

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED
PC/IPL/7
25 November 1994

(94-2536)

SUB-COMMITTEE ON INSTITUTIONAL,
PROCEDURAL AND LEGAL MATTERS

INFORMAL CONTACT GROUP ON TRIPS

Report by the Chairman as approved by the Sub-Committee on 18 November

1. This report of the work of the Informal Contact Group on TRIPS, established by the Sub-Committee at its meeting of 4 July 1994, is being submitted to the Sub-Committee on the responsibility of the Chairman of the Contact Group, Mr. K. Kesavapany (Singapore).
2. The Contact Group held three meetings, on 19 July 1994, on 23 September 1994 and 25 October 1994. The Contact Group was open to any member of the Preparatory Committee. 64 delegations indicated an interest in attending the Contact Group and participated in its work. At the meeting of the Contact Group on 25 October 1994, the International Bureau of the World Intellectual Property Organization (WIPO) was represented in an observer capacity.
3. This report is confined to the Contact Group's work on TRIPS matters. The Contact Group was asked by the Sub-Committee to also look at preparatory work in connection with TRIMs notification procedures. A separate report relating to this matter will be submitted in due course.¹
4. Two main issues, interrelated with each other, were the focus of discussion in the Contact Group: cooperation between the WTO and the WIPO, and notification procedures. The paragraphs that follow present the outcome of the work of the Contact Group on these points. A brief record of the work which took place at each of these meetings can be found in Annex 1 of this report.

Cooperation between the WTO and the WIPO

5. The Contact Group agreed that the WTO should seek close, cooperative and mutually supportive relations with the WIPO, in accordance with the relevant provisions of the TRIPS Agreement (Preamble, Article 63.2 and Article 68). The detailed attention given to this issue in the Contact Group in the context of the preparatory work for the WTO is a tangible expression of the importance attached to this. At its October meeting, the Contact Group was informed by the representative of the International Bureau of WIPO of a Resolution of the WIPO General Assembly of 3 October 1994 on relations with the WTO.² The Contact Group welcomed the expression in this Resolution of the desire of WIPO also to establish a mutually supportive relationship between the WIPO and the WTO.

¹To be circulated as PC/IPL/8.

²For text of statement, see Annex 2. See also communication from the Director General of WIPO reproduced in document PC/IPL/W/11.

6. The Contact Group established and initiated a staged programme of preparatory work on the question of the development of appropriate arrangements for cooperation between the WTO and the WIPO:

- (i) The first stage was to establish basic information on the possible areas of cooperation and on relevant WIPO practices. To this end, the Secretariat prepared, at the request of the Contact Group, documents referring to relevant TRIPS and other WTO provisions and containing a checklist of possible areas of cooperation. These documents also include a description of how notification systems in regard to national legislation and certain other matters are handled in the WIPO context; this description was prepared with the aid of informal assistance from the International Bureau of the WIPO, for which the Contact Group is grateful. These documents will be circulated as Addenda 1 and 2 to this document. In addition, at its October meeting, the Contact Group benefited from additional information provided by the representative of the International Bureau of WIPO in response to questions from members of the Contact Group; a record of the questions put and responses given is contained in Annex 3.
- (ii) The Contact Group has initiated a second stage of this work programme, which consists of a clarification of what Members of the WTO might wish to achieve on certain issues, such as the notification of national legislation, and of what forms of cooperation the TRIPS Council might seek with the WIPO. This work is still at a preliminary stage and will have to be carried forward by the TRIPS Council.
- (iii) The third stage of the work programme on cooperation with WIPO consists of considering how the consultations between the two Organizations might best be organized. Certain ideas have been put forward, including by the International Bureau of WIPO (see Annex 2), but it is clearly too early to come to a decision on this matter.
- (iv) The fourth stage in the work on cooperation with WIPO, which has yet to be initiated, will involve the holding and conclusion of consultations with WIPO aimed at the establishment of appropriate arrangements for cooperation, as envisaged in Article 68 of the TRIPS Agreement.

7. The Contact Group recommends that this report of its consideration of the question of cooperation with WIPO, together with the documents referred to, be transmitted to the TRIPS Council by the Sub-Committee for further action. In making this recommendation, attention is drawn to the fact that Article 68 of the TRIPS Agreement gives the TRIPS Council one year from its first meeting in which to seek the establishment of appropriate arrangements for cooperation with the bodies of WIPO. The work undertaken in the Contact Group will facilitate the TRIPS Council in this task, but it is clear that a great deal more thought and attention will have to be given to this matter before appropriate cooperative arrangements are finally established.

8. Once the consultations will have been successfully concluded, the cooperative arrangements between the two Organizations will no doubt need to be formalized through an exchange of letters or some similar mechanism and will likely entail the granting to WIPO, on a reciprocal basis, of observer status in relevant WTO bodies. The Contact Group recommends that the Sub-Committee recommend to the TRIPS Council that, during 1995, pending the conclusion of these arrangements, WIPO be invited to attend meetings of the TRIPS Council in an observer capacity, on the understanding that the WTO would have a similar opportunity to attend WIPO meetings. The Sub-Committee might also ask the TRIPS Council to consider whether WIPO should be invited to meetings of the General Council when matters of direct relevance to it are under discussion.

Notification procedures

9. The question of examination of any preparatory work required on notification procedures is closely related to the question of cooperation with WIPO, since Article 63.2 of the TRIPS Agreement calls for consultations with WIPO on the possible establishment of a "common register" of national laws and regulations and many of the other notification obligations in the TRIPS Agreement derive from provisions of WIPO Conventions incorporated by reference. The Secretariat notes, to be circulated as Addenda 1 and 2 of this document, and the additional information provided by the representative of the International Bureau of WIPO in response to questions at the October meeting of the Contact Group (recorded in Annex 3 of this report) provide basic factual material concerning this question. It was noted that the substantive obligations under the Agreement to which notifications relate will not, generally, have to be met until 1996 at the earliest. However, one substantive obligation, Article 70.8, which comes into force as of the date of entry into force of the WTO Agreement was referred to and there was acceptance that, under Article 63.2, national laws and regulations should be notified as of the time that the corresponding substantive obligation applies. Nonetheless, the Contact Group considered that it would be unwise to rush into an attempt to draw up notification procedures for national legislation simply because one provision applies at the outset. The Contact Group recommends that the record of its work on notification procedures, including the relevant documents, should be remitted to the TRIPS Council by the Sub-Committee, on the understanding that national laws and regulations implementing provisions that enter into force at the outset will be notified promptly to the TRIPS Council.

ANNEX 1RECORD OF WORK AT MEETINGS OF CONTACT GROUPMeeting of 19 July 1994

To aid it in its work, the Contact Group had an informal note, prepared by the Secretariat, listing the notification obligations in the TRIPS Agreement. The discussion in the Contact Group focused on these notification obligations, particularly that in Article 63.2 on the notification of national laws and regulations. In connection with this provision, the need to enter early on into dialogue with WIPO on the question of the possible establishment of a common register containing such laws and regulations was widely stressed. Many participants also spoke of the desirability of the Contact Group considering in the Fall other areas of possible co-operation between the WTO and the WIPO as a basis for the initiation of consultations with the WIPO. To facilitate the Contact Group's consideration of these matters in the Fall, the Secretariat was requested to prepare, on the basis of the discussions in the Contact Group and in consultation with interested delegations, and in the light of informal contacts with the WIPO Secretariat, a checklist of possible areas of co-operation between the WIPO and the WTO, specifying any relevant WTO provisions. In the context of this paper, the Secretariat was asked to provide information on the existing WIPO register of national legislation, including such matters as the nature of the obligation to notify in WIPO, the coverage of the WIPO notification system in relation to the TRIPS Agreement, the timing and distribution of notifications under it, and the languages in which notifications are made and circulated. The Contact Group agreed to meet again in the Fall to pursue its work, with the aid both of the note already distributed by the Secretariat on notification obligations and the paper that the Secretariat had been asked to prepare.

Meeting of 23 September 1994

Strong support was once more expressed for establishing close and mutually supportive relations with WIPO, and there was widespread satisfaction with the fruitful initial contacts which the Chairman and the Secretariat had had with the Director General of the WIPO, Dr. Bogsch, and his staff. A preliminary discussion took place on the basis of the resulting papers that the Secretariat had prepared. It was agreed that the WIPO should be invited to be represented as an observer at the next meeting of the Contact Group, it being understood that this would not rule out the possibility of the Contact Group also meeting without the presence of observers if it so wished.

The Contact Group also had a preliminary discussion of some ideas on how consultations between the two Organizations might be organized which Dr. Bogsch had shared with the Chairman during the informal contacts, namely the possible establishment of an informal joint consultative group open to any Member of either of the two Organizations and jointly serviced by the two Secretariats. The Contact Group was generally of the view that the issue of joint consultations between the two Organizations should be looked at carefully and a conclusion drawn at the appropriate time.

Meeting of 25 October 1994

The Contact Group took stock of recent developments concerning the question of cooperation between the WTO and the WIPO, in particular those at the meeting of the WIPO Governing Bodies of 26 September to 4 October 1994. In this regard, the representative of the International Bureau of WIPO made the statement to be found at Annex 2 of this document. The Contact Group also took up the question of notification procedures and, in particular, put a number of questions to the representative of the International Bureau of WIPO on relevant WIPO practices. A record of these questions and the responses given is in Annex 3 of this report. Finally, the Contact Group considered

the elements that should appear in its report to the Sub-Committee and set in motion a process for its preparation.

ANNEX 2

STATEMENT BY REPRESENTATIVE OF THE INTERNATIONAL BUREAU
OF WIPO AT CONTACT GROUP MEETING OF 25 OCTOBER 1994

I should like, in the name of the World Intellectual Property Organization, to thank you, Mr. Chairman, for the invitation to participate in today's meeting of the GATT-WTO Informal Contact Group on TRIPS. We should like also to thank the contracting parties of GATT which are Members of the Group for agreeing to WIPO's participation in the discussions.

As all present here today are aware, WIPO places much emphasis on the policy of good relations and close cooperation with GATT. That policy has become even more important with the conclusion of the TRIPS Agreement. We should like to use this occasion to assure you, Mr. Chairman, the contracting parties of GATT and the future members of the future WTO, that WIPO's policy will remain unchanged, also in respect of the future WTO.

I should like to inform the meeting of an important decision, in the form of a Resolution, taken by the General Assembly of WIPO earlier this month, on 3 October 1994. If you will permit me, I should like to quote that decision *in extenso*.

"1. Having noted that the preamble of the Agreement on Trade-Related Aspects of Intellectual Property Rights states that the Members of the World Trade Organization desire to establish a mutually supportive relationship between the World Trade Organization and the World Intellectual Property Organization, the WIPO General Assembly hereby also expresses the desire to establish a mutually supportive relationship between the World Intellectual Property Organization and the World Trade Organization.

"2. In accordance with its desire to establish a mutually supportive relationship between the World Intellectual Property Organization and the World Trade Organization, the WIPO General Assembly decides to establish an ad hoc working group open to all Member States of WIPO:

- (i) to advise and cooperate with the Director General of WIPO in his contacts with the competent organs of GATT/WTO;
- (ii) to discuss matters concerning possible cooperation between WIPO and WTO;
- (iii) to consider the establishment of an ad hoc informal WIPO/GATT-WTO Consultation Group on all matters concerning possible cooperation between WIPO and WTO.

"3. The WIPO General Assembly decides that the International Bureau should be at the disposal of any State that expressly asks for advice on questions of compatibility of its existing or planned national intellectual property legislation not only with treaties administered by WIPO, but also with other international norms and trends, including the Agreement on Trade-Related Aspects of Intellectual Property Rights, and that the International Bureau should prepare studies on the implications of the said Agreement on the treaties administered by WIPO."

The General Assembly also noted that, as was the practice in WIPO, any such advice or studies would not constitute an official interpretation of any international agreement.

The appropriate form and substance of the cooperation between WIPO and the future WTO has to be carefully examined and agreed to by the two sides. It is the view of the International Bureau of WIPO that such examination could best be carried out in a joint body comprised of Member States of WIPO and, initially, GATT contracting parties, with Member States of WTO joining when that Organization has been created. Such a joint body, which is foreseen in the Resolution of the WIPO General Assembly, could examine the various information issues raised in the GATT Secretariat papers dated 6 and 15 September 1994 and 19 July 1994. In addition, and equally important, that joint body could also look into the establishment of appropriate arrangements for cooperation between the TRIPS Council and WIPO as provided for in Article 68 of the TRIPS Agreement.

ANNEX 3QUESTIONS PUT TO AND REPLIES BY THE REPRESENTATIVE OF WIPO**Could you describe the system for the notification of legislation within the framework of WIPO?**

The system for the notification of legislation within the framework of WIPO is described very accurately in the GATT Secretariat note of 6 September 1994, notably in the tables on pages 3-5. Under the Paris and the Berne Conventions, Member States have an obligation to communicate to the International Bureau all new laws and official texts concerning the protection of industrial property or copyright. These Conventions do not specify how the reporting should be done and how the legal texts should be communicated. The International Bureau has two collections of laws, one in the area of industrial property and the other in the area of copyright and related rights. These collections include all the texts in the original language received from Member States and, where applicable, in translated versions as provided by Member States - usually in English but sometimes in French as well. In order to keep the collections up-to-date, the International Bureau requests Member States approximately every other year to send any newly-adopted pieces of legislation. At the same time, it informs Member States which of their laws form part of the collections, asking them to communicate any omissions. Some of the legal texts received are published, usually only the actual laws and not also implementing regulations, in WIPO's periodicals *Industrial Property* and *Copyright*, in the English and French languages (these journals will shortly be merged into a single one). However, it should be emphasized that only the most important texts are published in these journals. On some occasions, when a law has been changed and amended frequently, consolidated versions are published after a certain number of years, in order to improve transparency; this is, however, always subject to the approval - or with the help - of the Member State concerned. There is no formal notification of laws, but the journals *Industrial Property* and *Copyright* are sent to all Member States and members of the public.

Does the WIPO system cover non-Members?

If the International Bureau receives the law of a non-Member State, that law is put in the relevant collection, mainly because any such country is a prospective Member of WIPO. However, it has not been the practice to publish such laws.

Does the International Bureau rely purely on notifications from official sources or does it take positive action to make sure that the information in the collections is complete?

The collections include mainly, but not exclusively, texts received from official government sources, usually the patent and trademark office of the country concerned or its copyright authorities. Sometimes texts are received from other sources, for example translated versions of laws which have not been published in English by the International Bureau and whose text in the collection was received from the government only in the original language. In case the International Bureau, however, decides to publish such a translation, the government in question is always asked to check the translation.

Which categories of intellectual property are covered by the two collections?

The main categories which are covered by the collection of industrial property legislation are patents, trademarks, industrial designs, layout-designs of integrated circuits, unfair competition and geographical indications. The other collection contains legislation in the field of copyright and neighbouring rights. Legislation on the protection of undisclosed information or trade secrets is not

systematically collected, because this category of intellectual property under the TRIPS Agreement is very often not addressed in specific intellectual property legislation in WIPO Member States.

What are the criteria for deciding which laws should be translated and published?

The main criterion for deciding whether to publish a law or not is the interest of the reader. Consequently, the laws of all countries which have very important intellectual property activity in terms of, for example, filings are published. In addition, nowadays, also texts are published coming from countries which enact intellectual property laws for the first time. The practical limitations which require selectivity lie in the time needed for translation; moreover, the periodicals would be extremely bulky if everything received were to be published.

Does the International Bureau foresee, for the future, to publish also case law?

The International Bureau has never published case law or even systematically collected court decisions and does not intend to change that. One can never be sure that, even for a given country where court decisions are usually published, such a collection would be complete. So, the result could be more misleading than anything else. Besides, there are good collections of court decisions in some private institutes, like the Max-Planck Institute in Munich, which have been collecting court decisions for many years. There would not seem to be a good reason to duplicate their collection. Nevertheless, it should be mentioned that the International Bureau does have a special publication entitled "Intellectual Property in Asia and the Pacific", in which summaries of some court decisions are published. However, the relevant information is very partial and concerns only one region of the world.

Under what legal basis do Member States report their laws concerning the protection of layout-designs to WIPO?

Laws on layout-designs are sent to the International Bureau mainly on a voluntary basis. For one century, receiving and publishing laws has been a tradition in the International Bureau, the legal basis of which has never been questioned. Such a legal basis exists for industrial property, at least those parts of industrial property which are covered by the Paris Convention, and for copyright as covered by the Berne Convention. For neighbouring rights, as for layout-designs, no comparable legal basis exists.

Apart from communications from countries, does the International Bureau take the initiative to request a country to send a particular law it has come across but which is not contained in one of its collections?

If the International Bureau should learn about a new law issued by a certain country, be it through an official gazette or in a scientific or legal journal and it happens not to have the text, it would immediately ask that country to send it a copy.

What guarantee is there that the legislation contained in the collections of the International Bureau is the legislation which is effectively applied by the country in question?

There is no guarantee in the WIPO system that the collections contain the latest legislation in force. The International Bureau has to rely on the information provided by the Member States. It is, however, the experience of the International Bureau that, although countries sometimes have to be reminded and it occasionally takes some time until they communicate their laws, they generally consider it to be in their interest that their laws currently in force are known to the world and are quite cooperative.

Could you expand a little on the other notification requirements referred to in the GATT Secretariat note of 15 September 1994?

Part II of the note of 15 September covers two quite different types of notifications: one concerns notifications under Article 6*ter* of the Paris Convention, and the other all the other notifications. As far as Article 6*ter* of the Paris Convention is concerned, which deals with the protection of emblems, names, abbreviations, hallmarks, etc., of States as well as those of intergovernmental organizations, detailed explanations in writing have been provided to the GATT Secretariat as reproduced in Annex 3 to the note of 15 September. As far as the other notifications are concerned, a distinction has to be made between the Berne Convention on the one hand and the Rome Convention on the other, because the depositary of these Conventions is not the same. The depositary of the Berne Convention is the Director General of the WIPO whereas the depositary of the Rome Convention is the Secretary-General of the United Nations in New York. As far as the notifications provided for in the Berne Convention are concerned, whenever the Director General of WIPO receives such a notification from a State party to the Convention or other State entitled to make the notification, it is communicated to the governments of all States party to the Convention by the Director General of WIPO and also published in the WIPO periodical *Copyright*. In addition, the International Bureau publishes a reference to such notifications in an information document that is updated every six months and which is at the disposal of anybody; this document contains lists of States party to the various treaties administered by WIPO. As far as the Rome Convention is concerned, whenever the International Bureau receives from the Secretary-General of the United Nations, information that a notification has been made under the provisions of that Convention, the notification is published in the WIPO periodical *Copyright* and a reference to it is included in the document containing lists of States parties to treaties administered by WIPO.