

# WORLD TRADE ORGANIZATION

RESTRICTED

**IP/C/M/11**

16 December 1996

(96-5330)

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## **Council for Trade-Related Aspects of Intellectual Property Rights**

### MINUTES OF MEETING

Held in the Centre William Rappard  
from 11 to 15 November 1996

Chairman: Ambassador W. Armstrong (New Zealand)

#### Subjects discussed:

- A. Notifications under Article 4(d)
- B. Notifications under Article 63.2 relating to Articles 3, 4 and 5
- C. Other notifications under provisions of the Agreement
- D. Follow-up to the review of legislation on copyright and related rights
- E. Implementation of Article 70.8 and 70.9
- F. Technical cooperation
- G. Information on relevant developments elsewhere in the WTO
- H. Review of legislation in the areas of trademarks, geographical indications and industrial designs
- I. Review of the application of the provisions of the Section on geographical indications under Article 24.2
- J. Other business

1. The Council agreed to invite also to its next meeting WIPO, the IMF, the World Bank, UNCTAD, the FAO, the UN, the OECD, UPOV and the WCO, which had been invited to attend this meeting of the Council pending the ongoing consultations by the Chairman of the General Council on the application of the guidelines concerning observer status for intergovernmental organizations as adopted by the General Council at its meeting of 18 July 1996.

**A. Notifications under Article 4(d)**

2. The Chairman said that, since the Council's meeting in September, a notification under Article 4(d) of the Agreement had been received from Zambia. The notification had been distributed in document IP/N/4/ZMB/1.

3. The Chairman said that he had held further informal consultations on this matter in the light of the agreement at the Council's September meeting and as reflected in the Council's 1996 report (document IP/C/8) that further consultations should be held, so as to continue work on the development of criteria that could assist individual Members in making or reviewing their notifications, it being understood that such criteria could not add to or diminish the rights and obligations of WTO Members under the provisions of Article 4(d). These consultations had shown that some Members were not ready for a further discussion of the matter yet, while others had specific proposals that they would wish to advance. In the light of these consultations, he suggested that the Council postpone discussion to its next meeting and at that time allocate sufficient time to focus on the criteria listed in paragraph 6 of the Secretariat note (No. 2086 of 25 April 1996) and on proposals from delegations, adding that it might be helpful if the Secretariat were to update its informal paper prior to that meeting, taking note of the additional proposals made.

4. The Council so agreed.

**B. Notifications under Article 63.2 relating to Articles 3, 4 and 5**

5. The Chairman said that, since the Council's meeting in September, a notification relating to the provisions in question had been received from Zambia. This notification had been distributed as document IP/N/1/ZMB/1.

6. The Chairman recalled that the Council, at its September meeting, had concluded that this matter should be approached on the basis of a range of options between which Members could choose in making their notifications and that the Secretariat should prepare a format for one of these options, namely making a general statement that nationals of other WTO Members as defined in Article 1.3 of the Agreement enjoy national and MFN treatment and listing any exceptions to that principle. The Secretariat had recently distributed this (document IP/C/W/48) but, since copies were not yet available in all three WTO languages, he suggested that the Council take a decision on the proposed draft format at its next meeting. He recalled, however, that the notification obligation relating to national legislation corresponding to Articles 3, 4 and 5 was already applicable for all Members and urged delegations able to do so to make such notifications as soon as possible, taking advantage of the range of options that had been identified.

7. The representative of the United States expressed support for document IP/C/W/48 and encouraged its use by those WTO Members that had yet to satisfy their obligations under the provisions in question.

8. The Council took note of the statements made and agreed to proceed as suggested by the Chairman.

**C. Other notifications under provisions of the Agreement****(i) Notifications under Article 63.2**

9. The Chairman recalled that the delegation of Hungary had informed the Council, at the September meeting, that it had communicated Hungary's main laws and regulations in the area of industrial property to the Secretariat. Hungary had made its notification taking into account the procedures for notifications under Article 63.2 as adopted by the Council in November 1995. In the processing of this notification and the distribution of the texts of the laws and regulations in question, priority had been given to those laws and regulations made available in a WTO language which were relevant to the review of national implementing legislation to be carried out during the present meeting. Notifications had also been received from Cyprus, Nigeria, Romania, Swaziland and Uganda. The notifications from Romania and Uganda, which had been made with reference to the entitlements these Members claimed under Article 65 of the Agreement, were being processed and would be available as documents IP/N/1/ROM/1 and IP/N/1/UGA/1. The other notifications mentioned still required some clarification and would be processed as soon as possible.

10. The Chairman also referred to the cross-reference tables that the delegation of Japan had notified with a view to enhancing the efficiency of the review of national implementing legislation. The table relating to the area of copyright and related rights had been distributed in document IP/Q/JPN/1, as part of the record of the review of the legislation notified by Japan under Article 63.2. The other tables, regarding the areas of trademarks, geographical indications, industrial designs and patents, had been circulated in document IP/N/1/JPN/1/Add.2.

11. Informing the Council about the status of notifications by Members as required by Article 63.2 in combination with Article 65.1 of the Agreement, the Chairman said that, although most of the material due had been made available, there were still missing elements. Several main dedicated laws and regulations were not yet available in a WTO language and in some cases notifications had not been accompanied by the texts of the laws and regulations in question. He urged the Members in question to give the necessary priority to complementing their notification under Article 63.2 in this respect. As regards the checklist of issues on enforcement, eight Members had submitted responses. He recalled his statements at the July and September meetings and urged developed country Members which had not yet done so to notify these responses soon and in any case before the end of the year.

**(ii) Notifications under Article 69**

12. The Chairman informed the Council that, since its meeting in September, new notifications had been received from El Salvador, Honduras, Israel, Peru, South Africa and Turkey. Canada and Spain had notified modifications to the information on their contact points. An updated version of the compilation of contact points would be circulated in due course. Seventy-three Members had now notified contact points under Article 69.

**D. Follow-up to the review of legislation on copyright and related rights**

13. The Chairman said that the Secretariat had received written copies of all the follow-up and other additional questions and replies that had been presented orally in the review of legislation on copyright and related rights at the Council's July meeting. The record of the introductory statements made by delegations, the questions put to them and the responses given, including certain written responses provided after the meeting, had been compiled in a new IP/Q/- series of documents. Most of these documents had already been circulated, at least in one language, and a few were still being processed. He referred to the procedures for the review (document IP/C/M/7, paragraph 6), which

provided that, at subsequent meetings of the Council, an opportunity would be given to follow up any point emerging from the review session which delegations considered had not been adequately addressed. At the Council's September meeting, it had been agreed that the issue be kept on the agenda of the Council, as a general item, so as to allow delegations, as the process evolved, to raise any point they wished.

14. The representative of the Slovak Republic informed the Council that a draft copyright law had been submitted to the Legislative Council of the Slovak Government on 22 October 1996. Some elements of the draft required in order to have fully compatible legislation had caused a delay in the legislative process, but his delegation hoped to be in a position to notify the final text soon.

15. The Chairman proposed that the Council take note of the statements made and revert to the matter at its next meeting. He suggested that Members focus the follow-up to the review of legislation on copyright and related rights at that meeting. If there were any issues that arose from that review that Members wished to follow up, he suggested that they make a particular effort to cover them at that meeting. He invited Members to provide advance notice of any follow-up issues that they wished to raise to the Secretariat and to the Member concerned by the end of January 1997.

16. The Council so agreed.

#### **E. Implementation of Article 70.8 and 70.9**

17. The Chairman said that notifications had been received from Kuwait, the Slovak Republic and the Philippines (documents IP/N/1/KWT/1, IP/N/1/SVK/2/Add.1 and IP/N/1/PHL/1).

18. The representative of the United States said that, while he appreciated the efforts of those Members who had made recent notifications relating to Article 70.8 and 70.9, his delegation remained concerned that a number of Members who were subject to these provisions of the TRIPS Agreement had either not implemented the necessary procedures or had not made the required notifications. He also noted that many of the notifications that had been made only concerned the procedures to accept the filing of patent applications for inventions concerning pharmaceutical and agricultural chemical products, omitting any reference to the procedures that could be used to obtain the exclusive marketing rights required under Article 70.9. The absence of information made it difficult, if not impossible, to ascertain whether such procedures had been implemented by the Members in question. Finally, he said that the efforts of his delegation to resolve its dispute with regard to compliance by the Government of India with Article 70.8 and 70.9 had not proven successful to date and, accordingly, his delegation had requested the establishment of a panel in accordance with the procedures under the DSU.

19. The Council took note of the statements made.

#### **F. Technical cooperation**

20. The Chairman recalled that the Council, at its September meeting, had discussed the issue of technical cooperation and that, in preparation for that discussion, each developed country Member had been invited to update the information on its technical cooperation activities relevant to the implementation of the TRIPS Agreement. Similarly, intergovernmental organizations presently observers to the TRIPS Council had been invited to do the same. The resulting documentation concerning the technical cooperation activities of developed country Members had been circulated in documents IP/C/W/34 and Addenda 1 to 5, while the contributions of intergovernmental organizations had been

distributed in documents IP/C/W/35 and Addenda 1 to 5. Information on the WTO Secretariat's technical cooperation activities in the TRIPS area had been circulated in document IP/C/W/36. Since that meeting, the Secretariat had received updated information on technical cooperation activities from Finland, Denmark, Germany, Spain and Norway (documents IP/C/W/34/Add.3/Suppl.1-4), as well as from UNCTAD (document IP/C/W/35/Add.6). Unfortunately there were still a number of developed country Members that had not yet submitted any information on their technical cooperation activities. Given the importance that the Council had attached to this issue in the light of the needs of developing countries for such assistance, he hoped that these Members would be able to provide such information soon.

21. The Chairman recalled that the Council had invited each developed country Member to notify a contact point for technical cooperation purposes relating to TRIPS at the same time as it would submit updated information on its technical cooperation activities. The contact points that had been notified before the September meeting had been compiled in document IP/N/7. Since that meeting, contact points had been notified by Denmark, Greece and Norway. Austria and Canada had notified minor changes to their earlier notifications. Document IP/N/7 would be updated in due course to incorporate this additional information. Unfortunately, there were still a number of developed country Members that had not yet notified their contact points. He hoped that these Members would notify their contact points in the near future.

22. The representative of Japan informed the Council that Japan was assisting the International Bureau of WIPO in organizing an Asian regional seminar on the implementation of the TRIPS Agreement, which would be held in Singapore from 15 to 17 January 1997. An official from the WTO Secretariat would be invited as a speaker to that seminar. As many Asian countries were in the process of preparing their implementation of the Agreement, the seminar was likely to provide an effective and adequate contribution to this process through exchanges of views and would facilitate further technical cooperation in the area of intellectual property.

23. The representative of Ecuador expressed his country's interest in receiving the types of technical cooperation referred to by the Chairman and by the delegation of Japan, and in the programmes that would be undertaken at the bilateral level in this regard.

24. The Chairman believed that the information contained in the notifications on technical cooperation activities would be helpful in this regard.

25. The Council took note of the statements made and agreed to revert to the matter at its next meeting.

#### **G. Information on relevant developments elsewhere in the WTO**

##### *(i) Dispute settlement*

26. The Chairman drew attention to document IP/D/6 by which the Council had been informed that the United States, by means of a communication dated 8 October 1996 (document IP/D/6), had requested consultations with Indonesia regarding certain measures affecting the automobile industry which, according to the United States, were in violation with Indonesia's obligations under, *inter alia*, Articles 3, 20 and 65.5 of the TRIPS Agreement.

##### *(ii) Accession*

27. The Chairman said that the General Council, at its meeting on 2 October 1996, approving the Protocols of Accession for Bulgaria and Panama and the reports of the working parties on their requests

for accession (WT/ACC/BGR/5 and WT/ACC/PAN/19 and addenda and corrigenda), had adopted decisions allowing Bulgaria and Panama to accede to the WTO Agreement under the terms set out in their respective Protocols of Accession. Paragraph 2 of the Protocol of Accession for Bulgaria (WT/ACC/BGR/7) incorporated the commitment given by Bulgaria in relation to intellectual property as reproduced in paragraph 85 of the report of the Working Party on the Accession of Bulgaria. According to this paragraph, "[t]he representative of Bulgaria confirmed that his Government would apply the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights by the date of its accession to the WTO, without recourse to any transitional period." Similarly, paragraph 2 of the Protocol for the Accession of Panama (WT/ACC/PAN/21) incorporated the commitment given by Panama in relation to intellectual property as reproduced in paragraph 111 of the report of the Working Party on the Accession of Panama. According to this paragraph, "[t]he representative of Panama stated that Panama would fully apply all the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights by the date of its accession to the WTO, without recourse to any transitional period."

#### **H. Review of legislation in the areas of trademarks, geographical indications and industrial designs**

28. The Chairman recalled that the procedures for this review could be found in the minutes of the Council's May meeting (document IP/C/M/7, paragraph 6), with the adjustments agreed at its July meeting (document IP/C/M/8, paragraphs 69 and 70). In accordance with these procedures, the Secretariat had circulated a proposed timetable in an informal note of 10 October 1996. Written questions concerning other Members' legislation had been received in advance of the meeting from the European Community and its Member States, New Zealand, the United States, Japan and Australia. Written responses had been received in advance of the meeting from Liechtenstein, Australia, Switzerland, Norway, Japan, South Africa, the Czech Republic, Hungary and Canada. He suggested to proceed as had been done at the July meeting and invited each Member to provide, in introducing its legislation, a brief overview of the structure of its legislation on trademarks, geographical indications and industrial designs and of the changes, if any, that it had had to bring about in order to make the legislation compatible with the TRIPS Agreement. After having done so, an introduction might be provided to the responses to the questions put to them by other Members. Where responses had already been made available in the three WTO languages, the Member in question might limit itself to a brief summary, drawing attention to any points that it wanted to highlight. After these presentations and introductions of responses, he would then offer the floor to other delegations for any comments or other questions.

29. The record of the introductory statements made by delegations, the questions put to them and the responses given (including certain written responses provided after the meeting) will be circulated in the following documents:

|             |                    |
|-------------|--------------------|
| IP/Q2/AUS/1 | Australia          |
| IP/Q2/CAN/1 | Canada             |
| IP/Q2/CZE/1 | Czech Republic     |
| IP/Q2/EEC/1 | European Community |
| IP/Q2/AUT/1 | Austria            |
| IP/Q2/BEL/1 | Belgium            |
| IP/Q2/DNK/1 | Denmark            |
| IP/Q2/FIN/1 | Finland            |
| IP/Q2/FRA/1 | France             |
| IP/Q2/DEU/1 | Germany            |
| IP/Q2/GRC/1 | Greece             |
| IP/Q2/IRL/1 | Ireland            |

|             |                 |
|-------------|-----------------|
| IP/Q2/ITA/1 | Italy           |
| IP/Q2/LUX/1 | Luxembourg      |
| IP/Q2/NLD/1 | Netherlands     |
| IP/Q2/PRT/1 | Portugal        |
| IP/Q2/ESP/1 | Spain           |
| IP/Q2/SWE/1 | Sweden          |
| IP/Q2/GBR/1 | United Kingdom  |
| IP/Q2/HUN/1 | Hungary         |
| IP/Q2/ISL/1 | Iceland         |
| IP/Q2/JPN/1 | Japan           |
| IP/Q2/LIE/1 | Liechtenstein   |
| IP/Q2/NZL/1 | New Zealand     |
| IP/Q2/NOR/1 | Norway          |
| IP/Q2/SVK/1 | Slovak Republic |
| IP/Q2/SVN/1 | Slovenia        |
| IP/Q2/ZAF/1 | South Africa    |
| IP/Q2/CHE/1 | Switzerland     |
| IP/Q2/USA/1 | United States   |

30. After the consideration of the legislation of the above Members, the Chairman recalled that questions had been asked in advance of a number of other Members, in addition to those who had responded so far. He offered the floor to any delegation that might wish to comment.

31. The representative of the United States recalled that a discussion had taken place at the Council's July meeting on the circumstances under which Members should provide responses to questions posed to them in the context of the review of national implementing legislation. At that time, a number of Members had questioned that they should be taken up in the review, given their claimed status as developing country Members of the WTO or as a transition economy Member of the WTO entitled to an extended transitional period under the TRIPS Agreement. Consideration had also been given to the difficulty that the Council would face in the year 2000, when a large number of Members would be obliged to notify their implementing legislation and would be taken up in the review exercise. The question had been raised, at that time, whether certain Members, in light of their advanced status and advanced implementation of the TRIPS Agreement, would be able to participate at this time in the review exercise. In presenting advance questions for this review exercise, his delegation had anticipated that these Members would be prepared to do so and had, consequently, addressed questions to Turkey, Singapore, Mexico, Kuwait, Korea, Israel, Hong Kong and Poland concerning their legislation in the areas presently under review.<sup>1</sup> These questions had been asked on the understanding that the responses to them would be made without prejudice to the question as to whether a transitional period under Article 65 was applicable to a particular Member. The United States had also asked questions to Ecuador which, pursuant to the terms of its Protocol of Accession, was obligated to fully implement the TRIPS Agreement by 31 July 1996 and to be taken up in the review exercise at this time.

32. The representative of Korea acknowledged receipt of a list of questions from the United States with regard to his country's legislation on trademarks, geographical indications and industrial designs with the request to answer these questions at the present meeting of the Council. His delegation had responded to the United States that Korea's position on this matter had not changed since the Council's July meeting. Neither had a change occurred in the legal status of Korea under the TRIPS Agreement, nor had Korea decided to forgo the longer transitional period under Article 65.2 of the Agreement. Furthermore, he wished to point out that the Council had agreed at the July meeting that the review

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<sup>1</sup>These questions can be found in documents IP/C/W/39 and IP/C/W/39/Add.1.

procedures applied in the review exercise at that meeting would apply also at the present meeting. Korea did not belong to either of the categories of Members required to be reviewed at this time and was not in a position to respond to the questions posed to it at the present meeting.

33. The representative of the European Community wished to reiterate his delegation's encouragement at the July meeting to those Members whose laws had been brought in line with the Agreement or were advanced in implementing the Agreement to have these laws reviewed as early as possible so as to facilitate the review of the large number of Members that were required to comply fully with the provisions of the Agreement as of 1 January 2000. New WTO Members which had accepted in their protocols of accession that they would not avail themselves of any transitional period provided for in the Agreement had to deliver on that undertaking and be fully subject to the present review exercise.

34. The representative of Ecuador confirmed his delegation's view that Ecuador, as a developing country Member of the WTO, was entitled to invoke Article 65.2 of the TRIPS Agreement.

35. The Chairman said that the issue concerning the interpretation of Ecuador's Protocol of Accession would be addressed separately under agenda item J. As regards the other Members to which questions had been addressed in the context of the present review, he noted that the issue was not so much whether the Members in question were obliged to be subject to the present review exercise, but was more a practical issue related to the desirability of spreading out the future workload that the Council would face in reviewing legislation. At the same time, it seemed to be clear that the Members in question were not presently in a position to respond to the questions that had been put to them. From the point of view of the Chair, it would be desirable if some practical way could be found of evening out the future workload of the Council, in light of the fact that the present review exercise would be completed by the end of 1997 and so as to avoid an excessive bunching of review work that would otherwise arise after the year 2000. He wondered whether, in these circumstances, the Council could agree that the Chair would consult next year with individual Members whose legislation had not been subject to the present review exercise, but whose legislation would have been, in whole or in large part, brought into conformity with the TRIPS Agreement in advance. The purpose of those consultations by the Chair would be to see whether there was scope for the legislation of such Members to be progressively incorporated into the review process by the Council after the conclusion of the present review programme, i.e. at the earliest in 1998. It would be clearly understood that the agreement of a Member to this would be without prejudice to the legal situation regarding its entitlements under Article 65 and would be intended as a practical contribution to the work of the Council. Any Member which considered that it might be able to assist the Council in this way would be invited to inform the Chair, who would keep the Council informed of the progress in the consultations.

36. The representative of the United States expressed support for the Chairman's suggestions.

37. The representative of Singapore acknowledged that his delegation had received questions from the United States and had individually sent a response to the United States in a letter, dated 31 October 1996. In that letter, his delegation had indicated to the United States that its position had not changed since the July meeting. The review exercise did not apply to Singapore, as the review, according to the procedures adopted by the Council in May and July, only applied to Members obliged to comply with the TRIPS Agreement under Article 65.1 and to any other Members not still availing themselves in respect of the area of legislation under review of any longer transitional period to which they might be entitled. He reassured the United States and the TRIPS Council that Singapore was committed to fulfilling its obligations under the TRIPS Agreement. As also stated at the July meeting, Singapore would continue with its ongoing efforts to bring its legislation into conformity with the Agreement. He could support the Chairman's practical approach to this matter and the proposed consultations, provided that it would be made absolutely clear that the Members in question remained



fully entitled to their rights under Article 65 and that their participation in such consultations was of a voluntary nature.

38. The representative of Korea said that his delegation was not opposed to the Chairman's suggestion to start consultations with developing country Members aimed at spreading out the review exercise, but wished to point out that this should not serve as a means to categorize Members as more advanced and less advanced developing countries. Neither should these consultations discourage early notifications by developing country Members of their legislation for transparency purposes. The consultations should be of a purely voluntary nature.

39. The representative of Mexico said that his delegation had noted with surprise the receipt of a series of questions about his country's legislation in the areas presently under review, given the transitional arrangements stipulated in Article 65 of the TRIPS Agreement. In regard to some of the questions posed to his delegation, namely those relating to the area of geographical indications, he expressed his delegation's willingness to enter into an exchange of information, as agreed, in the context of the preliminary work referred to in paragraph 34 of the Council's report to the Singapore Ministerial.

40. The representative of Poland confirmed that his delegation had received a number of questions concerning his country's legislation in the areas presently under review, including from the United States. However, Poland was enjoying the transitional period to which it was entitled under the TRIPS Agreement. His authorities had carefully examined the questions that had been put to Poland and had come to the conclusion that it would be premature to subject Poland's legislation at this time to the review exercise. The Chairman's proposal to hold consultations concerning an advance review of the legislation of a number of Members was a constructive one, but its acceptability hinged on certain caveats as indicated by previous speakers. His delegation would continue with its efforts to bring Poland's legislation into conformity with the TRIPS Agreement.

41. The Chairman said that Singapore and Korea, in expressing their concerns with regard to the consultations that he had proposed to hold, had given a precise description of the caveats contained in that proposal.

42. The Council agreed to proceed as proposed by the Chairman.

43. In regard to the procedures for the follow-up to the review exercise, the Chairman recalled that a number of delegations had indicated that they would provide responses in writing subsequent to the meeting to some questions put to them. In some cases this included the general question concerning priority rights that all Members had agreed to respond to.<sup>2</sup> He suggested that such responses, together with a necessary fine-tuning of preliminary responses already provided, be made available to the Secretariat by 20 December 1996, so that the records of the review could be produced without undue delay. One other point which he wished to mention was that, in a number of cases, the Secretariat had noted that delegations, in responding to questions, had referred to legislative texts that had not been notified to the Council. The Secretariat would provide a list of such texts to the Members concerned so that they could take any necessary action in accordance with the procedures that the Council had adopted for notifications under Article 63.2. He said that the work under this agenda item had yielded once more a mass of information which would require time for delegations to digest. In some cases, it had become clear that some Members still had some work to do to adapt their legislation fully and it was important that this should be done with a minimum of delay. He also recalled that the procedures

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<sup>2</sup>In the context of the present review, Members agreed to provide a response to the following question:

Does your country recognize a right of priority on the basis of an earlier trademark application filed in any other WTO Member by a national of a WTO Member?

adopted for this review (as reflected in documents IP/C/M/7, paragraph 6 and IP/C/M/8, paragraphs 69 and 70) provided that at subsequent meetings of the Council an opportunity would be given to follow up any point emerging from the review sessions which delegations considered had not been adequately addressed.

44. Turning to the Council's review meeting scheduled for the first half of 1997, the Chairman recalled that, according to the "Schedule for Consideration of National Implementing Legislation in 1996/1997" decided by the Council in November 1995 (document IP/C/3), that review would relate to the areas of patents, layout-designs of integrated circuits and undisclosed information. The week of 26 to 30 May 1997 had been set aside for a Council meeting during which that review would be undertaken. He suggested that the same basic procedures would be used as employed so far and proposed the following dates for the advance notice of questions and the submission of replies, taking into account not only the experience with the review so far but also that the review of these areas was likely to elicit considerable interest and that there was a full six months before the review was scheduled:

- submission of advance notice of questions to the Member concerned and to the Secretariat: 15 March 1997;
- submission of responses to questions: 30 April 1997.

Given that the timetable that he was envisaging was somewhat more relaxed than that which the Council had had for the reviews conducted so far, he also suggested that Members make an effort to give some form of advance notice of follow-up questions, prior to the review meeting.

45. The Council so agreed.

**I. Review of the application of the provisions of the Section on geographical indications under Article 24.2**

46. The Chairman recalled that, at the Council's meeting in September, there had been a discussion of this matter on the basis of a non-paper provided by the European Community and that the Council had agreed to take up work on this matter by including on the agenda of the November meeting the present item which would be addressed after and taking into account the review of legislation in the areas of trademarks, geographical indications and industrial designs, it being understood that this would permit the consideration of the proposals put forward in September together with any other inputs from delegations.

47. The representative of the European Community said that it had been useful that this item had been scheduled after the review of legislation notified under Article 63.2 of the TRIPS Agreement relating to geographical indications and trademarks because the work in that review exercise had demonstrated that a great variety of approaches existed as to how to implement the relevant provisions of the TRIPS Agreement. It was in the light of this factual situation that his delegation had prepared the non-paper referred to by the Chairman. He therefore wished to underline his delegation's suggestions in the non-paper for work by the Council in the framework of the special review under Article 24.2 of the TRIPS Agreement. In his delegation's view, it would be helpful if, as a first step, the Secretariat drew up a comparative paper concerning the definitions of geographical indications which were in force in those WTO Members that had notified their legislation under Article 63.2. Since it was also important to compare the systems for the acquisition and enforcement of protection for geographical indications in each Member of the WTO, his delegation had also proposed that the Secretariat draw up a comparative table showing these various systems and highlighting the individual differences. Finally, it would be

useful if bilateral agreements in the area of geographical indications were notified to the Secretariat in order to enable the drawing up of a comprehensive list of such agreements.

48. The representative of India expressed the interest of his delegation in following up some of the ideas contained in the non-paper submitted by the European Community at the September meeting and especially the proposals that had just been outlined by the Community representative. Article 24.2 of the TRIPS Agreement called for keeping under review the application of the provisions of Section 3 of Part II of the Agreement, with the first review being within two years of the entry into force of the WTO Agreement. His delegation was happy that the TRIPS Council had decided, as reflected in its report to the Singapore Ministerial Conference, that such a review would include the scope of the protection of geographical indications. Geographical indications were protected under Article 22 against use in a manner which misleads the public as to the geographical origin of the good or any use which constitutes an act of unfair competition. Under Article 23, geographical indications for wines and spirits were provided an absolute protection even where the use was of such a nature as not to mislead the public as to the true place of origin. It was his delegation's view that it was within the jurisdiction of the TRIPS Council to interpret these Articles harmoniously under the review envisaged under Article 24.2. His country was committed to its obligations under the Agreement regarding additional protection for these products and would be naturally interested in seeking such additional protection for products of interest to it, such as food products. In his delegation's view, this issue had to be addressed under the continuous review proposed under Article 24.2. It was important that solutions to his country's concerns should be discussed in the TRIPS Council even while looking at the preliminary work on the multilateral system of notification and registration for wines under Article 23.4. This was because one of the solutions could well be to expand the scope of Article 23 to cover products of interest to other WTO Members. In such a case, Article 23.4 would have to take into account such additional products, as it was unlikely that the registration or judicial authorities in different Members would be familiar with the geographical indications originating in other Members. Further, the administrative burden in examining each application for registration as a geographical indication (or as a trademark) could be immensely reduced by such a system of notification. One option which could be considered by the Council was to devise a method to entitle Members which afforded protection to geographical indications originating from the jurisdiction of other Members at a higher level than that required under Article 22, at their request, to seek and obtain the same higher level of protection for products of interest to them from those Members. These were the preliminary views of his delegation on this matter; he would revert to this issue in more detail, with appropriate inputs, when the Council considered the process of the Article 24.2 review at its subsequent meeting. At this moment, his delegation would like the Council to appreciate its concern, since it required discussion, and a resolution, well before the expiration of the transitional period allowed to some Members under Article 65 of the Agreement.

49. The representative of Switzerland said that under Article 24.2 the TRIPS Council was called upon to keep under review the application of the provisions of the Section on geographical indications (Articles 22 to 24 of the Agreement) and emphasized that this review was scheduled to be a continuous exercise that as such could not be concluded by the end of the year. The TRIPS Council had just decided that Members would have the opportunity in the context of the Article 24.2 review to present inputs on the issue of scope of application of geographical indications. Her delegation believed that this was an appropriate and effective way of contributing to the implementation of the Section on geographical indications. Her delegation, like other delegations, had always considered that it was proper to extend the additional protection for wines and spirits to other sectors and had already expressed its interest in the extension of this additional protection to, for example, foodstuffs, handicraft and industrial products. In this regard, her delegation had carefully listened to the explanations by Members of the protection they offered to products other than wines and spirits. The present review allowed her delegation to note that significant differences and gaps existed in the protection offered by the various regimes. In this context, her delegation wished to support the proposals that had just been outlined

by the European Community. Furthermore, her delegation was convinced that it would be necessary to work towards improvements in this area. At the appropriate time, her delegation would submit its position in writing, in particular regarding the scope of application of geographical indications, on the objectives and on her delegation's ideas as to possible future action. In conclusion, she said that her delegation would play an active role in the preliminary work to be carried out in 1997, which would focus on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits.

50. The representative of the United States said that, in addressing the issue of the review indicated in Article 24.2 of the TRIPS Agreement, his delegation attached importance to a differentiation between what was required by the Agreement and what extra activities one or more delegations would like to see undertaken by the TRIPS Council. Article 24.2 clearly stated that Members were to review the application of the provisions of the Section on geographical indications by the end of 1996. During the review of national implementing legislation that had taken place at the present meeting, all Members had had the opportunity to ask as many primary and follow-up questions as they desired in this area and had largely availed themselves of this opportunity. Although some of the questions had been of a general nature, many other questions had been very specific, asking the Member in question to provide a detailed interpretation or respond to a detailed comparison. As a result, delegations had obtained a considerable amount of detailed information on the systems for the protection of geographical indications in the Members concerned and the review had been as thorough as any Member could have reasonably expected. In his delegation's view, this meant that Members had fulfilled their obligation under Article 24.2 of the Agreement to review the application of the provisions of the Section on geographical indications by the end of the year. He also stressed that many of the questions posed on other Members' legislation had not yet been answered and that it was consequently premature to consider at this time any further work. Precious resources should not be used to embark on new initiatives until Members had had a chance to absorb and analyse the huge amount of information generated by the review exercise. In conclusion, he said that his delegation could not agree, at this time, to the additional work suggested by the European Community that went beyond the requirements under the Agreement.

51. The representatives of Chile, Canada, Argentina and Brazil supported the views expressed by the United States.

52. The representative of Turkey referred to the philosophy behind the provisions on geographical indications in the Agreement and expressed support for the proposals from the European Community, in particular concerning the definition of geographical indications, as well as those from India and Switzerland concerning the extension of the additional protection for wines and spirits to other products.

53. The representative of the Czech Republic said that his delegation supported the proposals advanced by the European Community. Referring to the Council's 1996 report, in particular the issues and recommendations related to geographical indications to be brought to the attention of the Singapore Ministerial Conference and the anticipated submission of inputs by delegations on the issue of scope, he said that his delegation was of the view that, in order to attain the objectives of the Section on geographical indications, further efforts were desirable to provide adequate standards concerning the availability, scope and use of intellectual property rights in this area. The provisions of this Section, in particular Articles 23 and 24, provided room and opportunity for taking action as might be agreed in order to facilitate the operation of the Section and the attainment of its objectives, including increasing the protection of geographical indications under Article 23 and dealing with problems arising from the different levels of protection under Articles 22 and 23. The complexity of the issues related to geographical indications required early work aimed at further evolution in this area. Limitation of the higher level of protection under Article 23 to wines and spirits denied a number of products, and countries producing these products, the protection for their geographical indications often urgently

needed in order to deal effectively with imitations, counterfeits and other such uses of their geographical indications. One of the possible approaches to resolve this problem could be to enlarge the scope of Article 23 by encompassing other products of interest to WTO Members. His country had a strong interest in the additional protection of geographical indications for beers. His delegation saw the review under Article 24.2 as a continuing process requiring the Council to pay constant attention to matters affecting the operation of the Section on geographical indications and the compliance with its obligations. This process, which in his delegation's view corresponded to the recommendations and approaches outlined in the Council's report to the Singapore Ministerial Conference, should not be impaired by any impediments or time constraints and should proceed step by step aiming at securing a more absolute protection also in respect of other products. His country intended to participate in this process and would offer appropriate inputs which would address the issue of scope and improvement of the protection of geographical indications under Section 3 of Part II of the TRIPS Agreement.

54. The representative of Hungary said that his delegation was ready to start negotiations as foreseen in Article 24.1 of the TRIPS Agreement. Under the new laws of his country, additional protection was ensured for all geographical indications, not only those for wines and spirits as set forth in Article 23.1. Therefore, in principle, he could support the proposals made by the European Community as contained in its non-paper. His delegation favoured the establishment of a multilateral system of registration of geographical indications and wished to draw attention to the existing multilateral agreement concluded under the auspices of WIPO as well as to subsequent efforts undertaken in WIPO aimed at setting up an international treaty in this field: these exercises had generated specific knowledge in WIPO that might facilitate the preparation of work in the WTO. Furthermore, the Agreement between WIPO and the WTO provided for a basic framework for the utilization of this specific knowledge. Therefore, his delegation suggested that the preparatory work for the setting up of a new international system should be carried out in association with WIPO. As regards the proposed notification of bilateral agreements in the area of geographical indications, he expressed his delegation's readiness to notify its bilateral agreements. Finally, he believed that the preparatory process would be served by setting a timeframe for these notifications.

55. The representative of Mexico was supportive of the Community proposals to the extent that these provided more detailed suggestions in respect of notifications and introduced order into the work. She cautioned, however, that the Council should not move too hastily and recalled that the work agreed upon in this area as reflected in paragraph 34 in conjunction with paragraph 27 of its 1996 report had not even started yet. Her delegation had an interest in this area and was, in principle, open to discuss any related issue, but first wished to see more clearly the aims of other Members.

56. The representative of New Zealand said that her delegation continued to study carefully the material it had received in September and it would also study carefully any future inputs. Her delegation considered it important to recall, at the outset, the nature of the exercise on which Members had taken up work today and, in that regard, wished to draw particular attention to the specific wording in paragraph 34 of the Council's report to the Singapore Ministerial, which stated that Members had agreed that the review of the application of the provisions of the Section on geographical indications as provided for in Article 24.2 of the TRIPS Agreement would take the form outlined in paragraph 27 of that report which permitted inputs from delegations on the issue of scope. In her delegation's view, it was clear that the task before Members was the review of the application of existing provisions of the Agreement, not a negotiation. This was a task on which Members had already made substantial progress in the review of national implementing legislation at the present meeting. A large number of questions on geographical indications had been asked and answers, in some instances very detailed ones, had been given. These questions addressed a range of different matters including those raised in the non-paper presented by the European Community at the September meeting and a mass of information had been generated which Members still needed to digest, while several questions still had to be answered. Moreover, in accordance with the practice that Members had established in this Council, each Member

would have the opportunity to raise, at subsequent meetings of the Council, any point it wished by way of follow-up to the review of national implementing legislation. This process had and would continue to enable a detailed consideration of matters pertinent to the Article 24.2 review, including those covered in the non-paper from the European Community. Further consideration of the ideas put forward by the Community might be necessary, but it was too early to take any decision on any of the matters concerned.

57. The representative of Australia said that two different issues were being addressed in the discussions which should be dealt with separately. The first issue was the Article 24.2 review, which Members were currently undertaking, and which was far from being finalized, and the second issue was the preliminary work to be initiated in 1997 on issues relevant to the negotiations under Article 23.4. Her delegation fully supported the views expressed by New Zealand regarding, in particular, the report of the TRIPS Council to the Singapore Ministerial and also wished to echo the comments made by previous speakers regarding the outstanding work of the Council and the nature of priorities.

58. The representative of the European Community said that he failed to see what additional workload his delegation's suggestions would bring for delegations, given that the idea was to invite the Secretariat to do certain initial work, on the basis of data which were already available or which would be made available as a consequence of the review process.

59. The representative of Korea said that his delegation needed more time to analyse and examine the implications of the Community proposals.

60. Concluding the discussion, the Chairman said that the Council already had before it a number of proposals and that others could be expected as had been foreshadowed, for example, in the statements by India, Switzerland and the Czech Republic. At the same time, as pointed out by several delegations, Members would also need time to digest the information which had emerged from the review of national implementing legislation relating to geographical indications. In regard to the nature of the Council's future work, there seemed to be a variety of divergent views and, in the circumstances, he proposed that the Council take note of the statements that had been made and agree to give further consideration to how the issue of reviewing the application of the provisions of the Section on geographical indications under Article 24.2 would be handled. He proposed to do this through informal consultations in the first instance which, in view of various commitments before the Singapore Ministerial, would take place early next year. The timing of those consultations would also need to take into account the timeframe in which delegations which had promised to table proposals were able to make them available.

61. The Council agreed to proceed as proposed by the Chairman.

## **J. Other business**

### *(i) Protocol of Accession of Ecuador*

62. The representative of the United States said that his delegation had been surprised when at the Council's September meeting Ecuador had indicated that it intended to avail itself of the full transitional period for developing country Members under Article 65 of the TRIPS Agreement. It was the clear understanding of his country's officials who had been involved in the accession process of Ecuador that Ecuador had accepted the obligation to comply fully with the TRIPS Agreement, without recourse to the transitional provisions stipulated in Article 65, by 31 July 1996. His delegation was also of the understanding that the representatives of Ecuador had fully understood this obligation and accepted it. This issue had specifically been addressed during the accession negotiations and was clearly reflected in the documents concerning Ecuador's accession to the WTO. The third paragraph of Part I

of the Protocol of Accession of Ecuador indicated that, except as otherwise provided in paragraph 81 of the report of the Working Party on the Accession of Ecuador, the transitional provisions of the TRIPS Agreement and of any WTO Agreements would apply to Ecuador. Paragraph 78 of the report of the Working Party said that "[t]he representative of Ecuador confirmed that the date of application of the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights for Ecuador will be no later than 31 July 1996". Paragraph 81 of the report incorporated by reference this statement in paragraph 78. Consequently, it was clear that Ecuador had committed itself to fully implement the TRIPS Agreement by 31 July 1996. He expressed his delegation's deep concern with Ecuador's apparent unwillingness to meet these obligations, which might set an unfortunate precedent.

63. The representative of Ecuador wished to point out, first, that Ecuador was not trying to shirk its commitments and obligations as regards the protection of intellectual property rights. Ecuador was a Member of WIPO and had sound legislation to protect intellectual property, having incorporated the standards of the main international conventions into its legislation. Its Congress had ratified the WTO Agreement, including the TRIPS Agreement. However, it must be recognized that bringing certain aspects of its national legal system into conformity with the provisions of the TRIPS Agreement required time. In carrying out this process, Ecuador had the right to invoke the transitional period for developing country Members under the TRIPS Agreement and would welcome technical cooperation during that period, from any source. He also recalled that, during the process of accession, his delegation had pointed out that Ecuador's national legislation for the protection of intellectual property incorporated the common standards of the Andean Group, of which subregional integration agreement Ecuador was a member; these common standards provided adequate protection in respect of various categories of intellectual property, including patents, industrial designs, utility models, trademarks, trade names and geographical indications. Consideration of the provisions of this set of common rules, as contained in various instruments, in particular Decision 344 of the Cartagena Agreement, within the WTO would be subject to the transitional period of Article 65.2 applicable to all members of the Andean Group. The second aspect that he wished to point out was that his delegation could not accept attempts to impair its country's rights in the WTO. This was a matter of principle concerning the defence of acquired rights of developing countries under the WTO Agreement. Lack of respect for the principle of equity and for the special and differential treatment reserved for developing country Members might jeopardize and damage the image that other developing countries had of the multilateral system of the WTO. Longer periods of transition, as reflected in the TRIPS Agreement, had been agreed in order to provide the countries in question the opportunity to bring their systems into conformity with the requirements under that Agreement within the multilateral system of the WTO. It was not merely a matter of determining the date as of which the provisions of the TRIPS Agreement had to be applied by Ecuador. What was at stake here was the way in which stronger countries perceived the interests of developing countries in the WTO. The legal protection that the WTO system provided was not the exclusive prerogative of the great powers. Ecuador's participation in the WTO was justified if it could be sure that, if its government wished to exercise legitimately any right contemplated in an international instrument within the WTO system, for example under Article 65.2 of the TRIPS Agreement, it had the right to demand this if necessary. Turning to the interpretation of Ecuador's Protocol of Accession, he wished to make it clear that the text of the Protocol, at least in Spanish, did not imply that Ecuador was now in a position of having lost the right to invoke the transitional period provided for in Article 65.2 of the TRIPS Agreement. The position of Ecuador was not comparable to that of other countries that had recently acceded to the WTO. Unlike the countries in question, Ecuador had not accepted an unequivocal declaration in its Protocol of Accession that it would not make use of any transitional period under the TRIPS Agreement.

64. The representatives of Switzerland, Australia, New Zealand and the European Community shared the concerns expressed by the United States in respect of the importance of strictly abiding by commitments in accession protocols. The representative of Switzerland said that paragraph 78 of the report of the Working Party on the Accession of Ecuador, in French, provided that Ecuador would

apply the provisions of the TRIPS Agreement on 31 July 1996 at the latest. The representative of Australia said that specific derogations from transitional periods in accession protocols took precedence over the provisions in question of the WTO Agreement and of its annexes, such as Article 65 of the TRIPS Agreement.

65. The representatives of Colombia, Venezuela and Cuba supported Ecuador. A careful reading of Ecuador's Protocol of Accession led to the conclusion that Ecuador had not given up its right to invoke Article 65.2 of the TRIPS Agreement. The objective of the transitional arrangements in that Article was to allow developing countries sufficient time to adapt their national laws to the provisions of the TRIPS Agreement and in this way make sure that the Agreement was properly applied. This was precisely the situation in which Ecuador found itself, in particular since it had common laws on intellectual property with the other Andean Group countries.

66. The representative of Ecuador reiterated that the provisions of Article 65.2 constituted Ecuador's rights, which could not be diminished by means of a subsequent interpretation of the scope of the text and of the conditions, which Ecuador had negotiated with WTO Members and agreed to in precise terms as reflected in its Protocol of Accession. The undertaking contained in the Protocol of Accession should be read in conjunction with paragraph 2 of Article 65 of the TRIPS Agreement.

67. The Chairman proposed that the Council take note of the statements made and that it should remain open to any Member to revert to this matter at a future meeting of the Council.

68. The Council so agreed.

(ii) Dates of future meetings

69. The Chairman recalled that, at the Council's meeting of 5 November 1996, Members had been informed that the Secretariat had provisionally reserved, in the WTO schedule of meetings for 1997, the dates of 26 February, 26-30 May, 15 July, 30 September and 24-28 November for meetings of the TRIPS Council in 1997. The May and November meetings would focus on the review of national implementing legislation. He proposed that the Council agree to pencil in these dates, on the understanding that the Council might agree to amend them or convene additional meetings as appropriate.

70. The Council so agreed.