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GENERAL ASSEMBLY

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WIPO AND
THE WTO AND TRIPS AGREEMENTS

Memorandum by the Director General

I. Contacts with the Future World Trade Organization

1. The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations--conducted among the Contracting Parties of the General Agreement on Tariffs and Trade (GATT)--was adopted in Marrakesh on April 15, 1994.
2. Out of the 147 members of WIPO and the 123 Contracting Parties of GATT, 106 belong to both WIPO and GATT. Among the 41 members of WIPO which are not GATT Contracting Parties are China, the Russian Federation, most of the other successor States of the former Soviet Union, and 17 developing countries. On the other hand, among the 17 GATT Contracting Parties which are not members of WIPO are 15 developing countries, as well as Hong Kong and Macao. (The latter two do not qualify for membership in WIPO since they are not States.)
3. A full list of the members of WIPO and the GATT Contracting Parties is in the Annex to this document.
4. The Final Act of Marrakesh contains an Agreement establishing the World Trade Organization (hereinafter referred to as "the WTO Agreement" and "the WTO," respectively). It also contains an Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as "the TRIPS Agreement"). The TRIPS Agreement is an integral part of the WTO Agreement, binding on all Members of the WTO (see WTO Agreement, Article II, paragraph 2).

5. One of the organs of the WTO is the General Council, which will be composed of representatives of all the Members of the WTO. Another organ of the WTO will be the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS)--hereinafter referred to as "the WTO/TRIPS Council"--which will operate under the general guidance of the WTO General Council and whose task will be to "oversee the functioning of the Agreement on Trade-Related Aspects of Intellectual Property Rights" (WTO Agreement, Article IV, paragraph 5), that is, the TRIPS Agreement.

6. The WTO will have a Secretariat.

7. At the date of the present document, neither the WTO Agreement nor the TRIPS Agreement is in force, but it is expected that both will enter into force soon, probably in 1995. At that time, the WTO General Council, the WTO/TRIPS Council (in which membership is open to representatives of all Members of the WTO) and the WTO Secretariat will come into existence and will start functioning. In the meantime, a Preparatory Committee for the WTO, with various subcommittees, functions. One of their tasks is to make recommendations to the WTO General Council (once it comes into existence) "concerning the appropriate arrangements with respect to relations with other organizations referred to in Article V of the WTO Agreement" (Decision on the Establishment of the Preparatory Committee for the World Trade Organization of April 14, 1994, paragraph 8(b)(iii)).

8. The preamble of the TRIPS Agreement states, inter alia, that the Members of the WTO desire "to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (WIPO) as well as other relevant international organizations."

9. The Director General proposes that the WIPO General Assembly declare that WIPO, too, desires the establishment of a mutually supportive relationship between WIPO and the WTO.

10. Article V, paragraph 1, of the WTO Agreement provides that "The General Council shall make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO." WIPO seems to fall into the said category as far as intellectual property is concerned, and the Director General of WIPO looks forward to the initiative of the WTO organs (whether preparatory or definitive) to discuss arrangements for effective cooperation between WIPO and WTO. He will, in due course, report on these discussions to the General Assembly of WIPO and ask for the latter's agreement to the arrangements thus discussed.

11. The TRIPS Agreement establishes norms of protection in respect of the following categories of intellectual property: (1) copyright and related rights, (2) trademarks, (3) geographical indications, (4) industrial designs, (5) patents, (6) layout-designs (topographies) of integrated circuits and (7) protection of undisclosed information.

12. Article 2 of the TRIPS Agreement provides that "nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated

Circuits." The Rome Convention is co-administered by WIPO, ILO and Unesco; the other three treaties are administered by WIPO. The said four (I to IV) Parts of the TRIPS Agreement are entitled "General Provisions and Basic Principles," "Standards Concerning the Availability, Scope and Use of Intellectual Property Rights," "Enforcement of Intellectual Property Rights" and "Acquisition and Maintenance of Intellectual Property Rights and Related Inter-Partes Procedures."

13. The TRIPS Agreement refers in several of its provisions to obligations existing under WIPO-administered treaties. For example, Article 2, paragraph 1, says that, in respect of Parts II, III and IV of the TRIPS Agreement, "Members shall comply with Articles 1 through 12, and Article 19, [that is, the articles on substantive obligations] of the Paris Convention (1967)," and Article 9, paragraph 1, contains a similar provision concerning the Berne Convention, except Article 6bis (moral rights) of that Convention.

14. Article 68 of the TRIPS Agreement provides that the TRIPS Council will (i) "monitor the operation of this [the TRIPS] Agreement and, in particular, Members' compliance with their obligations hereunder," (ii) "afford Members the opportunity of consulting on matters related to the trade-related aspects of intellectual property rights," (iii) "carry out such other responsibilities as assigned to it by the Members" and (iv) "in particular ... provide any assistance requested by them in the context of dispute settlement procedures."

15. Article 68 of the TRIPS Agreement also contains the following two sentences: "In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization." As in the case mentioned in paragraph 10, above, the Director General looks forward to the TRIPS Council's initiative for consultation with WIPO and will proceed in the same manner as indicated in that paragraph.

II. Advice to Member States of WIPO

16. Most of the States members of WIPO are expected to become party to the TRIPS Agreement. They will have to revise their national intellectual property laws in order to comply with their new obligations contracted under the TRIPS Agreement. Many of the developing countries members of WIPO have approached and continue to approach the International Bureau for advice, asking, in particular, what are the obligations under the TRIPS Agreement with which their present national laws do not comply and what kinds of provisions should be introduced in their legislation to comply with any new obligations that will exist for them under the TRIPS Agreement. It is natural and logical that they address such questions to WIPO, the more so since, as regards most of them, either their present legislation was prepared in consultation with the International Bureau of WIPO or they are in consultation with the International Bureau of WIPO with respect to ongoing or planned revisions of their legislation.

17. A characteristic example of such requests is a recent request of the WIPO Permanent Committee for Development Cooperation Related to Industrial

Property. That Committee has 113 members. Among them, 82 are developing countries, namely:

Algeria, Angola, Argentina, Bangladesh, Barbados, Benin, Brazil, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Democratic People's Republic of Korea, Ecuador, Egypt, El Salvador, Gabon, Gambia, Ghana, Guatemala, Guinea, Guinea Bissau, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kenya, Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Nicaragua, Niger, Pakistan, Panama, Paraguay, Peru, Philippines, Republic of Korea, Rwanda, Senegal, Sierra Leone, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United Republic of Tanzania, Uruguay, Venezuela, Viet Nam, Yemen, Zaire, Zambia, Zimbabwe.

The 31 countries members of the Permanent Committee, which are not developing countries, are the following:

Australia, Austria, Bulgaria, Canada, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Israel, Italy, Japan, Kazakhstan, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russian Federation, Slovenia, Spain, Sweden, Switzerland, Ukraine, United Kingdom, United States of America, Uzbekistan, Yugoslavia.

The said request of the Permanent Committee, adopted by consensus on June 21, 1994, reads as follows:

"The Permanent Committee urged the International Bureau to be at the disposal of developing countries wishing to receive advice on questions of compatibility of their existing or planned national intellectual property legislation not only with treaties administered by WIPO, but also other international norms and trends, including the recently concluded GATT agreement on TRIPs (trade-related aspects of intellectual property rights). In this connection, many delegations indicated the need for WIPO to prepare studies on the implications of the said agreement on the treaties administered by WIPO." (Document PC/IP/XVI/4, paragraph 19.)

18. The Director General proposes that the International Bureau should be at the disposal of any State that expressly asks for advice of the kind referred to in the preceding paragraph and that the International Bureau should prepare studies of the kind referred to in the same paragraph.

Decisions Invited

19. The WIPO General Assembly is invited to note the plans referred to in paragraphs 10 and 15, above, and to approve the proposals made in paragraphs 9 and 18, above.

[Annex follows]

ANNEX

WIPO AND GATT MEMBERSHIP

WIPO only (41)	Both WIPO and GATT (106)	GATT only (17)
Albania	-	-
Algeria	-	-
-	Angola	-
-	-	Antigua and Barbuda
-	Argentina	-
Armenia	-	-
-	Australia	-
-	Austria	-
Bahamas	-	-
-	Bangladesh	-
-	-	Bahrain
-	Barbados	-
Belarus	-	-
-	Belgium	-
-	-	Belize
-	Benin	-
Bhutan	-	-
-	Bolivia	-
Bosnia and Herzegovina	-	-
-	-	Botswana
-	Brazil	-
-	Brunei Darussalam	-
-	Burkina Faso	-
Bulgaria	-	-
-	Burundi	-
-	Cameroon	-
-	Canada	-
-	Central African Republic	-
-	Chad	-
-	Chile	-

WIPO only	Both WIPO and GATT	GATT only
China	-	-
-	Colombia	-
-	Congo	-
-	Costa Rica	-
-	Côte d'Ivoire	-
Croatia	-	-
-	Cuba	-
-	Cyprus	-
-	Czech Republic	-
Democratic People's Republic of Korea	-	-
-	Denmark	-
-	-	Dominica
-	-	Dominican Republic
Ecuador	-	-
-	Egypt	-
-	El Salvador	-
Estonia	-	-
-	Fiji	-
-	Finland	-
-	France	-
-	Gabon	-
-	Gambia	-
Georgia	-	-
-	Germany	-
-	Ghana	-
-	Greece	-
-	-	Grenada
-	Guatemala	-
Guinea	-	-
-	Guinea-Bissau	-
-	-	Guyana
-	Haiti	-
Holy See	-	-
-	Honduras	-
-	-	Hong Kong

WIPO only	Both WIPO and GATT	GATT only
-	Hungary	-
-	Iceland	-
-	India	-
-	Indonesia	-
Iraq	-	-
-	Ireland	-
-	Israel	-
-	Italy	-
-	Jamaica	-
-	Japan	-
Jordan	-	-
Kazakhstan	-	-
-	Kenya	-
-	-	Kuwait
Kyrgyzstan	-	-
Latvia	-	-
Lebanon	-	-
-	Lesotho	-
Liberia	-	-
Libya	-	-
-	Liechtenstein	-
Lithuania	-	-
-	Luxembourg	-
-	-	Macau
-	Madagascar	-
-	Malawi	-
-	Malaysia	-
-	-	Maldives
-	Mali	-
-	Malta	-
-	Mauritania	-
-	Mauritius	-
-	Mexico	-
Monaco	-	-
Mongolia	-	-

WIPO only	Both WIPO and GATT	GATT only
-	Morocco	-
-	-	Mozambique
-	-	Myanmar
-	Namibia	-
-	Netherlands	-
-	New Zealand	-
-	Nicaragua	-
-	Niger	-
-	-	Nigeria
-	Norway	-
-	Pakistan	-
Panama	-	-
-	Paraguay	-
-	Peru	-
-	Philippines	-
-	Poland	-
-	Portugal	-
-	Qatar	-
-	Republic of Korea	-
Republic of Moldova	-	-
-	Romania	-
Russian Federation	-	-
-	Rwanda	-
-	-	Saint Kitts and Nevis
-	Saint Lucia	-
San Marino	-	-
-	-	Saint Vincent and the Grenadines
Saudi Arabia	-	-
-	Senegal	-
-	Sierra Leone	-
-	Singapore	-
-	Slovakia	-
Slovenia	-	-
Somalia	-	-
-	South Africa	-

WIPO only	Both WIPO and GATT	GATT only
-	Spain	-
-	Sri Lanka	-
Sudan	-	-
-	Suriname	-
-	Swaziland	-
-	Sweden	-
-	Switzerland	-
Tajikistan	-	-
-	Thailand	-
The former Yugoslav Republic of Macedonia	-	-
-	Togo	-
-	Trinidad and Tobago	-
-	Tunisia	-
-	Turkey	-
-	Uganda	-
Ukraine	-	-
-	United Arab Emirates	-
-	United Kingdom	-
-	United Republic of Tanzania	-
-	United States of America	-
-	Uruguay	-
Uzbekistan	-	-
-	Venezuela	-
Viet Nam	-	-
Yemen	-	-
-	Yugoslavia	-
-	Zaire	-
-	Zambia	-
-	Zimbabwe	-

[End of Annex and of document]