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

SYNOPTIC TABLE SETTING OUT PROPOSALS ON PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF IPRS

Prepared by the Secretariat

1. The synoptic table contained in this note takes into account the different specific proposals regarding procedures for the acquisition and maintenance of IPRs, circulated by delegations, setting them out in a comparative manner.

2. The attached synoptic table replaces Section D of the synoptic table on enforcement contained in document MTN.GNG/NG11/W/33/Rev.1. Since that document was issued, certain participants put forward their proposals on procedures for acquisition and maintenance of IPRs in connection with standards and principles. Therefore, the suggestions on this matter have been brought together in this separate synoptic table.

3. The various proposals have been structured in the attached synoptic table under four main headings:

(1) a part relating to the application of basic principles such as transparency, national treatment and mfn,
(2) a part dealing with availability of procedures, costs and complexity, and inter partes procedures,
(3) a part concerning the duration of procedures, and
(4) a part regarding decisions and review of decisions.

4. The synoptic table sets out those proposals by participants specifically referring to procedures for the acquisition and maintenance of intellectual property rights (United States (MTN.GNG/NG11/W/14/Rev.1), the European Communities (MTN.GNG/NG11/W/31 and 49), Canada (MTN.GNG/NG11/W/47), the Republic of Korea (MTN.GNG/NG11/W/48), Hong Kong (MTN.GNG/NG11/W/54), Austria (MTN.GNG/NG11/W/55 and 62) and the Nordic Countries (MTN.GNG/NG11/W/58)). It should be noted that some of the other proposals of these participants and some of the proposals of other participants, although not specifically referring to procedures for the acquisition and maintenance of intellectual property rights, may also be intended to cover such matters. This might apply particularly to suggestions regarding basic principles as well as, in some cases, to suggestions for general obligations relating to enforcement.

5. The attached synoptic table only covers proposals on acquisition and maintenance of IPRs generally, not those specifically relating to individual IPRs. Such proposals can be found in the synoptic table on standards and principles concerning the scope, availability and use of trade-related intellectual property rights contained in document MTN.GNG/NG11/W/32/Rev.2 - in respect of trademarks under section III (3), (5), (7), (9), (11) and (12), in respect of industrial designs under section V (1) and (5), in respect of patents under section VI (2) and (7), and in respect of the layout-design of integrated circuits under section VII (3).

6. It should also be noted that only proposals regarding national procedures for acquisition and maintenance of IPRs have been reflected in the attached synoptic table. Consequently, the first column, which concerns corresponding provisions of existing international treaties, is confined to those provisions in multilateral treaties that prescribe requirements for national procedures for the obtaining and maintaining of IPRs. It therefore does not deal with the procedures under international conventions facilitating the obtaining of protection in several countries, for

example the Madrid Agreement Concerning the International Registration of Marks and the Protocol to it, the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, the Patent Cooperation Treaty and the Hague Agreement Concerning the International Deposit of Industrial Designs.

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(1) APPLICATION OF BASIC PRINCIPLES

A. NATIONAL TREATMENT

Corresponding Provisions of ExistingInternational Treaties

The Paris Convention obliges each of its member States to grant to nationals of the other member States, as well as nationals of non-member States who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the other member States, the same legal remedies for infringement of industrial property rights as those it grants to its own nationals, possibly subject to the provisions of national law relating to judicial and administrative procedure and to jurisdiction (Articles 2 and 3). Provisions requiring contracting parties to grant national treatment to nationals of other contracting parties (and certain other persons) are also contained in the Treaty on Intellectual Property in Respect of Integrated Circuits (Article 5). This Treaty allows for an exception as far as any obligations to appoint an agent or to designate an address for service are concerned or as far as the special rules applicable to foreigners in court proceedings are concerned.

The General Agreement requires that the products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use (Article III:4). However, a general exception allows any contracting party to adopt or enforce measures necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of the General Agreement, including those related to the protection of patents, trademarks and copyrights, and the prevention of deceptive practices, subject to the requirements that such measures are not supplied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on trade (Article XX(d)).

United States (W/14/Rev.1)
Republic of Korea (W/48)
Hong Kong (W/54)

European Communities (W/31 and 49)
The provision on national treatment in the agreement on TRIPS should provide that the protection of IPRs of foreigners be no less favourable than that provided to nationals. It should apply, inter alia, with regard to the procedures and remedies, laid down therein, concerning the enforcement of IPRs, including the acquisition of IPRs.

Nordics (W/58)

Canada (W/47) Procedures of the parties for the acquisition or revocation of IPRs should be non-discriminatory. Austria (W/55 and 62)Parties to a future TRIPS instrument shall subscribe to international standards and principles, including procedures for industrial property rights' protection, which will eliminate any discriminatory treatment.

(1) APPLICATION OF BASIC PRINCIPLES

B. MOST-FAVOURED-NATION TREATMENT/NON-DISCRIMINATION

Corresponding Provisions of Existing International Treaties The General Agreement requires that with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties (Article I:1). However, a general exception allows any contracting party to adopt or enforce measures necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of the General Agreement, including those related to the protection of patents, trademarks and copyrights, and the prevention of deceptive practices, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on trade (Article XX(d)).	United States (W/14/Rev.1) This complex question of mfn will need to be addressed. Republic of Korea (W/48) Hong Kong (W/54)	European Communities (W/31 and 49) Provisions concerning the acquisition of IPRs should not constitute a means of arbitrary or unjustifiable discrimination between nationals of other signatories. Nordics (W/58)	Canada (W/47)Procedures of the parties for the acquisition or revocation of IPRs should be non-discriminatory. Austria (W/55 and 62)Parties to a future TRIPS instrument shall subscribe to international standards and principles, including procedures for industrial property rights' protection, which will eliminate any discriminatory treatment.

(1) APPLICATION OF BASIC PRINCIPLES

C. TRANSPARENCY

Corresponding Provisions of Existing International Treaties According to Article X of the General Agreement laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, affecting the sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use of imports or exports, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private. Article X of the General Agreement also provides	United States (W/14/Rev.1) Concepts such as those embodied in Article X of the GATT should apply to intellectual property provisions; specifically, laws, regulations, judicial decisions and administrative rulings of general application pertaining to obtaining and enforcing IPRs should be published promptly in such a manner as to enable governments and persons to become familiar with them. Republic of Korea (W/48) Procedures for obtaining IPRs should be transparent. Hong Kong (W/54) Nordics (W/58)	European Communities (W/31 and 49) The TRIPS agreement should: - require, in conformity with the objectives pursued by Article X of the GATT, the prompt publication of laws, regulations, judicial decisions and administrative rulings of general application, pertaining to the availability, scope, acquisition and enforcement of intellectual property rights, in such a manner as to enable governments and traders to become acquainted with them: - require the notification of such laws and regulations to the appropriate body with a view to permitting parties to the agreement to monitor the notifying party's compliance with the agreement. Moreover, upon request, a party to the agreement shall have access to specific judicial decisions and administrative rulings as well as to bilateral agreements; - encourage an exchange of information and consultation between parties to the agreement relating to possible changes in their intellectual property right laws and regulations which could affect the operation of the agreement.	Canada (W/47)Procedures of the parties for the acquisition or revocation of IPRs should be transparent. Austria (W/55 and 62)The notification of relevant national legislation and rulings to the parties of a future TRIPS instrument and/or the GATT secretariat or any body to be set up by the future agreement shall be part of such agreement. This notification shall include within the limits of national constitutions advance information on planned changes of legislation relating to IPRs.

that no measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.

D. OTHER BASIC PRINCIPLES

Corresponding Provisions of Existing International Treaties
Republic of Korea (W/48)
Hong Kong (W/54)

United States (W/14/Rev.1)
shall not constitute a disguised restriction to

European Communities (W/31)
Procedures concerning the acquisition of IPRs
Austria (W/55 and 62)international trade or nullify or impair benefits resulting from the TRIPS agreement.
Nordics (W/58)

Canada (W/47)

(2) AVAILABILITY/COSTS AND COMPLEXITY/INTER-PARTES PROCEDURES

A. AVAILABILITY

Corresponding Provisions of ExistingInternational Treaties
Republic of Korea (W/48)
Hong Kong (W/54)
Nordics (W/58)

United States (W/14/Rev.1)
United States (W/14/Rev.1)
shall not be unnecessarily complicated, costly
adequate opportunities for right holders,
holder himself, any other person authorised by

European Communities (W/31)
Austria (W/55 and 62)
requirements, the following procedures should
- industrial designs: deposit;

Canada (W/47) In addition to the examination of formal be applied to:- trademarks: application, registration, examination as to substance;- patents: application, examination as to substance, opposition procedure, registration.
Canada (W/47)In all registration procedures for industrial involved should be reasonable. Whenever multiple registration or deposit requirements

B. COSTS AND COMPLEXITY

Corresponding Provisions of ExistingInternational Treaties
Republic of Korea (W/48)
Hong Kong (W/54)
Nordics (W/58)

European Communities (W/31)
Procedures concerning the acquisition of IPRs
Austria (W/55 and 62)or time-consuming, nor shall they be subject to unreasonable time limits. They shall provide property protection all costs and fees including foreign nationals, to make use of them. (The term "right holder" means the right have to be met, fees should be degressive.him or persons having legal standing under national law to assert such rights.)

C. INTER-PARTES PROCEDURES

Corresponding Provisions of ExistingInternational Treaties
Republic of Korea (W/48)
Hong Kong (W/54)

United States (W/14/Rev.1)
revocation, cancellation or similar
applicant or holder of an intellectual property
Where the national law provides for opposition, revocation, cancellation or similar inter-partes procedures, they should take into account the legitimate interests of the applicant or holder of an intellectual property right, in particular in an expeditious conclusion of such proceedings, as well as the interests of the other party, in particular in presenting its side of the case.

European Communities (W/31)
Where the national law provides for opposition,
Austria (W/55 and 62)inter-partes procedures, they shall take into account the legitimate interests of the
Nordics (W/58)right, in particular in an expeditious conclusion of such proceedings, as well as the interests of the other party, in particular in presenting its side of the case.

Canada (W/47)

MTN.GNG/NG11/W/65Page(3)
DURATION OF PROCEDURES

Corresponding Provisions of ExistingInternational Treaties
Republic of Korea (W/48)
Hong Kong (W/54)

United States (W/14/Rev.1)
agreement is subject to the IPR being granted
substantive conditions for the IPR being
right within a reasonable time so as to avoid agreement
is subject to the IPR being granted or registered,
participants should provide for procedures which

European Communities (W/31)
Where the acquisition of an IPR covered by this
Austria (W/55 and 62)or registered, participants should provide for procedures which permit, subject to the fulfilled, the granting of registration of the
Nordics (W/58)the period of protection being

Canada (W/47) All registration procedures should be speedy.Registration, if required, shall be granted within a reasonable period of time.

Where the acquisition of an IPR covered by this
(4) DECISIONS AND REVIEW OF DECISIONS

permit, subject to the substantive conditions for the IPR being fulfilled, the granting of registration of the right within a reasonable time so as to avoid the period of protection being curtailed.	curtailed. See also (2) (B) and (C) above.