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**TRIPS IN THE CONTEXT OF
THE MILLENNIUM ROUND**

UNICE COMMENTS

I. UNICE BASIC POSITION

Before commenting any further, UNICE would like to recall its basic conclusions as set out in its previous position paper of 13 November 1998 on the above subject.

The TRIPs agreement is one of the major achievements of the Uruguay round UNICE is concerned that failure by a substantial number of developing countries to implement TRIPs in a proper and timely fashion will seriously call into question its viability and its value.

UNICE believes that the right strategy to allow a building-up of strong and harmonised intellectual property protection at international level is to concentrate for the time being in injecting life into the provisions of the agreement.

The priority for strengthening intellectual property protection at international level is to ensure effective and timely implementation of the TRIPs agreement and pursue the work programme embodied in the built-in agenda.

Once the agreement has been consolidated, further negotiations could be considered but UNICE remains of the opinion that the time is not yet ripe to include intellectual property as a subject for further negotiation in an imminent WTO new global round. The European and international atmosphere in the field of intellectual property is not propitious to this exercise. It might endanger the "acquis" of the TRIPs agreement and could upset its effective implementation.

UNICE is of the firm opinion that, instead of imposing higher standards on those countries which are already showing resistance to implementing the basic TRIPs provisions, industry needs to concentrate on further education of and discussion with those countries to help them fulfill their obligations.

UNICE and the companies it represents do not want to see attention distracted from implementation of the agreement and urge the Commission and EU governments to restrict any discussion to this field rather than embarking on risky and hazardous negotiations which might

result in compromises which could undermine irremediably the content and implementation of the TRIPs agreement.

II. USE OF THE "BUILT-IN AGENDA"

As explained in detail in its 13 November 1998 position, UNICE is of the opinion that improvements of intellectual property protection should be based first on the TRIPs "Built-in Agenda" work programme. (Articles 27.3b and 71).

Article 71.1 empowers the TRIPs Council to review experience gained in the implementation of TRIPs from 1 January 2000, two years after that date and at two-year intervals thereafter. As noted, the TRIPs Council may also undertake reviews in the light of relevant new developments which might warrant amendment of TRIPs.

Article 71.2 can be used to adjust TRIPs to higher levels of protection achieved under other multilateral agreements, in accordance with Article X.6 of the Agreement establishing the WTO.

III. COMMISSION PROPOSALS

UNICE has taken note of a Commission working document on TRIPs in the context of a new round. UNICE is pleased to note that the Commission seems also to regard implementation of the agreement as the main priority.

Nevertheless, if contrary to UNICE's recommendations the Commission were to decide to propose further negotiations in the field of intellectual property in the millennium round, the possibility of achieving substantial progress at WTO level should be more thoroughly assessed before any further position is taken. This is the case, in particular, concerning:

- amendment of Article 27.3 b to introduce plants and animal varieties *per se*;
- prohibition of a "Bolar" type exclusion and introduction of indirect infringement as in the Community Patent Convention (Article 26.1);
- prevention of any backsliding on compulsory licensing;
- introduction of patent-term restoration in article 33 to compensate for delays due to market approval;
- improvements of article 39.3 to allow for 10-year protection of data against disclosure or unfair commercial use;
- adoption of first to file at worldwide level;
- introduction of universal provisions on novelty (based on absolute novelty as in EPC);
- introduction of requirement that all WTO members use the PCT standard for unity of invention;
- improvements in article 70.8 and 70.9 to ensure that the standard of protection is not less than that accorded under TRIPs parts II and III, ensuring that member states that have failed to implement these provisions do so retroactively and that exclusive marketing rights means that no other product under the patent claims are allowed onto the market;
- strengthening of provisions against counterfeiting.

This is not an exhaustive list but an indication of topics on which a Commission study of realistic TRIPs improvements should be carried out urgently.

In addition, UNICE would once again urge the Commission to take into account industry's position on exhaustion of IPRs. (see UNICE's position paper of 21 April 1999).

V. CONCLUDING REMARKS

- UNICE can only reiterate its strongest reservations about launching new WTO negotiations in the field of intellectual property. UNICE remains convinced that further improvement of the agreement should be first sought making use of the “built-in agenda”.
- If nevertheless the Commission believes that some subjects are ripe for negotiation at WTO level and that this can be done without endangering other provisions of the agreement, either on the substance or on its implementing deadlines, then UNICE would urge the Commission to share with industry an assessment of the probability of improvement on these topics. Until now industry has only seen shopping lists without evidence as to the chances of achieving substantive progress on any of the items listed. Indications about the positions of key WTO members on these subjects need to be studied.
- Industry wants to concentrate its efforts on effective implementation of the agreement. In this context we would like to invite the Commission's services to supply detailed information on the progress made on this subject. Additional information about the possible use of the WTO dispute settlement for specific cases would also be appreciated.
- UNICE has welcomed the various initiatives from WIPO, WTO and developed countries to provide LDCs and LLDCs with the technical assistance which some of them need to carry out the necessary legislative reforms in order to comply with the TRIPs agreement. UNICE also remains committed to supporting any Commission initiative in the field.

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