectual Property Organization

The following paper, dated 7 June 1989, has been received from the International Bureau of the World Intellectual Property Organization.

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1. This paper has been prepared by the International Bureau of the World Intellectual Property Organization (WIPO) in response to the request made by the Negotiating Group on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (TRIPS) at its meeting of May 11 and 12, 1989, that the International Bureau "prepare a background paper on basic principles of relevant international intellectual property agreements and conventions" (letter of May 18, 1989, from the Chairman of TRIPS to the Director General of WIPO). Because of the extreme shortness of time allowed for its preparation, this paper only deals, and in a very concise manner, with the essence of the basic principles.

2. Unless otherwise indicated, the present paper deals with the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works.

3. The basic principles this paper covers are the following:

I. Parties to Treaties
II. Beneficiaries
III. National Treatment
IV. Norms
V. Non-Reciprocity
VI. Independence of Protection
VII. Settlement of Disputes

I. Parties to the Treaties

4. The parties to the treaties are States.

5. Certain intergovernmental organizations may become party to the Treaty on Integrated Circuits (adopted in

May 1989). The European Communities is one such organization.

II. Beneficiaries

6. The general rule is that the beneficiaries of the protection are natural persons and legal entities having a certain relation to the Contracting States: they are nationals of, or are domiciled in, or have a commercial or industrial establishment in, one of the Contracting States.

7. This rule applies in the field of patents, trademarks and other fields of industrial property.

8. This rule applies, generally, also in the field of copyright; in that field, however, even persons and legal entities not qualifying under the general rule benefit from the treaty protection if their works were first published in a Contracting State.

III. National Treatment

9. The general rule is that, in each Contracting State, the intellectual property protection available to foreigners is the same as the protection available to nationals of that Contracting State.

10. Naturally, the protection must conform to the minimum standards of protection provided for in the Treaty and must respect the limitations placed on national legislation by the Treaty. For example, the Berne Convention generally requires that the term of the copyright protection must not be less than 50 years after the death of the author; should the national law of any Contracting Party provide for a shorter duration, then the minimum duration fixed in the Berne Convention, rather than the shorter term fixed in the national law, must be applied to foreigners. Or, under the Paris Convention, a compulsory license to use a protected invention in cases of failure to use may be applied for only after a certain "waiting" period (in general 3 years from the date of the grant of the patent); should the national law of a Contracting Party not provide for such a waiting period, or should it provide for a shorter waiting period, then the waiting period fixed in the Paris Convention, rather than the national law's shorter (or non existent) waiting period, must be applied to foreigners.

11. In other words, where national treatment would result in less protection than the minimum required by the Treaty, the Treaty rather than the national law must be applied to foreigners.

IV. Norms

12. The Treaties fix norms for protection which must be respected. A listing of such norms is contained in document MTN.GNG/NG11/W/24/Rev.1. Here are some examples:

(i) a compulsory license for a patent cannot be applied for earlier than the expiration of a certain waiting period;

(ii) the registration of a trademark may be cancelled for non-use only after a reasonable period;

(iii) as a rule, copyright must last at least 50 years after the death of the author.

V. Non-Reciprocity

13. As a general rule, the level of protection to be given by a Contracting State ("the first Contracting State") is governed only by the Treaty and the principle of national treatment, and, consequently, cannot be reduced, or the protection cannot be denied, vis-à-vis the nationals of another Contracting State ("the second Contracting State") on the ground that the nationals of the first Contracting State enjoy a "lower level" of protection, or no protection, in the

second Contracting State.

14. For example, if, in the first Contracting State, the right of broadcasting is an exclusive right without the possibility of granting compulsory licenses for broadcasting, but, in the second Contracting State, such a possibility (permitted by the Berne Convention) exists, the first Contracting State is not permitted to grant compulsory licenses for the broadcasting of works in which copyright belongs to a national of the second Contracting State.

15. There are a few cases of permitted reciprocity in the Berne Convention but they are of small practical importance. For example, if a Contracting State provides for a term of protection of 70 years after the death of the author (that is, 20 years more than the required minimum under that Convention), such a Contracting State may, in the case of works originating in another Contracting State which grants 50 years, apply, to such works, a term of protection of 50 years rather than 70 years.

VI. Independence of Protection

16. The mere fact that an inventor has been granted or denied a patent for his invention in one of the Contracting States, or the mere fact that a trademark has been denied registration in one of the Contracting States, or that the author of a work enjoys or does not enjoy copyright protection in one of the Contracting States, does not oblige any of the other Contracting States to grant or deny the grant of a patent for the same invention, to deny registration to the same trademark, or to protect or not protect by copyright the same work.

17. This principle is usually referred to as the principle of "independence of protection". Simply stated, the principle means that, for the protection or non-protection of a given invention, trademark, literary or artistic work, etc., in one Contracting State, it is irrelevant whether that invention, trademark or work is or is not protected in any of the other Contracting States.

VII. Settlement of Disputes

18. Both the Paris and the Berne Conventions provide for the jurisdiction of the International Court of Justice. But both allow Contracting States to opt out, through a reservation, of this jurisdiction.

19. None of the treaties in force provide for a settlement of dispute mechanism in the framework of WIPO. But the Treaty on Intellectual Property in Respect of Integrated Circuits (adopted in May 1989 and not yet in force at the time of writing this paper) provides for such a mechanism (through a panel and recommendations of the Assembly created by the said Treaty).

20. It is to be noted that the draft program of WIPO for 1990-91 (which will be acted upon by WIPO's Governing Bodies in September 1989) contemplates the creation of a settlement of dispute mechanism in the framework of WIPO for disputes between States in all fields of intellectual property.