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REPORT OF THE GROUP OF GOVERNMENTAL EXPERTS ON THE ROLE OF THE
INDUSTRIAL PROPERTY SYSTEM IN THE TRANSFER OF TECHNOLOGY

on its session held at the Palais des Nations, Geneva,
from 6 to 14 October 1977

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*/ The text of this annex will be issued in an addendum to the present report.

INTRODUCTION

1. The Group of Governmental Experts on the Role of the Industrial Property System in the Transfer of Technology, which held its session at the Palais des Nations, Geneva, from 6 to 14 October 1977, was convened by the Secretary-General of UNCTAD pursuant to resolution 3 (I) adopted by the Committee on Transfer of Technology at its first session, to continue, in the light of resolution 88 (IV) adopted by the United Nations Conference on Trade and Development at its fourth session (in particular, paragraph 4 thereof), the examination of the economic, commercial and developmental aspects of industrial property in the transfer of technology to developing countries and to make recommendations thereon. In the course of its session, the Group of Experts held six plenary meetings.
2. The session was opened on 6 October 1977 by the Deputy Secretary-General of UNCTAD, who made a brief statement.

Chapter I

THE IMPACT OF TRADE MARKS ON THE DEVELOPMENT PROCESS
OF DEVELOPING COUNTRIES

(Agenda item 3)

A. Introductory comments

3. The representative of the Secretary-General of UNCTAD, introducing the report entitled "The impact of trade marks on the development process of developing countries" (TD/B/C.6/AC.3/3), said that this document had been prepared in accordance with paragraph 6 of resolution 3 (I) of the Committee on Transfer of Technology and Conference resolution 88 (IV). The industrial property system rested on two main pillars: patents and trade marks. This was the first time that serious discussion on trade marks had been attempted by the international community. He explained that the secretariat report consisted of three parts: first, a theoretical framework of the trade-mark system; second, a study of trade marks in developing countries; and third, a brief summary providing a synthesis of the document. The whole report had been conceived as a complement to the earlier secretariat report on the patent system.^{1/}

4. Unlike patents, trade marks had quite distinct features. Patents were intended to stimulate innovation and creativity; trade marks to create goodwill and brand loyalty. Referring to the main findings of the report, he said that it was against this basic framework that the impact of trade marks in developing countries had to be appreciated. The secretariat had listed some possibilities for revision of the trade-mark system at the national and international levels and some policy alternatives such as, for example, shifting from brand names to generic names in pharmaceuticals. Other areas related to fee policy, quality control, taxation on capital gains derived from trade marks, combination of national trade marks with foreign trade marks, promotion of national trade marks in export markets, etc.

5. He added that trade marks, particularly foreign-owned trade marks, were an omnipresent phenomenon in the daily life of ordinary people in developing countries. Especially in Africa and Asia, foreign-owned trade marks represented the majority of new registrations and they certainly had the highest economic value and importance. Such marks carried most of the advertising efforts of the leading subsidiaries of manufacturing transnational corporations and of transnational advertising agencies - efforts not comparable to the underdeveloped R & D activities of those countries.

^{1/} The role of the patent system in the transfer of technology to developing countries (TD/B/AC.11/19/Rev.1) (United Nations publication, Sales No. E.75.II.D.6).

6. In conclusion, he expressed the hope of the secretariat that the broadest consideration would be given to these issues.

B. General discussion

7. The expert from Cuba, speaking on behalf of the experts from the Group of 77, congratulated the UNCTAD secretariat for the outstanding report prepared on trade marks (TD/B/C.6/AC.3/3). It was the first time that the issue had been dealt with not only in legal terms, but also in its broadest economic, commercial and political dimensions. In his view, the report was a faithful reflection of what constituted the "tragedy of trade marks". He hoped that a serious and constructive debate would take place. The discussion should be quite open and permit all experts to express their views on this important issue. Trade marks had been used, so far, from the point of view of the traditional trade relations between North and South. They had been used for economic growth but not for economic development. Development implied a complete change of structure and other patterns of life, such as education and welfare.

8. The expert from the United Kingdom, speaking on behalf of the experts from Group B, said that he agreed with the spokesman for the Group of 77 that the discussion should be open and allow the widest participation of experts. At this time, he wished to express a formal view of Group B on the report on trade marks prepared by the secretariat, and not enter into the substance of the document. Since the report had reached the experts at the very last moment, there had not been time for discussion with appropriate governmental bodies and with representatives of industry and trade. The opinions expressed on the report, therefore, would be merely the personal opinions of the experts from Group B and would not represent the final views of their respective Governments. In particular, the fact of their agreeing to discuss the document in no way invalidated the reservations and serious objections which a great many Group B countries had concerning the approach adopted and the conclusions drawn.

9. Commenting on the report by the UNCTAD secretariat, the expert from the United States of America said that, while he recognized the great deal of work that had gone into its preparation, the report was, in his view, based on an uncritical acceptance of certain social, ideological and economic assumptions and was highly ideological in its content. It reflected the view that the State knew better than the consumer how economic assets should be allocated. Instead of educational efforts to achieve the social goals that governments deemed desirable, the report advocated what might be regarded as radical alternatives, the results of which inevitably would be to produce a series of mediocre products, wholly vulnerable to foreign competition. In the view of his delegation, the report should have approached the

analysis of the economic function of trade marks without such built-in, preconceived value judgments, leaving it to the developing countries to decide what rules to adopt to satisfy such needs as full disclosure, ingredients labelling, quality standards and the like - none of which was a trade mark matter. The report failed to establish how compulsory licensing, abolition of trade marks, trade-mark linking, and the elimination of foreign marks would help develop the economies of the developing countries, whose complex economic and socio-political problems differed from country to country or at least between groups of countries. A total overhaul of the concept of trade-mark rights as they had existed hitherto under national and international law would not cure those ills.

10. He added that, while every country had the right to "manage" its market as it saw fit, it was not reasonable to contend that countries should focus their market restructuring efforts around an attack on trade marks. In this connexion, he quoted a recent article by Professor J. Thomas McCarthy entitled "Compulsory licensing of a trade mark: remedy or penalty?" (67 Trade mark Reporter 197) in which Professor McCarthy established a distinction between power and symbols of power. One might harbour the illusion of attacking the power when one was in fact merely attacking the symbols. One might feel better for the action, but no real competitive result would be achieved.

11. In conclusion, he said that, while it recommended policy alternatives and changes in trade-mark law, the secretariat report also recognized that such changes would not seem to be sufficient to solve the broader economic problems which the report associated with trade marks. This appeared to be an admission that trade marks were not directly connected with the problems and issues raised in the report.

12. The expert from France supported the comments made by the spokesman for Group B concerning the delay in the distribution of the secretariat report, drawing attention in particular to the lateness of the French version. Commenting on the substance of the report, he said that it was a deep and complex document which was very difficult to assess in its entirety. In his view, the report was based on socio-economic options for which no consensus existed and it went beyond its formal title, calling into question the trade-mark system itself. Since trade marks existed in different economic systems, there were different expectations on the part of trade-mark owners as well as on the part of consumers. Such a far-reaching report as the one prepared by the secretariat should have taken those differences into account. However, in every economic system trade marks fulfilled similar functions, namely to identify the product and its origin and, by so doing, to protect the consumer. Those functions were to be respected because they were inherent in the system. The report seemed to disregard those functions, with no

benefit either for the trade-mark owner or for the consumer. Many of the issues raised in the report could not find a solution at the level of trade-mark law, but rather at other legal levels and through consumer education. Finally, he regretted that the report did not consider fully the function of trade marks in the development of national enterprises. Trade marks were useful instruments for gaining and developing domestic and foreign markets.

13. The expert from Poland, speaking on behalf of the experts from Group D, shared the opinion of previous speakers concerning the complexity of the report by the secretariat. Many of the conclusions of the report - particularly those relating to the inadequacy of the national regulations in various developing countries - were fully supported by his Group. He stated that many aspects of the report were related to consumer protection and advertising problems, issues which were beyond the purview of the present Group of Experts. He suggested that a study of these important issues should be undertaken at the level of particular countries.

14. The expert from India congratulated the UNCTAD secretariat for the outstanding work done in preparing its report, with its detailed statistical information. The summary and conclusions contained in part three of the report brought out, in a lucid way, the impact of trade marks on the development process. His delegation was largely in agreement with the contents of the document and hoped that this would serve as a basic input for the changes needed in the revision of the trade-mark system in developing countries.

15. The expert from Switzerland said that the report by the UNCTAD secretariat raised numerous important issues. He considered that it was a political document rather than an objective study. The industrial property system was depicted in an entirely negative way which, had it corresponded to reality, would have prompted the Swiss delegation to propose the abolition of the industrial property system. Practitioners as well as industrial sectors knew that this was not the case. The industrial property system was a valuable instrument for economic development. He considered that part one of the report was objective but that part two was not rigorous at all. Trade marks were presented in the study as instruments of domination by industrialized countries in the developing world. He recognized that trade marks might have secondary negative effects but these effects could be remedied by legal means outside trade-mark law. He pointed out that if the industrial property system, in particular the trade-mark system, was to be limited or abolished in certain countries, industrialized countries would be reluctant to transfer their technology to the developing countries, and this would be against the interests of the developing countries themselves.

16. The expert from Venezuela said that his delegation attached great importance to the report by the secretariat. Trade marks were used to protect monopolies when patents were not sufficient. In some cases, trade marks protected harmful products. He considered that the contents of the report should be taken into account in the process of revision of the Paris Convention for the Protection of Industrial Property which was now under way. He emphasized that in the process of revision of the Paris Convention the public interest should prevail.

17. The expert from Norway shared the opinion of the expert from the United Kingdom and said that he had not been able to consult with his Government or with interested circles. He emphasized that the report by the secretariat was very interesting and that transfer of technology should constitute an instrument to bridge the gap between the developed and developing countries.

18. The expert from the Federal Republic of Germany paid tribute to the secretariat for the enormous amount of work put into the preparation of the report. She hesitated to call the report "the impact of trade marks", since it covered a much broader field than the title suggested and exceeded by far questions of industrial property and transfer of technology. The report ascribed to trade marks real or alleged detrimental effects which resulted, not from the proper use of trade marks, but from certain forms of advertising and even from doubtful decisions of certain consumers. The generalized form of abusive practices put the blame for them on trade marks, which were only a side factor. This mistaking of the role of the trade mark caused a lack of balance in the report and led to a number of inappropriate conclusions. The report underlined, in some places, that some countries had achieved industrialization without an extensive use of trade marks. This might be true, but for industrialization of a country as such, trade marks did not play a prominent role. However, in markets that provided for a wide range of consumer goods or at least offered some possibility for choice between certain products of the same kind produced by different manufacturers, trade marks were essential and their proper use was in the legitimate interest not only of the manufacturer but also of the consumer. Therefore, in industrialized countries where trade marks, up to a certain time, had not played an important role, their use was growing with an extension of the market for consumer goods and with the greater exports into countries with big markets for consumer goods. The report did not go into these questions and, in particular, into the question of how developing countries and their enterprises - especially with growing industrialization and increasing production of consumer goods - could use trade marks to promote the marketing of their goods in their own countries and, in particular, to promote their exports to

other countries. Individual trade marks or collective trade marks could constitute an important tool for developing countries in promoting their exports and in creating goodwill for their products in export markets.

19. The expert from Iraq congratulated the secretariat on the report and for its submission at a time when the international community was dealing with the revision of the Paris Convention for the Protection of Industrial Property. In his view, the report was factual and portrayed accurately the situation in relation to trade marks in developing countries. The report was objective in the analysis of the facts, demonstrating the existing imbalance between developed and developing countries, and it was a source of inspiration for future action in this area. He stressed that, in his opinion, the aim of the present meeting was not to negotiate but to discuss problems of common interest. The experts should concentrate, not on analysing trade marks per se, but on their relationship to development issues.

20. The expert from Finland said that the general model of economic analysis applied to developing countries in the 1960s now appeared to be inadequate. He found that the report by the UNCTAD secretariat was interesting and very well prepared and that it was a valuable contribution to the analysis of economic development. He thought that the interdisciplinary approach adopted in the report was the right one for discussing this issue, and the analysis of persuasive advertising and the protection of consumers was particularly useful. This was interesting and valuable for Finland too. The issues raised in the report were interrelated and even if the Group of Experts should assess more specifically the question of trade marks, broader implications should be recognized. In conclusion, he said that, as social sciences were always based on certain value judgments, it was in his view only appropriate that the secretariat report should discuss seriously some dimensions of a new international economic order.

21. The expert from Romania considered that the report contained useful information for institutions dealing with the subject. Trade marks had advantages as well as disadvantages. He indicated that if this report had one fault, it was precisely that it did not show in detail ways and means by which trade marks were harmful to developing countries.

22. In the case of Romania, trade marks were associated with the whole issue of quality standards. In his country, in addition to trade marks, there was a highly developed system of control by producers and consumers in trade unions. In his view, it would be useful to work towards a final resolution of the Group of Experts recommending very concrete measures to redress the present situation in developing countries. One recommendation which could be considered was the promotion in

developing countries of their own trade marks. He also suggested transmitting rights for the use of trade marks that were associated with the technology transferred to the developing countries.

23. The expert from Yugoslavia congratulated the secretariat for its report and specified that the objective of the study was not to analyse the potential role of trade marks for developing countries, but to examine the actual operation of the system in developing countries. He underlined that the question was not the abolition of the trade-mark system but its adaptation to the needs of developing countries. He considered that the report on trade marks would have a similar impact to the one on patents.^{2/}

24. In his view there existed an imbalance between the rights and obligations of trade-mark owners and this should be radically revised. In the revision of the Paris Convention, the possibility of revocation of trade marks for reasons of public interest should be recognized.

25. The expert from the United Kingdom considered that the problems raised by the report lay much more in the penetration of developing countries by products which they did not want or were not strong enough to resist. In his view, developing countries should protect themselves by adopting legislative measures in areas such as import controls, control of advertising, control of misleading advertising and consumer protection. He was of the opinion that trade marks were only vehicles to sell things and that the issues raised by the report had nothing to do with trade marks. Many options were open to developing countries without necessarily affecting the institution of trade marks.

26. The expert from the Soviet Union considered that the report by the secretariat constituted a good study. Although there had not been an opportunity of communicating the text to the Government agencies, the report would be carefully analysed by Government agencies in his country. In his view, trade marks had a positive effect on economic relations between States. He added that the Soviet Union hoped to expand the registration of Soviet trade marks abroad. Furthermore, trade marks were important for reasons of quality control. Referring to the work being carried out in WIPO for the improvement of trade-mark registration, he said that trade-mark registration for specific goods would provide stimulus for competing in the market and would reinforce the enterprise positions by creating

^{2/} See foot-note ^{1/} above.

goodwill. Some sections of the report were of great concern because they showed certain abuses in competition and the utilization of trade marks. In his view, this did not provide grounds for raising the question of eliminating trade-mark protection but, if necessary, for taking appropriate measures, including adoption at the national level, and perhaps at the international level, of special legal regulations aimed at avoiding abuses of trade marks and the use of trade marks for establishing excessively high monopoly prices. Finally, the Group of Experts should adopt a resolution dealing with specific questions and containing recommendations that would serve the consumers in order to stimulate economic relations between developed and developing countries.

27. The expert from Senegal considered that the report by the secretariat was very clear and complete, and he fully supported the views expressed by the spokesman for the Group of 77. In his view, the trade-mark system should be revised to take into account the interests of developing countries. He also referred to the long duration of trade marks, to the negative effects of franchise arrangements, and to the high cost of advertising - issues which were well documented in the report.

28. The expert from Cuba said that the reaction of some Group B experts to the report prepared by the secretariat was similar to the reaction they had had towards the report entitled The role of the patent system in the transfer of technology to developing countries, prepared jointly by the secretariats of UNCTAD and WIPO in 1974.^{3/} In his view, it was important to distinguish trade marks in their intrinsic function from the question of abuse of trade marks. These abuses were of particular concern to developing countries. He pointed out that developing countries were not for the abolition of trade marks but were fighting against their misuse. He said that the system of trade marks was useful but that it was necessary to recognize and analyse the effects of their improper use in developing countries.

29. The observer for the International Association for the Protection of Industrial Property and the International Federation of Pharmaceutical Manufacturers Associations congratulated the secretariat for the efforts made in producing the report. He indicated that the pharmaceutical industry was more concerned than other industries with the subject under discussion in this meeting. He considered that

^{3/} See foot-note 1/ above.

patents and trade marks constituted important tools for the transfer of technology. The pharmaceutical industry was willing to co-operate as much as possible in finding solutions to the problems raised in the secretariat report.

Action by the Group^{4/}

30. At its closing meeting, on 14 October 1977, the Chairman introduced the text of draft agreed conclusions and recommendations relating to agenda item 3 (TD/B/C.6/AC.3/L.7). The draft proposals contained in TD/B/C.6/AC.3/L.3 having been withdrawn, the Group of Governmental Experts adopted the draft agreed conclusions and recommendations submitted by the Chairman (TD/B/C.6/AC.3/L.7).^{5/}

^{4/} For the action by the Group on the Declaration of governmental experts from developing countries members of the Group of 77 (TD/B/C.6/AC.3/L.6) and on draft decision TD/B/C.6/AC.3/L.8, which relate to agenda items 3 and 4, see respectively paragraphs 51 and 53 below.

^{5/} For the text, see annex I below.

Chapter II

THE INTERNATIONAL PATENT SYSTEM: THE REVISION OF THE
PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

(Agenda item 4)

A. Introductory comments

31. The representative of the Secretary-General of UNCTAD, introducing the report entitled "The international patent system: the revision of the Paris Convention for the Protection of Industrial Property" (TD/B/C.6/AC.3/2), said that this document, which had been prepared in pursuance of Conference resolution 88 (IV), paragraph 4, was a revised and enlarged version of an earlier preliminary report published in 1975.^{6/} After outlining some of the background of the historical events that had led to the signing of the Paris Convention in 1883, he said that the number of developing countries in the Paris Convention had increased in the last decades, but so far the Convention had not fully reflected their interests. He underlined that the process of revision had, in the past, covered three important landmarks: the agreed conclusions and recommendations adopted in 1975 by the UNCTAD Group of Governmental Experts on the Role of the Patent System in the Transfer of Technology;^{7/} the conclusions of the experts from developing countries that had participated in that group;^{8/} and the Declaration on the Objectives of the Revision of the Paris Convention agreed by the WIPO Ad hoc Group of Governmental Experts on the Revision of the Paris Convention. The full implications of the contents of these three sets of conclusions had so far not been examined carefully with a view to determining the new dimensions which could be introduced into the Paris Convention to give it a more positive framework for responding to the main interests of developing countries.

B. General discussion

32. The expert from the United Kingdom, speaking on behalf of the experts from Group B, expressed some doubts about the purpose of the report prepared by the UNCTAD secretariat. He referred to the work being carried out in WIPO, and in particular to the 14 questions for the revision of the Paris Convention agreed upon in December 1975. He was astonished to see that the report did not take into account what had happened in WIPO. It was not reasonable to expect Group B experts who had arrived at a decision in one forum to revise it in another, and indeed this was not a basis for progress. He thought that the UNCTAD secretariat report took things back to the beginning of the whole process of revision. He therefore concluded that the report should not be considered by this Group of Experts.

^{6/} See footnote 1 above.

^{7/} See the report of the Group of Experts (TD/B/C.6/8) annex I.

^{8/} See Official Records of the Trade and Development Board, Seventh Special Session, Supplement No. 4 (TD/B/593), annex III.

33. The experts from Switzerland and the United States of America, supporting the statement made by the expert from the United Kingdom on behalf of Group B, said that the consideration of the secretariat report would be a step backwards in the revision process of the Paris Convention.

34. The expert from Canada, referring to the statements appearing in paragraph 7 and footnote 7 of the secretariat report, in which reference was made to a Canadian working paper on patent law revision prepared for the Canadian Department of Commerce and Corporate Affairs, and referring to the impression created by those statements, made the following statement: "In view of a concern expressed, not only in Canada but also abroad, regarding the suggestion in the working paper on patent law revision that Canada would abolish the patent system in 10 years' time, the Minister responsible for patent law in Canada stated, on 24 February 1977: 'It is my conviction that a well-designed and carefully drafted patent law can and will continue to usefully serve Canada's national interests.' Hopefully, this statement has now made it abundantly clear that Canada does not intend to abolish the patent system in Canada".

35. The expert from Cuba, on behalf of the experts from the Group of 77, congratulated the secretariat on the useful report prepared on the revision of the Paris Convention. He underlined that in preparing that study, the UNCTAD secretariat was fulfilling the resolution adopted on this particular subject at the fourth session of the Conference. The role of UNCTAD in this area, within its sphere of competence, was of great help for developing countries. He further indicated that the report was an important contribution to the on-going process of the revision of the Paris Convention.

36. The expert from Australia said that he did not doubt that all participants recognized the conclusions reached in Nairobi as reflected in Conference resolution 88 (IV), but the fact was that, since that time, work on the revision of the Paris Convention had proceeded and agreements and conclusions had been reached. The major issues now before the Group of Experts in relation to the international patent system had been covered in considerable depth in WIPO and he therefore questioned the merit of attempting to again cover the same ground.

37. The expert from India, recalling Conference resolution 88 (IV), underlined that patents should be adequately worked within developing countries to stimulate their industrial progress rather than to retard it. Merely to import patented products was no substitute for working the patents. He also reiterated that adequate provisions should be devised in the Paris Convention to deal with abuses of patent rights. He felt that the secretariat report was an important contribution to the present negotiations on the revision of the Paris Convention.

38. The expert from Poland, speaking on behalf of the experts from Group D, considered that the secretariat report was a solid and valuable study. The socialist countries of Group D had participated actively in the relevant resolutions, which recognized the function of UNCTAD in this area. He considered that the activities of the Group of Experts could be helpful for the WIPO negotiations on the Paris Convention. He added that some of the issues raised in the report had already been discussed within WIPO. Independently of the work carried out on the revision of the Paris Convention, UNCTAD should continue its active participation in the creation of adequate national legal and organizational instruments in developing countries to protect their social and economic needs. Positive results could be achieved in this respect even under the present wording of the Paris Convention.

39. The expert from the Federal Republic of Germany said that she was worried about the duplication of work in the area of the revision of the Paris Convention. She was even more concerned because the secretariat report created the impression that UNCTAD resolutions were not being taken fully into account in the negotiations within WIPO. In point of fact, at the last administrative meeting in WIPO, developing countries had recognized that they were satisfied with the way in which the Declaration of Objectives of 1975 and the UNCTAD resolutions were being taken into consideration in the negotiation process.

40. A number of experts from Group B countries also expressed their doubts as to whether the competence of UNCTAD and of this Group of Experts enabled them to deal with the question of the Paris Convention in the form and to the extent implied by the secretariat in its report.

41. The expert from the United States of America mentioned that all States Members of the United Nations were invited to participate in the revision of the Paris Convention. Thus the subject should not be rediscussed in this forum.

42. The expert from Cuba, speaking on behalf of the experts from the Group of 77, said that he did not understand why some experts considered that the secretariat report was a step backwards. The revision of the Paris Convention was an on-going process and the final word on it would be said at the revision Conference. In the meantime, full consideration should be given to new ideas. The position of the Group of 77 in UNCTAD and in WIPO was always the same. The Group of 77 did not understand the question of duplication in this area because the respective competences of the two organizations had been clearly defined in the past. In the view of the Group of 77, it was useful to have both organizations involved in this process, although, of course, the actual process of revision was taking place in WIPO.

43. The experts from Mexico, Venezuela and Yugoslavia supported what had been said by the spokesman for the Group of 77 and congratulated the secretariat on the preparation of the report on the revision of the Paris Convention, which was an excellent contribution to the process of revision. They reiterated their belief that UNCTAD and, in particular, the present Group of Experts were competent to deal with the issues raised in the secretariat report.

44. The expert from Egypt did not see any contradiction between WIPO and UNCTAD and thought that Conference resolution 88 (IV) was very clear on the subject. There were a number of new aspects to be considered and negotiated, especially on trade marks, and they should be included in the agenda for the revision of the Paris Convention.

45. The representative of the World Intellectual Property Organization (WIPO) said that, judging by the turn of the discussions, one might wonder whether, instead of a discussion of the working papers submitted by the UNCTAD secretariat, the discussion would not centre on items that were on the agenda of the WIPO Intergovernmental Committee in charge of preparing the revision of the Paris Convention. He wondered whether this would not mean adding a new instance to the revision of the Paris Convention or substituting for the Preparatory Intergovernmental Committee.

46. He mentioned the fact that, as was known to most experts present - since most of them were also actively participating in the negotiations on the revision of the Paris Convention taking place in the said WIPO Intergovernmental Committee - the last session of that Committee, which had taken place in June 1977, had completed a draft for a new formulation of Article 5A dealing with patents. It had also dealt with other articles of the Convention; on many of the items, it had requested the Director-General of WIPO, on the basis of the discussions that had already taken place, to prepare studies or concrete proposals to be submitted to the November 1977 session of the Preparatory Intergovernmental Committee. Such studies and proposals would be discussed first in the Working Group entrusted with questions of special interest to developing countries and later by the Preparatory Intergovernmental Committee itself. The Preparatory Committee had also discussed the agenda for the future preparatory meetings on the revision of the Paris Convention and it was possible that, if the same progress were made at future meetings as countries had been able to achieve in June, at its next meeting in November the Preparatory Intergovernmental Committee would be able to determine what it considered to be the likely date for the conclusion of the preparatory work and for the convening of the Diplomatic Conference.

47. The representative of the Secretary-General of UNCTAD made some clarifications on the question of the competence of the present Group of Governmental Experts. First, the Group was the result of the recommendation made by a former UNCTAD Group of Governmental Experts in September 1975, and then decided upon by the Committee on Transfer of Technology at its first session and, finally, at the fourth session of the Conference. Moreover, the present Group had adopted its own agenda and organization of work. Secondly, in any international negotiation process, the inputs came from various sources -- from different United Nations organizations, including UNCTAD, and from the countries themselves. Thirdly, the results of all these discussions at different levels finally culminated in the actual drafting of particular principles and provisions and this was being accomplished in WIPO.

C. Consideration of proposals

48. The expert from Cuba, on behalf of the Group of 77, introduced draft proposals on the impact of trade marks on the development process of developing countries (TD/B/C.6/AC.3/CRP.1); ^{2/} the revision of the Paris Convention for the Protection of Industrial Property (TD/B/C.6/AC.3/CRP.2 and TD/B/C.6/AC.3/L.1); and on the impact of trade marks on the development process of developing countries and the revision of the Paris Convention for the Protection of Industrial Property (TD/B/C.6/AC.3/L.2).

49. The expert from the United Kingdom, on behalf of Group B, introduced a draft proposal on the impact of trade marks on the development process of developing countries (TD/B/C.6/AC.3/L.3).

Action by the Group

50. At its closing meeting, on 14 October 1977, the Group of Governmental Experts noted with appreciation the efforts of the UNCTAD secretariat in preparing the report entitled "The international patent system: the revision of the Paris Convention for the Protection of Industrial Property" (TD/B/C.6/AC.3/2). The Group also noted the proposals on the subject submitted by Cuba on behalf of States members of the Group of 77 (TD/B/C.6/AC.3/CRP.2). Although the Group of Experts did not consider them, it agreed that the above report and the proposals by the Group of 77 should be forwarded to Governments for their consideration. It also requested the Secretary-General of UNCTAD to transmit them to the World Intellectual Property Organization so that they could be considered during the on-going process of the revision of the Paris Convention.

^{2/} TD/B/C.6/AC.3/CRP.1 was incorporated into the text of the Declaration of governmental experts from developing countries members of the Group of 77 on the role of the industrial property system in the transfer of technology. See annex IV to the present report (section III, paragraph 6, of the Declaration).

51. At the same meeting, the Group decided to annex to its report the proposals submitted by the Group of 77 (TD/B/C.6/AC.3/CRP.2),^{10/} the document entitled "Declaration of governmental experts from developing countries members of the Group of 77 on the role of the industrial property system in the transfer of technology" (TD/B/C.6/AC.3/L.6), submitted by Yugoslavia on behalf of the Group of 77,^{11/} as well as the text submitted by the expert from the United States of America during the meeting, of preliminary comments by the United States Government on the secretariat report on the international patent system.^{12/}
52. Also at the closing meeting, the Chairman introduced a draft decision (TD/B/C.6/AC.3/L.5), which related to agenda item 4. The draft proposal contained in TD/B/C.6/AC.3/L.1 having been withdrawn, the Group of Experts adopted draft decision TD/B/C.6/AC.3/L.5.^{13/}
53. At the same meeting, the Chairman introduced a draft decision (TD/B/C.6/AC.3/L.8) which related to agenda items 3 and 4. The draft proposal contained in TD/B/C.6/AC.3/L.2 having been withdrawn, the Group of Governmental Experts adopted draft resolution TD/B/C.6/AC.3/L.8.^{14/}

^{10/} See annex III below.

^{11/} See annex IV (TD/B/C.6/24/Add.1).

^{12/} See annex V (TD/B/C.6/24/Add.1).

^{13/} For the text, see annex II below, decision 1.

^{14/} For the text, see annex II below, decision 2.

Chapter III

ORGANIZATIONAL MATTERS

(a) Election of officers

(Agenda item 1)

54. At its first meeting, on 6 October 1977, the Group of Governmental Experts elected Mr. A.G. Bahadian (Brazil) as its Chairman; Mr. Y. Al-Khanati (Iraq), Mr. S.L. Bâ (Senegal), Mr. M.L. Gorodissky (Union of Soviet Socialist Republics), and Mrs. E. Steup (Federal Republic of Germany) as its Vice-Chairmen; and Mrs. M. Hiance (France) as its Rapporteur.

(b) Adoption of the agenda and organization of work

(Agenda item 2)

55. At its first meeting, on 6 October 1977, the Group of Experts adopted the provisional agenda suggested by the UNCTAD secretariat (TD/B/C.6/AC.3/1 and Corr.1) which read as follows:

1. Election of officers
2. Adoption of the agenda and organization of work
3. The impact of trade marks on the development process of developing countries
4. The international patent system: the revision of the Paris Convention for the Protection of Industrial Property
5. Other business
6. Adoption of the report of the Group of Experts to the Committee on Transfer of Technology

(c) Attendance^{15/}

56. Experts from the following States members of UNCTAD attended the session: Algeria; Argentina; Australia; Belgium; Brazil; Canada; Chile; Colombia; Cuba; Czechoslovakia; Dominican Republic; Ecuador; Egypt; El Salvador; Finland; France; Gabon; German Democratic Republic; Germany, Federal Republic of; Ghana; Guinea-Bissau; Hungary; India; Indonesia; Iraq; Israel; Italy; Jamaica; Japan; Jordan; Madagascar; Malaysia; Malta; Mauritania; Mexico; Morocco; Netherlands; Nigeria; Norway; Pakistan; Peru; Poland; Portugal; Republic of Korea; Romania; Senegal; Spain; Sudan; Sweden; Switzerland; Thailand; Trinidad and Tobago; Tunisia; Turkey; Union of Soviet Socialist Republics; United Kingdom of Great Britain and Northern Ireland; United Republic of Tanzania; United States of America; Venezuela; Viet Nam; Yugoslavia; Zaire.

^{15/} For the list of participants, see TD/B/C.6/AC.3/INF.1.

57. The Economic Commission for Europe was represented at the session.
58. The following specialized agency was represented at the session: World Intellectual Property Organization. The General Agreement on Tariffs and Trade was also represented at the session.
59. The following intergovernmental organizations were represented at the session: European Economic Community; Organisation for Economic Co-operation and Development; Permanent Secretariat of the General Treaty on Central American Economic Integration.
60. The following non-governmental organizations were represented at the session:
General Category: International Organization for Standardization; Union of Industries of the European Community; World Confederation of Labour.
Special Category: International Association for the Protection of Industrial Property; International Federation of Pharmaceutical Manufacturers Associations; Licensing Executives Society International.
61. A representative of the following non-governmental organization attended the session at the special invitation of the secretariat: United States Trademark Association.

(d) Adoption of the report of the Group of Experts to the
Committee on Transfer of Technology

(Agenda item 6)

62. At the closing meeting, on 14 October 1977, the Group of Experts adopted its draft report (TD/B/C.6/AC.3/L.4 and Add.1), with a number of amendments, and authorized the Rapporteur to complete the report as appropriate.

ANNEXES

Annex I

THE IMPACT OF TRADE MARKS ON THE DEVELOPMENT PROCESS OF DEVELOPING COUNTRIES

Agreed conclusions and recommendations of the Group of
Governmental Experts

1. The Group of Experts noted with appreciation the efforts of the secretariat of UNCTAD in preparing the report entitled "The impact of trade marks on the development process of developing countries" (TD/B/C.6/AC.3/3). The report addressed itself to a number of important issues having both direct as well as indirect relations to trade-mark legislation and practices, including matters relating to consumer protection, fair trade practices, quality standards, ingredient labelling and advertising. Since there was delay in the availability of the report for consideration by national authorities and interested parties, the Group of Experts could give only general consideration to some of the more pertinent issues. The Group agreed that those issues raised by the report which directly relate to trade-mark legislation and practices at the national level in developing countries should be taken into consideration by Governments of these countries in formulating their national trade-mark laws and policies and by the World Intellectual Property Organization in the current efforts to revise the Paris Convention for the Protection of Industrial Property and to develop a new model trade-mark law for developing countries.

2. The Group of Experts was of the opinion that appropriate trade-mark legislation can achieve an equitable balance between the public interest and the private interest and can be a useful instrument for economic and social development.

3. In this connexion, the Group of Experts agreed that the process of revision of the Paris Convention, as well as the preparation in WIPO of a new model law for developing countries on trade marks, should be guided, inter alia, by the following considerations:

(a) The purpose of trade marks is to serve the legitimate interests of consumers, by enabling them to distinguish and select goods and services, and the legitimate interests of their owners to protect the goodwill connected with the goods and services sold under their marks;

(b) Trade marks should not be deceptive or mislead the consumer;

(c) Trade marks and, in particular, certification marks and collective marks could serve as one of the appropriate means of ensuring the necessary standards of quality of goods;

(d) The protection granted to trade marks should not justify misleading and/or otherwise abusive practices forbidden under national laws relating, for example, to the prices and quality of goods and services;

(e) The consideration in WIPO of non-reciprocal preferential treatment for nationals of developing countries including in the matter of trade-mark fees, should be continued;

(f) The adoption in national legislation of appropriate use requirements for trade marks, including a defined term for starting use of the mark, is useful;

(g) The licensing of trade marks serves legitimate business interests and should be encouraged on mutually beneficial and equitable terms, including goodwill;

(h) Developing countries should consider the use of indigenous appellations of origin and trade marks belonging to enterprises in their countries for promoting their exports;

(i) The possibility of providing in national law for cancellation of trade marks violating the legitimate interests of consumers, producers and sellers should be considered;

(j) Continued co-operation between national authorities should be encouraged in order to avoid, to the extent feasible under national law, registrations of trade marks that are misleading as to origin.

4. The consideration in WIPO of the question of possible conflict between appellations of origin and other geographical indications and trade marks should be continued.

5. The Group of Experts was of the opinion that, during the current deliberations in WIPO on the revision of the Paris Convention, all Governments should take fully into account the concern expressed by the developing countries regarding their public interest and their ability to adopt appropriate legislation and policies in that interest.

Annex II

DECISIONS ADOPTED BY THE GROUP OF GOVERNMENTAL EXPERTS

Decision 1: The revision of the Paris Convention for the Protection of Industrial Property

The Group of Governmental Experts:

1. Requests the Secretary-General of UNCTAD to transmit to the Director-General of the World Intellectual Property Organization the report and results of the present session of the Group.

2. Urges all countries members of UNCTAD and, in particular, developing countries to participate actively in the on-going revision process of the Paris Convention for the Protection of Industrial Property.

Decision 2: The impact of trade marks on the development process of developing countries and the revision of the Paris Convention for the Protection of Industrial Property

The Group of Governmental Experts,

Recalling resolution 88 (IV) adopted by the United Nations Conference on Trade and Development at its fourth session,

1. Recommends to the Committee on Transfer of Technology that, at its second session, it request the Secretary-General of UNCTAD to undertake studies in the field of industrial property on matters of special concern to developing countries, such as the role of trade-mark protection in vital sectors of the economy, in consumer protection and in promotion of exports;

2. Further recommends that the Committee on Transfer of Technology, at its second session, should consider appropriate means of continuing the examination of the topics dealt with at the present meeting of the Group of Experts, including the convening of a further meeting or meetings of experts.

Annex III

REVISION OF THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL
PROPERTY

Proposal submitted by the expert from Cuba on behalf of the Group of 77 */

1. The actual process of revising the Paris Convention for the Protection of Industrial Property is taking place in the World Intellectual Property Organization. A Preparatory Intergovernmental Committee has been established and has held two sessions, the last in July 1977. In this process a new proposal on Article 5A of the Convention has been made. This new proposal, as agreed at the second session of the Preparatory Intergovernmental Committee, constitutes a positive development.
2. Developing countries reiterate that Article 5 A of the Paris Convention, as stated in the Declaration of the Objectives of the Paris Convention, should reflect the main concerns particularly of developing countries, promote the actual working of inventions in each country and enable member countries to take all appropriate measures to prevent abusive practices in the field of industrial property.
3. In order to serve as a useful tool for facilitating the transfer of technology to developing countries and the development of indigenous technology and to respond to the historical and economic changes which have been taking place in the last few decades, the current revision of the Paris Convention should recognize that all rights granted by a patent should be related to the working of the patent and guided by the following considerations:
 - (a) The deletion of article 5 quater, at least as it concerns the developing countries;
 - (b) Particular attention should be given to efforts to improve the quality of patent disclosure for granting patents in order to fulfil its basic development function and facilitate adequate diffusion of patent documentation and information among potential users, particularly in developing countries;
 - (c) The revision of article 4 bis of the Convention, in order to incorporate the concept of compulsory exchange of information by patent offices of all orders passed by administrative and judicial authorities with regard to the validity of a patent concerning novelty, inventive step and industrial applicability;

*/ Circulated to the Group of Experts as TD/B/C.6/AC.3/CRP.2.

- (d) The principle of national treatment contained in article 2 of the Convention should not be in conflict with efforts by certain developing countries to design in their national laws types of patents or other industrial property rights whose purpose could be to foster inventive capacity, the diffusion of inventions and their effective use in local manufacture;
- (e) The Convention should recognize effective measures for granting preferential treatment to developing countries in some of the areas covered by the Convention, such as fees, right of priority, etc.;
- (f) In the revision process, the unanimity practice should be abandoned.

Annex IV

DECLARATION OF GOVERNMENTAL EXPERTS FROM DEVELOPING COUNTRIES MEMBERS
OF THE GROUP OF 77 ON THE ROLE OF THE INDUSTRIAL PROPERTY SYSTEM IN
THE TRANSFER OF TECHNOLOGY

[For technical reasons, the text of this annex, which has already been given limited distribution under the symbol TD/B/C.6/AC.3/L.6, will be issued in an addendum to the present report.]

Annex V

UNITED STATES OF AMERICA: PRELIMINARY COMMENTS ON THE REPORT BY THE
UNCTAD SECRETARIAT ENTITLED "THE INTERNATIONAL PATENT SYSTEM: THE
REVISION OF THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL
PROPERTY" (TD/B/C.6/AC.3/2)

Text submitted by the expert from the United States of America

[For technical reasons, the text of this annex will be issued
in an addendum to the present report.]

Annex VI

LIST OF DOCUMENTS SUBMITTED TO THE GROUP OF EXPERTS

<u>Document No.</u>	<u>Title</u>
TD/B/C.6/AC.3/1 and Corr.1	Provisional agenda, annotations to the provisional agenda, and suggestions for the organization of the work of the Group : note by the UNCTAD secretariat
TD/B/C.6/AC.3/2	The international patent system : the revision of the Paris Convention for the Protection of Industrial Property : report by the UNCTAD secretariat
TD/B/C.6/AC.3/3	The impact of trade marks on the development process of developing countries : report by the UNCTAD secretariat
TD/B/C.6/AC.3/L.1	The revision of the Paris Convention for the Protection of Industrial Property : proposal submitted by Cuba on behalf of States members of the Group of 77
TD/B/C.6/AC.3/L.2	The impact of trade marks on the development process of developing countries and the revision of the Paris Convention for the Protection of Industrial Property : proposal submitted by Cuba on behalf of States Members of the Group of 77
TD/B/C.6/AC.3/L.3	The impact of trade marks on the development process of developing countries : proposal submitted by the United Kingdom on behalf of States members of Group B
TD/B/C.6/AC.3/L.4 and Add.1	Draft report of the Group of Governmental Experts on the Role of the Industrial Property System in the Transfer of Technology (on its session held from 6 to 14 October 1977)
TD/B/C.6/AC.3/L.5	The revision of the Paris Convention for the Protection of Industrial Property : proposal submitted by the Chairman of the Group of Governmental Experts */

*/ For the text, see annex II above, decision 1.

- TD/B/C.6/AC.3/L.6 Declaration of governmental experts from developing countries members of the Group of 77 on the role of the industrial property system in the transfer of technology : submitted by Yugoslavia **/
- TD/B/C.6/AC.3/L.7 The impact of trade marks on the development process of developing countries : draft agreed conclusions and recommendations submitted by the Chairman of the Group of Governmental Experts ***/
- TD/B/C.6/AC.3/L.8 The impact of trade marks on the development process of developing countries and the revision of the Paris Convention for the Protection of Industrial Property : proposal submitted by the Chairman ****/
- TD/B/C.6/AC.3/INF.1 List of participants

**/ The text of the Declaration is reproduced in annex IV to the present report.

***/ For the text, see annex I above.

****/ For the text, see annex II above, decision 2.