

WIPO



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PROGRAM AND BUDGET COMMITTEE

Sixth Session

Geneva, April 29 to May 1, 2003

REPORT

adopted by the Committee

1. The sixth session of the WIPO Program and Budget Committee, hereinafter referred to as “the Committee,” was held at the headquarters of WIPO from April 29 to May 1, 2003.
2. The Program and Budget Committee is composed of the following Member States: Algeria, Argentina, Brazil, Bulgaria, Canada, Chile, China, Czech Republic, Ecuador, Egypt, France, Germany, Hungary, India, Japan, Mexico, Morocco, Netherlands, Nigeria, Oman, Pakistan, Philippines, Republic of Korea, Russian Federation, Senegal, Serbia and Montenegro, Slovenia, South Africa, Spain, Sri Lanka, Switzerland (*ex officio*), Ukraine, United Kingdom, United States of America and Venezuela (35). The members of the Program and Budget Committee which were represented at this session were the following: Algeria, Brazil, Canada, China, Czech Republic, Ecuador, Egypt, France, Germany, Hungary, India, Japan, Mexico, Morocco, Netherlands, Nigeria, Oman, Pakistan, Philippines, Republic of Korea, Russian Federation, Senegal, Serbia and Montenegro, Slovenia, Spain, Sri Lanka, Switzerland (*ex officio*), Ukraine, United Kingdom, United States of America and Venezuela (31). In addition, the following States members of WIPO but not members of the Program and Budget Committee were represented as observers: Barbados, Belarus, Benin, Colombia, Greece, Haiti, Kazakhstan, Latvia, Libyan Arab Jamahiriya, Lithuania, Portugal, Republic of Moldova, Romania, Rwanda, Turkey and Uganda (16). The list of participants is provided at Annex I.

3. Discussions were based on documents WO/PBC/6/2 (“Proposed Program and Budget 2004-2005”) and WO/PBC/6/3 (“Accounts for the 2000-2001 biennium”).
4. The session was opened by Mr. Philippe Petit, Deputy Director General, who welcomed the participants on behalf of the Director General.
5. The Committee unanimously elected Mr. Jennes H.A.C. De Mol (Netherlands) as Chair and Mr. Mohammed Ariyu Abubakar (Nigeria) and Mr. Jae-Hyun Ahn (Republic of Korea) as Vice-Chairs of the Committee.
6. The Chair invited any observations on the draft agenda contained in document WO/PBC/6/1 Prov. Corr. As proposed by the Chair, the Committee agreed that discussion on item 5 “Accounts for the 2000-2001 biennium” should precede discussion on item 4 “Proposed Program and Budget 2004-2005.” The agenda was adopted.
7. Introducing the document relating to the accounts for the 2000-2001 financial year, the Secretariat said that the financial management report and the account audit report had been sent to the Member States in July 2002. It summarized the audit opinion, i.e. that compliance with the Financial Regulations and the authorizations provided by the Organization’s deliberative bodies had been achieved, and drew the Committee’s attention to the three recommendations included in the audit report. The Secretariat also pointed out that the external auditor was prepared to attend the Committee meeting on the following day if delegations wished to ask him questions.
8. The Delegation of France thanked the Chairperson for amending the Committee’s agenda so as to begin by examining the previous financial year’s accounts. The Delegation also thanked the Secretariat for the documents which had been sent. It noted the three recommendations made by the external auditor and particularly approved the idea of giving an official document number to the financial management report. In order to achieve greater transparency, it suggested that this report should be published, together with those for the two previous biennia, on the WIPO Internet site. By making a comparison with the previous biennium, the Delegation noted that certain amounts published in the 1998-1999 financial management report differed from those relating to 1998-1999 published in the 2000-2001 financial management report. It also noted a change in staff costs of more than 25 per cent, a change in expenditure relating to consultants and experts of around six per cent, and a change in other contractual services of more than 130 per cent. The Delegation said that a similar change had been observed between the 1996-1997 and 1998-1999 financial years, and the revised 2000-2001 and 2002-2003 financial years. It mentioned that staff costs and related charges represented about 71 per cent of the operating budget, and expressed concern at the burden represented by new forms of recruitment for the future of the Organization. Finally, the Delegation expressed regret that the table indicating the use of reserves was not included in the 2000-2001 financial management report.
9. The Secretariat stated, in response to the suggestion made by the Delegation of France, that it had envisaged publishing the financial management reports on the WIPO Internet site, but that it had decided not to do so for security reasons, since the reports provided very precise information on the relevant sums and bank accounts of the Organization. The Secretariat pointed out that in order to further the recommendation made by the external auditor, it had given a document number (FMR/2000-2001) to the financial management report so that it was considered to be an official document intended for the Assemblies of the Member States. The Secretariat explained also that, in the tables common to the United

Nations specialized agencies, for the purposes of making a valid comparison between the figures for the 1998-1999 biennium and those for the 2000-2001 biennium, it had been obliged to adapt the presentation of the 1998-1999 accounts to that of the 2000-2001 accounts, and the intermediate totals were therefore sometimes slightly different, although the overall total was identical. It also specified that these tables had been audited by the external auditor who, based on knowledge, had vouched that they were accurate. As regards the Organization's reserves, the Secretariat said that, in accordance with the decisions taken by the Assemblies in September 2001, the special reserve fund which stood at 236 million Swiss francs, had been redistributed and allocated to the reserves of the unions that had helped to set it up; during the 2000-2001 biennium, these reserves had been modified only by the result for the financial year, and table 5 of the financial management report provided details of these transactions. The Secretariat pointed out that an explanation of the differences between the budgeted costs and the real costs appeared on pages 9 to 15 of the financial management report.

10. The Delegation of France noted the explanations given. It recalled that the staff costs heading alone had seen an increase of more than 25 per cent between 1996-1997 and 1998-1999, and of the same percentage between 1998-1999 and 2000-2001 and of more than 16 per cent between 2000-2001 and the revised 2002-2003 budget, and expressed concern at this change. The Delegation also requested a precise statement of the use of the reserves.

11. The Secretariat said that the Organization's activities were entirely financed from the regular budget and that the reserves were no longer used to fund activities. As regards the change in staff-related and other costs, the Secretariat pointed out that the level in question had not exceeded the amounts that had been authorized in the budgets approved by the Assemblies.

12. The Chairperson suggested that the question of staff costs should be reconsidered when examining the budget. The WIPO Program and Budget Committee had given its opinion on the audited accounts for the 2000-2001 financial biennium and recommended that the 2000-2001 financial management report (document FMR/2000-2001) should be approved at the Assemblies of the Member States of WIPO.

13. The Secretariat made an introduction on the general context within which the draft Program and Budget was prepared by highlighting the changing perceptions of intellectual property and underscoring its important role for international trade and economic development worldwide. In this context, the draft Program and Budget for the 2004-2005 biennium focuses on the realization of the objectives of the vision and strategies of the Organization as initiated by the Director General in 1997, thus enabling it to endeavor to contribute to the promotion of the effective use of intellectual property.

14. The Secretariat noted that the progressive refinement of WIPO's results-based program and budget has been made in the light of experience gained over the past three biennia, and the program structure had been slightly revised to reflect this improvement. The objectives of each program had been readjusted, in order to ensure a proper reflection of this vision on each program activity. Compared with previous biennia, Part II of the Program and Budget had been reinforced with the aim of providing more systematic and specific assistance to users and prospective users of intellectual property systems, taking into account different economic and social circumstances. Programs had been crafted to address the different and diverse needs of Member States. Each one of them containing practical, specific, measurable and tangible results of program activities, closely linked to the vision and strategy of WIPO.

Investment in information technology and premises began to show economical benefits and most programs have started benefiting from the more efficient services rendered by those facilities and infrastructures. Most programs are designed to involve stakeholders from both government and private sectors, in such a way that they could supplement each other by offering their expertise and knowledge for achieving the common goal.

15. The Secretariat further elaborated the budget proposed by the Director General for 2004-2005, amounting to 655.4 million Swiss francs, representing a decrease of 2.5 per cent as compared to the current biennium. The budget policy could be summarized as follows:

- consolidate and re-align programs to WIPO's vision and strategy with particular emphasis on deliverables in each program;
- budget for anticipated growth in global protection services under the PCT, Madrid and the Hague systems;
- budget for priority programs, including programs in the framework of cooperation for development and new program initiatives with limited budgetary implications;
- budget for the final phase of infrastructure investments concerning the new construction project;
- budget for mandatory cost increases, in particular increases in salary and common staff costs;
- present zero nominal growth for contribution-financed activities;
- identify efficiency gains for PCT due to IMPACT and in rental costs;
- ensure that the budget envelope stays within available funding for 2004-2005 and complies with the financial plan up to 2009;
- ensure that reserves during the next few years are adequate to support sound financial operation;
- exercise maximum budgetary restraint.

16. Concerning the budget components, the Secretariat stated that the proposed 14 programs were listed under four main parts. Part II and III included programs on the IP system and services and support to users of IP with an amount of 306.5 million Swiss francs or 46.8 per cent of the total budget. Activities on patent related matters and the PCT accounted for 46.1 per cent of the total; activities covering development cooperation and the Worldwide Academy accounted to 24.9 per cent; trademarks, industrial designs and geographical indications accounted for 13.5 per cent; activities on intellectual property for development, intellectual property culture and respect accounted for 9.1 per cent and the remaining activities covered 6.4 per cent. Overall, those programs increased by 5.3 per cent. Activities on policy and direction were captured under Part I, which amounted to 28.0 million Swiss francs or 4.3 per cent of the total budget. Administrative services were listed under Part IV and amounted to 314.4 million Swiss francs or 48.0 per cent. This was a rather high share of the overall budget and included a budget allocation of 81.0 million Swiss francs for the new construction project. The support programs listed in Part I and IV decreased on average by 9.0 per cent.

17. The Secretariat stated, with regard to budgetary changes, that within the overall reduction of 18.5 million Swiss francs or 2.5 per cent, budget increases in the range of 60 million Swiss francs and decreases in the range of 80 million Swiss francs were accommodated. In addition, a number of efficiency gains had been identified. Decreases included budget reduction in IT of 58.1 million Swiss francs which were possible due to the completion of infrastructure projects which entered into an operational phase during 2003. This included the completion of the IMPACT development effort and the deployment of

WIPONET. The completion of the ex-WMO building reduced the building service budget (sub-program 13.4) by a further 13.6 million Swiss francs. At the same time, the final phase of infrastructure investments would be implemented. The budget of 81.0 million Swiss francs for the new construction project for 2004-2005 represented an increase of 31.1 million Swiss francs under sub-program 13.5. Further main increases were necessary under the global protection system of PCT and Madrid (programs 3 and 4) with 8.0 million Swiss francs due to the higher workload, the new programs on IP for Development, IP Culture and Respect for IP (programs 11 and 12) with an increase of 4.0 million Swiss francs, programs on Cooperation and the Worldwide Academy (programs 8, 9 and 10) with an increase of 2.7 million Swiss francs as well as copyright (program 5) with an increase of 1.0 million Swiss francs. With the availability of the ex-WMO building, efficiency gains due to savings in rental costs reduced the requirements for building service (sub-program 13.4) by 14.2 million Swiss francs and efficiency gains from the IMPACT Project reduced the requirements for the PCT (program 3) by 4.0 million Swiss francs. Decreases by object of expenditure included contractual services by 37.9 million Swiss francs due to the completion of the IT projects and the discontinuation of the work by external IT contractors. Further reductions of 23.0 million Swiss francs were due to the completion of the ex-WMO building and the reduction in leasing costs for IT equipment. The main increases were under construction costs with 41.4 million Swiss francs due to the new construction project. Another main increase of 13.7 million Swiss francs was due to re-costing for salaries and common staff costs. Furthermore, increases were required for 52 additional posts and the reclassification of posts. Of the new posts, 33 were allocated to PCT and 11 to Madrid in accordance with the anticipated increase in workload. By grade, the adjustment included 10 posts in the Director category, 78 posts in the Professional category and a decrease of 36 posts in the General Service category. The proposed increase in director posts was seen to bring in line the distribution of posts with previous arrangements following the increase in the overall number of posts. Whereas in 1999, the number of D-posts accounted for 5.6 per cent of total posts, this share had decreased to 4.6 per cent by 2003 and the proposal would bring back the share to 5.3 per cent.

18. In addition to the proposals for the coming biennium, a revised budget was presented for 2002-2003. The revised budget amounted to 672.2 million Swiss francs, which represented a reduction of 6.2 million Swiss francs, or 0.9 per cent. The reduction reflected lower requirements due to decreases in workload in arbitration, Madrid, PCT and Hague as compared to the initial assumption, resulting in a net reduction of 23 posts. Also reflected was a reduction in the 2002-2003 phase of the new construction by 2.5 million Swiss francs as approved by the General Assembly in September 2002.

19. The Secretariat stated, with regard to income and PCT fees, that the budget was elaborated in the context of the overall financial situation of the Organization. Projected expenditures had to be met by anticipated income and, if available, excess reserve resources. To illustrate the income situation, it was noted that for the coming biennium, 93 per cent of the total income was generated by fee income. Of the total income, the PCT fees alone accounted for 80 per cent, followed by Madrid with 10 per cent. The estimates with regard to PCT income were fundamental in determining the overall available resources and thereby the possible budget envelop. In recent years, WIPO's budget estimates had been accompanied by an assessment of estimated PCT income. This had been continued and improved in the context of the current budget exercise. As suggested during the 2002 General Assembly, consultations were held with national patent offices to estimate the number of PCT applications in the coming years. The number of applications multiplied by the average fee per applicant was a key determinant for estimating the PCT income. Compared with the

estimates reviewed by Member States in September 2002 in connection with the approval of the budget for the new construction project, the projections for PCT, and also for Madrid, Hague and the Arbitration and Mediation Center had to be revised downwards, essentially due to the difficult economic outlook. This was in addition to the lower than anticipated income for 2002. For the period 2002 to 2009, 5.4 per cent was removed from the projections, equivalent to an amount of 145 million Swiss francs. Despite these adjustments, the projection still incorporated substantial increases in the number of applications for PCT, including 6.9 per cent in 2003, 10.4 per cent in 2004 and 9.9 per cent in 2005. Such increases were however lower when compared to the past with an average growth rate of nearly 20 per cent for the period 1996 to 2001. In order to fund the proposed budget 2004-2005 of 655.4 million Swiss francs, it was proposed to make maximum use of available reserves in the amount of 51.9 million Swiss francs, decreasing them temporarily to 41.0 million Swiss francs by the end of 2005, below the recommended reserve target. The remaining balance of required funding amounted to 603.5 million Swiss francs, and would need to be generated. In order to achieve this on the basis of the anticipated number of PCT applications and Madrid filings, little flexibility existed to decrease the current level of fees.

20. Concerning the PCT fees, the Secretariat noted that the current situation was different from what had been anticipated when recommending, in 2001, further fee reductions in the context of the approval of the budget for the 2002-2003 biennium. The level of activities under the global protection systems is closely linked to the general economic situation. This had to be realized and the policy on fees adapted accordingly. Despite a slowing down in the growth of PCT activities, the Director General was able to maintain and somewhat reduce the fees since the budget had been reduced - an unprecedented proposal in the recent history of WIPO. The review of the PCT fee, still pending approval by the PCT Assembly, overlapped with the introduction of the PCT fee reform. The current proposal introduces as of 2004 a new flat international filing fee structure, including for every application filed, among others, applicability in all PCT countries and the processing of a written opinion. When adjusting for this change in workload, the proposed fee for 2004 was reduced by 3.1 per cent in real terms. In nominal terms, however, fees would increase by 3.2 per cent. This proposed reduction in real terms was in addition to previous decreases, which amounted to 38 per cent between 1997 and 2003, from 2,607 to 1,626 Swiss francs. As a result of successive fee reductions, the income had declined despite substantial increases in application activities, with total income for 2002-2003 of 500.7 million Swiss francs being 20 million Swiss francs lower when compared to 2000-2001. Current fee proposals would reverse this trend and increase income to 603.5 million Swiss francs, an increase of 20.5 per cent, reaching a level sufficient to fund the proposed budget. Changes in the PCT fee, even by a small margin, would have major implications for the WIPO income and therefore would directly impact the possible budget envelope. For example, changing the level of fee by only one per cent would imply a change in the income and budget by 4.7 million Swiss francs for the biennium 2004-2005. A change in the fee by 10 Swiss francs would change income and budget by 2.5 million Swiss francs. By proposing a budget reduction and a small fee reduction as well as by making maximum use of the reserve, the Secretariat was of the view that it had responded successfully to the change in the global outlook, while complying with the spirit of the decision taken by the General Assembly in September 2002.

21. With regard to the budget format, the presentation of the Proposed Program and Budget was seen to enhance budget transparency and fully integrated budget, income and reserves. The Secretariat had further developed the budget format and provided additional information on key budgetary and financial issues as follows:

- the program and budget was presented in Chapter A in accordance with the result-based format, identifying objectives, results, performance indicators and activities by sub-program;
- for each of the main programs, a detailed resource description had been introduced for the first time to enhance budget transparency; a revised budget was presented in Chapter B to update the approved initial budget for the current biennium;
- the budget proposals were supported by a detailed presentation of estimated income in Chapter C;
- the structure of fees for PCT, Madrid, Hague, Lisbon, and the Arbitration and Mediation Center services was presented for the first time in the Appendix since fee income was of fundamental importance for determining the overall available resources;
- a resource plan was presented in Chapter C, integrating information on budget, income, surplus/deficit and reserves by Union and for trust funds for the biennium 2002-2003 and 2004-2005;
- initiatives with long-term budgetary implications were outlined in the Annex to the budget, including the WIPO premises plan, an update of the new construction project and a description of the efficiency gains from the IMPACT project;
- the budget policy and standards were presented in the appendix, including details on the various budget stages, workload flexibility formulas for global protection systems, arrangements for budget allocation by Union and the standard costs utilized for calculating the re-costing adjustments;
- the biennial funding arrangements were presented in the context of financial indicators for a 12-year period from 1998 to 2009.

22. It was noted that the financial indicators captured past developments and future plans. The Secretariat recalled its statement made in 2001 that “it is anticipated that infrastructure expenditure will peak in 2002, followed by the gradual completion of the projects. Those investments will result in efficiency gains after 2003 through IT automation and reduced rental costs through the availability of additional WIPO-owned premises.” This had become a reality and WIPO was currently in the middle of the process. The completion of the infrastructure investments and the associated efficiency gains allowed accommodating substantial increases in the level of activities within overall declining budget requirements. This included accommodating targeted increases for priority programs and new initiatives, including activities in the area of cooperation. Substantial growth in the level of registrations and filings had been experienced in the past, particularly for the PCT and Madrid systems, and was anticipated to continue, although at a reduced rate. Fees were anticipated to remain stable in the coming years until the new construction project had been completed. As of 2007, additional flexibility would exist either to expand the level of activities and/or to reduce further the level of fees.

23. The Delegation of Zambia, speaking on behalf of the African group, said it was regrettable that the overall budget proposed a decrease of 2.5 per cent, but it understood the circumstances and factors that had motivated the reduction, including the evolution in building expenditures.

24. Concerning the program on Cooperation with Developing Countries, the Group believed that notwithstanding the overall downward trend of the budget, the Committee should consider an increase of up to twice the proposed budget figure, adding that this Program was at the core of Africa’s interests in the activities of the International Bureau.

It expected a positive impact of the new initiatives on cooperation for development as a result of better coordination and consolidation of relevant programs grouped under Part III of the Program and Budget, including Cooperation with Developing Countries, the Worldwide Academy, and Intellectual Property for Economic Development.

25. With regard to sub-program 11.3 on Industry, Non-Governmental Organizations (NGOs), and the Private Sector Partnership, the African Group underlined that more funding for the private sector should not lead to any compromising in the priorities of work established by Member States. It noted with concern that only a small increase of resources, of approximately 1.7 million Swiss francs was proposed for Main Program 08, representing an increase of only 3.1 per cent. Resources allocated to Part III also represented a very modest increase, despite the fact that Part III was at the heart of realizing the International Bureau's new vision to use intellectual property for economic development. It encouraged the Secretariat to further promote increased revenues and to explore the possibility of additional resources for important activities, particularly in the area of cooperation for development. While an increase of only 1.7 million Swiss francs was allocated to Main Program 8, the Group noted that the proposed Main Program 12 (Development of intellectual property culture and respect for intellectual property) showed a much larger increase of 16 per cent, resulting in an asymmetrical and unbalanced increase in resources between the two programs. One practical way of balancing the budgetary allocation would be to increase resources for Main Program 08. Regarding Main Program 10 (Worldwide Academy), it stated that the Academy was playing an increasingly important role as an educational institution of excellence in the teaching, training and research in intellectual property, fulfilling its role under human and financial constraints. The fact that the Academy would be called upon to provide even greater assistance in the field of human resources development, given the ever increasing demand from Member States on the Academy's Services next biennium appeared to be in contradiction with the proposed budgetary increase for the Academy of only 600,000 Swiss francs, or 4 per cent. The demand foreseen for the next biennium, mainly from intellectual property professionals, policy advisors, decision-makers, academicians, students, diplomats and teachers of intellectual property, enforcement officials, the research and development community and the civil society, ranging from practical "hands on," training programs to policy debate and formulation, training in practical tools for enforcement of intellectual property rights, curricula development, training of trainers, to public awareness of rights, was increased; moreover, Member States had pointed to a number of new initiatives that they wanted the Academy to undertake in the new biennium during the Permanent Committee Meeting held in October last 2002. Thus the Academy needed to be equipped with adequate resources, human and financial, requiring additional funding for the Academy.

26. As to the PCT, the Group noted its role in funding cooperation for development activities, and it believed there was a strong case that the PCT system continue to pay not only the direct costs of administering the PCT system itself, but also the development cooperation activities of WIPO. This scheme should be supported by those representing the applicants whether governments, or NGOs, such as the intellectual property associations – and could take into account that development cooperation efforts improve laws and local infrastructure including local patent offices and courts of developing countries upon which PCT applicants would rely. Institutional building, training, provision of legislative advice, and other forms of capacity building for African countries, in particular the Least Developed Countries (LDCs), are essential elements towards implementing intellectual property laws and justify the principle of having a portion of PCT fees spent towards development cooperation. The Group noted that the process of developing an intellectual property culture and respect for it in

developing countries would require investments in creating awareness of police makers and administrative offices. Concerning the proposal of reducing PCT fees, it recalled that in 2002, following the proposal of the Secretariat (document WO/PBC/5/2 page 21, paragraph 59) Member States agreed to postpone the reduction of PCT fees to reflect the impact of PCT reform and fundamental changes to the PCT designation system with effect from the beginning of 2004. While reducing PCT fees was welcomed in view of promoting PCT among users in developing countries as it makes the system much more accessible to individual users and small and medium-sized enterprises (SMEs), it considered necessary to maintain the PCT fee level in such a manner that major sources of WIPO's income should be ensured in order to keep important activities going successfully for the years to come. In this respect, the relationship between the PCT and cooperation for development activities should be viewed not as a dichotomy but as mutually supportive programs, as the use of the PCT should be able to enhance the awareness and utilization of the patent system and create a business-friendly environment for PCT users in developing countries, contributing to narrowing the knowledge gap between the developing world and the rest of the world. Consequently, it considered that the proposed level of fees for the PCT was reasonable and well-balanced, also understanding that the PCT fee levels will continue to be subject to review, reflecting the implication and impact of the ongoing PCT reforms and the number of international applications during the next biennium.

27. Concerning the Inter-governmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), the African Group valued its important role, without prejudging the outcome of the next session of the Committee to continue with its good work until a practical solution is found towards the securing of financial resources. It also hoped that this Program and Budget Committee could reach a decision to continue the funding of the IGC, including its extension to cover the participation of traditional leaders who are the custodians of traditional knowledge to enable them attend the IGC Meetings. The Delegation also expressed its interest in the plans by the International Bureau to establish an African Copyright Common Networking system which would be responsible for establishing a data exchange system for African Collective Management Organizations. As to their understanding, the concept proposed to establish a project for a global documentation system and network to be built from the databases of the existing African collective management organizations and databases which already exist outside Africa, with the ultimate aim of facilitating the electronic exchange of information for royalty distribution, with the WIPONET as the backbone, hoping that further consultations on this issue will be forthcoming. In conclusion, the Delegation of Zambia, on behalf of the African Group, expressed its readiness to support the Proposed Program and Budget after proposals and points made in the intervention have been taken into account in the amended text. .

28. The Delegation of Benin, speaking on behalf of the Group of Least Developed Countries (LDCs), stated that in some countries intellectual property had been a major factor in developing prosperity at a time, when knowledge and know-how were crucial factors in an economy. For LDCs, the establishment and development of effective intellectual property systems was essential. Genuine recognition of the Director General's vision was reflected in the Declaration of Ministers of LDCs who met in Benin in August 2002, reflecting on the contribution of WIPO. It invited other institutions to follow the example set by the International Bureau in tackling the problems of LDCs. It noted that document WO/PBC/6/2 mentioned that LDCs were beginning to meet the challenges by benefiting economically, socially and culturally from the extension and modernization of intellectual property infrastructures. The Delegation welcomed this trend, but stated that it needed to be hand in hand with the allocation of adequate financial resources, the later being a mater of concerns

that resources allocated for LDCs activities were limited and shared with other sub-programs. However, the staffing of the unit responsible for LDCs in WIPO was seen as insufficient to deliver its mandate and further assist LDCs. It recalled that WIPO's work for LDCs should not be seen in isolation of its other activities but rather as an effective policy instrument within a broad range of social, economic, technological and political instruments which enable a large range of problems and concerns for LDCs to be dealt with. Capacity building and skill development was essential for managing intellectual property and efforts must be focussed on institutions dealing with intellectual property issues in LDCs.

29. The Delegation of Portugal, speaking on behalf of Group B, expressed its regrets that the working documents were not made available for review in all working languages six weeks before this first meeting of the Program and Budget Committee. It recalled that the Secretariat had presented a fully integrated budget covering all activities and expenditures including information technology and premises project. It indicated that all budget chapters had been revised: Part I (Policy and Direction), Part II (Intellectual Property Systems and Issues), Part III (Intellectual Property for Economic, Social and Cultural Development) and Part IV (Administrative Services). The major changes of the budget chapters adequately reflected the strategy and priority setting of WIPO. The objectives and planned activities contained in the budget were clearly described. Information was given for a 10-year period.

30. Group B congratulated the Secretariat for the improvement in the budget development, its presentation and information sharing. Group B welcomed the Secretariat's efforts to involve Member States in the budget planning process, in particular to provide them all with accurate information and encouraged the Secretariat to provide further justification for income, especially the setting of PCT fees. On the format of the new budget while expressing satisfaction with the maintenance of the budget into four major chapters and the efficiency gains through consolidating similar services in the Secretariat, Group B emphasized the importance of producing a fully integrated budget covering all the activities including those related to information technology and premises. The format of the Program and Budget, in general, reflected the Group B's positions on this matter and its previous comments. At the same time, an evaluation system should be established which allows accurate evaluation of the implementation of the approved programs and budgets.

31. Comparing the revised budget for 2002-2003 of 672.2 million Swiss francs and the proposed program and budget for 2004-2005 of 655.4 million Swiss francs, it noted that a decrease of 2.5 per cent was reflected. It also noted that in the current biennium 146 million Swiss francs were funded by surplus resources accumulated during previous biennia and such budget was presented at a level which was seen as temporary. In this respect, the proposed budget decrease for information technology expenditures was projected to be reallocated to the intellectual property systems and issues, which increased its allocation by 4.6 per cent, intellectual property for economic, social and cultural development, which increased its allocation by 6.9 per cent and the new construction, by 82 million Swiss francs. It noted that the revised income target for 2002-2003 represented a decrease of 5.8 per cent as compared to the approved income estimate. The total income for 2004-2005 reflected an increase of 20.5 per cent. Indeed the level of income had increased at a slower rate than in the past, reflecting decreases in the PCT fees during recent years. In the draft Program and Budget, the International Bureau proposed a new structure for the setting of PCT fees. The Members of Group B would address this issue in their national statements. The International Bureau expected fees to remain stable in the coming years until the new construction project has been completed. Reserves are expected to drop temporarily below the recommended level, and due attention must be paid to the situation of reserves to avoid a continuing structural deficit.

During the 2004-2005 biennium, the level of reserves would be below the level approved by Member States, and it will only be towards 2009 that the reserve will be replenished to the recommended level.

32. The Program Performance Report for the 2000-2001 biennium was the second report in the context of result-based programming and budgeting and was based on the evaluation framework contained in the approved Program and Budget document for 2000-2001 biennium, which included objectives, expected results and performance indicators. Although Member States generally welcomed the report, further improvement was still needed in order to assess effectiveness, not only the quantity of WIPO's work. WIPO's evaluation strategy was introduced to familiarize program managers on evaluation concepts and to obtain their feedback. Exceptionally the external auditor, the Swiss Federal Audit Office, was asked to submit an evaluation report on the project for construction of a new building. This report was very useful for Member States in recommending cost savings and efficiency gains. It welcomed the appointment of an external consultancy firm to participate in the new construction project management and the consultation process established of that topic and encouraged the Secretariat to continue the process. It requested that the Secretariat continued to provide timely reports to Member States on the status of all building projects. It encouraged the Secretariat to continue targeting areas for efficiency savings and welcomed the work of the Contracts Review Committee (CRC) on that subject. In the draft Program and Budget, the International Bureau showed some advantages and efficiency gains in 2002-2003 from the implementation of the processing teams, IMPACT Project and communication-on-request. Although the direction was welcomed, Member States would need the full assessment of expected gained efficiencies in 2004-2005 from IMPACT and WIPONET. In the proposed budget for 2004-2005, substantial reduction in information technology projects was planned. However, attention should be paid not to cause any delay in IT projects due to such reduction. Especially in budget allocations for projects, careful consideration should be paid that ongoing PCT reform should be reflected to such relevant IT projects as IMPACT and PCT-SAFE in a timely manner. It felt that adequate explanation on specific effects of IT projects was not mentioned in related documents and should be provided. As to the IT project as a whole, operating costs would be generated after the development process. Appropriate distribution of operating costs could be an important issue in the future. In this context, detailed explanation about efficiency of the projects after the development process was essential. About the IT projects in the development process, on the other hand, it was necessary to make clear the relationship between the assumed defect of IT projects and the relevant costs in order to make proper judgement about feasibility of future IT projects. With regards to WIPONET, the International Bureau should report the results achieved by the adoption of WIPONET not only from the qualitative perspective of how far WIPONET was introduced in IP offices, but also from the quantity perspective to what agreed office administration process were made efficient by introducing WIPONET.

33. The Internal Audit and Oversight Division (IAOD) was responsible for most internal supervisory function, audit investigation, inspections and evaluation, but had no role in monitoring. Although the division took the central role for preparing the program performance report and the program implementation overview document, its activities were still not incorporated or defined in the financial regulations. The Institute of Internal Auditors had finished a review of the standards for the professional practice of internal auditing and these revised standards were now being incorporated into a WIPO Charter for Internal Audit that should be finalized during this year. It encouraged the Secretariat to base the activities of oversight on regulations and to produce, as soon as possible, a charter for internal audit which would be submitted for approval in order to keep Member States informed of matters under

study. It also encouraged the Secretariat to continue creating new specific evaluation instruments and work to coordinate and improve the evaluation tools used by the Secretariat and Member States with a view to assess the effectiveness of the programs. With respect to Main Program 11 (Intellectual Property for Economic Development), it underlined its support for sub-program 11.2 (Innovators and SMEs). However, concerns were raised over WIPO's proposal to launch a new program on private sector partnership aimed at exploring the possibility of private and voluntary funding for the provision of services and expertise by the private sector. In this regard, Group B encouraged the development of effective codes of conduct for the proposed relations between the organization and the private sector. WIPO was also requested to review those rules set forth by the Secretary General of UN on such contributions and to report on how they could be adopted. It highlighted the need to continue providing assistance to developing countries, LDCs and countries in transition.

34. Group B welcomed sub-program 07.1 (Genetic Resources, Traditional Knowledge and Folklore) in addressing these issues in developing countries. With regard to WIPO's enforcement activities under sub-program 12.2 (Intellectual Property Enforcement Issues and Special Projects), it recommended that the Enforcement Advisory Committee be fully utilized and close coordination be maintained with other programs. On the issue of human resources, it pointed out an upward trend in staff recruitment with the overall number of budgetary posts increasing from 803 in 2002 to 1,009 in the current biennium. Although the proposed budgeted expenditures for 2004-2005 are reduced by 2.5 per cent, the number of proposed posts is increased by 5.2 per cent, including 52 new posts, of which 10 posts in D-category and above, and a reclassification of 78 posts from G-category to P-category. These figures do not include personnel with short-term contracts, namely consultants, Special Labor Contracts (SLC), Special Service Agreements (SSA) and translators. It noted that as of March 2003, there were 470 employees with short-term contracts. It was of the view that short-term contracts provide some flexibility to adapt staff levels to fluctuations in workloads and encouraged the Secretariat to provide figures concerning staffing through short-term contracts and to study the balance between the number of permanent and non-permanent staff. The Group indicated that the budget and the number of staff members should not be increased without careful consideration owing to efficiency constraints. In particular, the increase in the staff, specifically in the number of positions for Directors and program officers, can lead to budgetary and organizational inflexibility. While noting the proposed increase by 10 D-category and 78 P-category posts, the Group requested additional explanations regarding the choice of 1999 as the reference year for justifying additional D-category posts. Explanations were also sought for the proposed increases in P-category staff as well as the continuing employment of externally-contracted experts whose posts were supposed to be eliminated or replaced by regular P-category staff members under the scope of cost-cutting and the fact that such large-scale projects as IMPACT will have been developed in 2003. Explanations were requested for the proposed increases of 33 persons under Main Program 03 (PCT System) and 11 persons under Main Program 04 (Trademarks, Industrial Designs and Geographical Indications). The Group also pointed out that the report on WIPO personnel structures and practices, delivered by the National Academy of Public Administration, offered a number of useful comments and recommendations and that the United Nations Common System and the International Civil Service Commission (ICSC) reviews should be taken into account when considering the report. Finally, the Group stressed the need for more discussion later on different issues, including those in the context of the PCT reform and further proposals made by the Secretariat in response to discussions at the current session of the Program and Budget Committee.

35. The Delegation of Brazil, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), conveyed its support to the Chair and expressed its appreciation to the Secretariat for its documentation and presentations. The Group also expressed its disappointment at the fact that the current meeting had been scheduled to take place simultaneously with other important meetings in Geneva, particularly the session of the Standing Committee on Trademarks and the TRIPS-related discussions at the WTO. It therefore strongly requested that necessary arrangements be undertaken to keep such situations from arising, which may be particularly detrimental to the participation of developing countries and small delegations.

36. While expressing its appreciation for the efforts undertaken by the Secretariat in preparing the documents, the Group expressed its concern over whether the priorities of developing countries were adequately reflected therein. It emphasized the critical importance of cooperation for development activities in view of the vision shared by developing countries integrating intellectual property and development. It viewed the cooperation for development program as a critical element of WIPO's work program and felt strongly that additional financial and human resources should have been made available to the program under the 2004-2005 budget to ensure timely and effective implementation of the various technical cooperation activities. The Group expressed its disappointment at the level of funding allocated to the program on cooperation for development.

37. GRULAC also expressed concern over the reduction of PCT fees, which might have a negative impact on the budget for Cooperation for Development. This situation was further aggravated by the fact that reserve levels could not be reduced below the level of 41 million Swiss francs even though reserves were used in the past to finance cooperation for development. Furthermore, the Group pointed out that the small increase in funds allocated to Part III of the budget titled "Intellectual Property for Economic, Social and Cultural Development" does not reflect the real priorities of developing countries. In this regard, the Group requested clarifications as to the timing of the decision, as well as reasoning, to create and allocate substantial amounts of funding to main programs 11 (Intellectual Property for Economic Development) and 12 (Development of IP Culture and Respect for IP). While underscoring the true importance of main programs 08 (Cooperation with Developing Countries) and 10 (The WIPO World Wide Academy (WWA)) for the needs of developing countries, it raised a concern over the reduction of the WIPO World Wide Academy activities in Latin American and Caribbean region. The Group pointed out that, while the proposed budget for 2002-2003 biennium for cooperation for development originally amounted to 59 million Swiss francs, the revised budget for 2002-2003 was reduced to no more than 53.9 million Swiss francs and the small increase for main program 08 under the proposed budget for 2004-2005 would be used for personnel costs. As a result, the actual increase in funding for cooperation activities would amount to no more than 556,000 Swiss francs, constituting only a marginal increase in real terms.

38. GRULAC also indicated that Main Programs 11 and 12 were not directly related to the real interests of developing countries, and thus their inclusion, especially of Main Program 12 which deals primarily with public outreach programs and enforcement, in Part III of the Program and Budget, is politically problematic as it may appear to suggest, for example, that the issue of enforcement is only a problem of developing countries. Such a view would not take into account the fact that right holders from developing countries may also face serious difficulties in seeking to enforce their rights in developed countries. Therefore, the Group was of the view that Main Program 12 should be moved to Part II (Intellectual Property Systems and Issues) of the Program and Budget. In regards to Table 5 in the Program and

Budget, the Group inquired about the rationale for merging Main Programs 16, 17 and 18 under 2002-2003 budget into a single program in 2004-2005, namely Main Program 13 (Resources Management). As to the funding for Main Program 13, the Group recalled the resolution adopted by the WIPO Assemblies in September 2002 on the new construction project according to which the project was not to have a bearing on the amount of resources available for cooperation for development activities or other priority activities. In this regard, questions were raised about increases foreseen under the new construction project. In reference to Table 6 in the Program and Budget, the Group inquired about why significant reductions in funds allocated to Main Program 14 (Information Technology) had not resulted in the reduction in the number of posts for the program. Furthermore, it raised concerns about the general content of several parts of the program and recommended that changes be made in the text to make it more balanced and to correctly reflect on-going discussions within the Organization. For instance, several cases appeared to prejudice the outcome of substantive discussions that are being undertaken by Member States in the Standing Committees in a manner that is not acceptable to the members of GRULAC.

39. With respect to Main Program 03 (PCT), GRULAC expressed its concern over the reference to the WIPO Patent Agenda contained in paragraph 58 of the Program and Budget, and recalled that this Agenda - an initiative of the Director General - was still under discussion by Member States and had not been formally adopted or endorsed as the future blueprint for the evolution of the International Patent System. It was suggested that paragraph 58 be redrafted to make it clear that the WIPO Patent Agenda was only a proposal currently under consideration by the Member States. With respect to sub-program 03.1 (Development of International Patent Law and Services), a concern was raised over the contents of the table on expected results of the sub-program contained on page 42 of the document, which appear to commit Member States and the Organization to further harmonization in the area of Patent Law. Given the current state of discussions in the SCP on the draft PLT, the Group believed it was pre-mature to commit the Member States to such an outcome, since, at the present time, the only outcome realistically expected were further discussions on harmonization in the context of the work of the SCP, not harmonization itself. The Group questioned the relevance of one of expected results mentioned for the sub-program, namely the fact that developing and least developed countries would feel “enhanced confidence in the direction of development of the international patent system”. The phrase appears to imply the future direction of the Patent System as a given and that the developing countries are the ones on the wrong side of the debate. With respect of paragraph 63 of the document, the Group was concerned about the reference to the convening of a diplomatic conference on a draft SPLT and stated that the Program and Budget Committee should not prejudice the decisions that Member States may take on this matter in the Standing Committee on Patents. Therefore, it was proposed that the reference to the convening of such a diplomatic conference be deleted. With regard to paragraph 66, the Group requested further clarification of the proposal to prepare “further studies on important issues relating to the law of patents that might not yet be ready for consideration by the SCP”.

40. As to Main Program 07 (Selected Issues of Intellectual Property) and sub-program 07.1 (Genetic Resources, Traditional Knowledge and Folklore), GRULAC was of the view that the language of this section should more precisely reflect the concepts and terms that are currently utilized in inter-governmental committee on genetic resources and traditional knowledge. Concerning sub-program 07.2 (Intellectual Property and Life Sciences), the Group wished to have further clarifications on paragraph 147, specifically on “selected activities agreed by the WIPO Working Group on Biotechnology”. It was of the understanding that the recommendations of the afore-mentioned working group were

non-binding in nature and were never formally endorsed by the Member States. Concern was also expressed over the fact that the creation of this new sub-program appeared to imply reduction in the budget allocated to the work of the Inter-governmental Committee on Genetic Resources and Traditional Knowledge.

41. With respect to Main Program 08 (Cooperation with Developing Countries), GRULAC raised a number of questions and concerns about the content of the program description. In particular, clarifications were sought to explain the idea that capacity building should “make further use of existing strong links with other program areas concerned with substantive IP legal issues” (paragraph 159). In reference to paragraph 160, the Group recalled that the conclusions of the Forum on Strategic Issues for the Future were not adopted as recommendations by the Permanent Committee on Cooperation for Development. It was also of the view that the emphasis and general trust of cooperation for development should be a north-south transfer of technology and technical cooperation. Furthermore, the Group stated that it could not accept the idea contained in paragraph 164 that the Permanent Committee on Cooperation for Development will solicit policy inputs from the WIPO Policy Advisory Committee and the Industry Advisory Committee. Rather, it believed the Permanent Committee should take its guidance from the Member States themselves, being inappropriate to commit Member States to solicit advice from those two commissions. In regards to sub-program 08.1 (Empowerment for Development), clarifications were sought about paragraphs 167 and 168, which seem to imply that only developing countries should receive advice on the benefit of adherence to global IP protection systems. Also, it was recommended that references to best practices in enforcement matters, in paragraph 168, be deleted. In reference to sub-program 11.3 (Industry, NGOs and Private Sector Partnership), GRULAC expressed its concern over possible implications of the creation of extra-budgetary funds on the regular budget of the cooperation for development program. As cooperation for development activities must take into account the special needs of developing countries and the different national circumstances, concern was shared that resources from extra-budgetary funds may be earmarked for only specific activities and that conditions may be imposed on their use. This would be contrary to the very important idea that cooperation for development should be demand-driven. On the other hand, if the creation of this sub-program is agreed to by the Member States, activities have to be implemented in accordance with the guidelines contained in Resolution 56/76 of the UN General Assembly titled “Towards Global Partnerships” and closely monitored by Member States to ensure that they meet their developmental needs and concerns. Concerning paragraph 232, the Group expressed its disagreement with the statement concerning the private sector as “a valuable source of expertise” and recommended that such reference be deleted from the text.

42. Concerning sub-program 12.2 (Intellectual Property Enforcement Issues and Special Projects), the GRULAC was concerned about the stated objective of the sub-program. In particular, it was proposed that the reference to non-governmental actors be deleted since it may give an imprecise idea of where guidance may come from. Moreover, the Group asked for the deletion of the reference to “good and cost-effective practices,” mentioned in the same section. Finally, the Group stated that in light of above-mentioned comments and suggestions GRULAC was not in a position at the present time to recommend the adoption by the WIPO Assemblies of the proposed Program and Budget for the 2004-2005 biennium.

43. The Delegation of China thanked the Secretariat for its efforts in providing the documents for the Program and Budget for 2004-2005. The Delegation noted the proposed overall budget reduction of 2.5 per cent while the funding for the program on cooperation for development was increased. However, it also emphasized that the assistance to developing

countries, especially LDCs, needed to be further enhanced in view of lower expenditures for a number of major activities and projects, such as IMPACT. The assistance should include the strengthening of human resources and capacity development, such as training and assistance to SMEs, as well as IP capacity building. While noting reductions in PCT fees, the Delegation pointed out that the level of fees was still high for many users in developing countries, which in fact benefit very little from the reduction of PCT fees. The Delegation suggested that a special assistance be provided to PCT applicants from these countries.

44. The Delegation of Pakistan, speaking on behalf of the Asia and Pacific Group, expressed its gratitude to the Secretariat for the presentation of the draft Program and Budget 2004-2005 while noting its importance in better understanding and evaluating WIPO's priorities for the coming biennium in relation to those of its Member States. The Delegation welcomed the proposed 2.5 per cent reduction in the overall budget as an indication of the Secretariat's efforts to use available resources in an efficient manner. However, it expressed its concern over whether the budget reduction would be at the expense of programs on cooperation with developing countries. The Delegation declared itself pleased with a zero nominal growth for contribution-financed activities. While referring to the proposed one per cent increase in program variation for main program 08 (Cooperation with Developing Countries), it highlighted that the increase, marginal from a developing country's perspective, needed to be substantially enhanced. The Delegation expressed its view that when devising new programs or expanding the scope of existing ones duplications should be avoided and objectives are achieved in a manner that would not make the target countries unnecessarily apprehensive. In this regard, greater focus should be put on traditional activities under the cooperation for development programs, such as capacity building, leading to better understanding of and respect for intellectual property. The Delegation questioned a separate presentation of main programs 11 (Intellectual Property for Economic Development) and 12 (Development of IP Culture and Respect for IP) and wished to have more discussions on their resource allocation. Lastly, the Delegation was pleased with a proposal to maintain PCT fees stable after 40 per cent reduction during the past five years as it was of the view that further fee reductions in the main source of WIPO income might jeopardize core programs of the organization, in particular cooperation for development activities. On the other hand, it pointed out that fee reductions for developing countries might encourage their wider usage of the PCT system.

45. The Delegation of Belarus, speaking on behalf of the Central Asian, Caucasus and Eastern European Group, noted the need for timely presentation of documents in all official languages at WIPO meetings, in particular, a document such as the proposed Program and Budget. It noted further, its satisfaction with the content of the program element on Cooperation with Certain Countries in Europe and Asia and the activities proposed therein. However, it regretted that despite the fact that there was an overall increase in the volume of funding by more than five percent for staff, in the budget proposal, there had actually been a decrease in funding for other items. Given the concerns expressed by its Group, it was felt that this approach would not allow them to fully meet all the objectives that they had set themselves in accordance with this program. It was also noted that funding over the past biennium was also reduced for some items. Another point of concern was in respect to funding for Main Program 14 (Information Technology). It was stated that there had been a particular cut in the funding, which was not discussed by the Standing Committee on Information Technology (SCIT) in advance. When looking at the revenue for WIPO in the future, it stated that there might be some difficulties with income and that being so, it seemed undesirable that these problems should particularly affect the program on information

technology. It also sought further clarifications on the justification for the increases in staff costs.

46. The Delegation of Uganda wished to associate itself with the statements that were made by Zambia on behalf of the African Group as well as by Benin on behalf of the LDCs. It attached greatest importance to Part III, Intellectual Property for Economic, Social and Cultural Development, of the proposed program and budget, particularly the Main Program 08, Cooperation with Developing Countries, which align themselves with the Director General's vision of using intellectual property for the promotion of economic, social and cultural development. To reinforce this direction, it felt that the budget allocation for Part III should be increased, even doubled as the magnitude of the work that needed to be accomplished, was very large. It noted that increasing funding for Development Cooperation should not be seen as an act of charity but merely as an expression of enlightened self-interest from the developed countries because a truly developing country with prosperous trading capability was beneficial to everyone. As the funding for development cooperation was requested to be increased, it was also essential that more consideration be made on the actual allocations both for the programs that fall under Part III and other constituent programs, including Main Programs 11, Intellectual Property for Economic Development and 12, Development of IP Culture and Respect for IP. Furthermore, concerning the allocation for Main Program 08, it questioned whether resources were distributed in the most cost-effective way.

47. The Delegation of India expressed the view that intellectual property protection from the perspective of developing countries did not only concern legal rights but should rather be seen as a tool for economic development. As the budget document itself noted there could be no "one-size fits all" approach, to pursue its development objectives each country must be able to use the full set of flexibilities consistent with its international obligations. The Delegation expressed its satisfaction that the program recognized this and it was reflected in the strategic overview of the Program and Budget for the next biennium. The Delegation welcomed the effort at streamlining the different programs, regrouping and consolidating them as well as integrating the approach outlined in the document, resulting on better focusing programs towards the strategic goal of economic development. If it has been appropriately structured, at the top of the pyramid must be the overall goal of economic development in order to ensure an equitable balance between development dimension and the interests of all intellectual property stakeholders. For WIPO's strategic goal and vision to be translated into positive development, the programs on cooperation for development were crucial, and these programs should move beyond just creating awareness into tangible deliverables providing developing countries with the infrastructure and advice appropriate to its stage of development, in harmony with their development goals to ensure that the inputs provided by WIPO relating to intellectual property protection genuinely advance the economic well-being of the countries concerned. Programs which tried to limit flexibility to developing countries would be unacceptable. It also expressed its concerns about some sub-programs mentioned in the budget document, for instance sub-program 3.1, Development of International Patent Law and Services, which listed, among the expected results, "harmonized positions and guidelines in the area of patent law and practice." Given the absence of any consensus in the SCP on the draft SPLT it believed it was premature to commit Member States to any outcome. The Delegation of India did not share the view that such upward harmonization was necessarily desirable or inevitable. Under Main Program 07, a new sub-program 07.2, Intellectual Property and Life Sciences, had been proposed, reflecting the growing interest in the intellectual property community on the global debate on this issue, which had generated enormous controversy. More importantly, if delegations decided in favor of WIPO's

venturing into this field, the Delegation considered it should not be at the expense of sub-program 07.1, Genetic Resources, Traditional Knowledge and Folklore. As the proposed budget for the two sub-programs that made up Main Program 07 was only marginally higher than the revised budget for the 2002-2003 biennium for Genetic Resources, Traditional Knowledge and Folklore alone, and with the same staff strength that sub-program 07.1 currently had, it appeared that Intellectual Property and Life Sciences would be a new sub-program introduced at the expense of Genetic Resources, Traditional Knowledge and Folklore - a proposal that the Delegation could not support. On the question of, sub-program 12.2, Intellectual Property Enforcement Issues and Special Projects, it pointed out that the consideration of this subject in the context of WIPO had posed considerable difficulty to delegations from developing countries in the past, and urged the Secretariat not to seek the expansion of the remit of WIPO in this area, as it would only serve to keep alive a point of conflict between delegations in WIPO, which in turn could only harm the larger cause of global intellectual property protection and its promotion. A program involving extra-budgetary funding by the private sector of activities to be undertaken by WIPO was regarded as having several risks, not least the undue influence that such private sector entities might exercise over WIPO. As an international organization, WIPO operated in a relatively comfortable financial environment thanks to the fees that it receives for the various services that it provides, and embarking on projects with extra-budgetary funding from the private sector might lead the Secretariat to orient some activities in ways not all countries could support. It stated that it had carefully studied the financial indicators, income estimates and resource plan contained in Chapter C of the Program and Budget, noting that because of a combination of factors WIPO's reserves were projected to dip sharply in the coming years to around one third of the desired level, far below 18 per cent of the biennial budget, which was the level approved by the Assemblies of the Member States of WIPO in 2000. In such circumstances it would clearly be unacceptable to consider any further fee reductions, beyond the 3.1 per cent effective reduction proposed with effect from 2004. It requested clarification as to why further lowering of PCT fees for the benefit of international patent filers should be considered, as the very fact that an international patent seeker filed a PCT application implied that he recognized that the value of what he received exceeded the cost of the fee that he was asked to pay.

48. The Delegation of Venezuela supported the statement made by Delegation of Brazil on behalf of GRULAC. In addition, it expressed its concerns about the effect on the budget for the development program following the reduction of PCT fees, fearing that this would have a generalized negative effect on the budget in general and more specifically on cooperation activities. It noted that while some growth was proposed for some activities, it felt those activities were not those of greatest interest for developing countries. It noted the evolution of proposed staff posts in the different budget parts, and its perception that general reductions in the budget did not appear consistent with staffing proposals. In this respect, the Delegation associated itself with the Delegation of India in seeking further information concerning staffing figures. Concerning Main Program 03, it expressed its concerns about the fact that patents were being reflected as a general orientation, while such guidelines were never adopted by the Assemblies of the Member States of WIPO. Concerning sub-program 07.1, it noted its concern on the questions related to personnel. Concerning Main Program 10, The WIPO Worldwide Academy, it supported the statement made by the Delegation of Brazil. Concerning sub-program 10.1, Distance Learning, it felt that a future vision was not really included in the results. As indicated in paragraph 203 the Academy would design, implement and deploy more distance-learning modules, while this activity should have already been implemented. On sub-program 10.2, Professional Training, it expressed its difficulties in assessing the results of intellectual property protection in terms of innovation and technology

transfer. While it agreed on the importance of distance learning, it said it should not be seen as a substitute for other training modalities. Concerning Main Program 11, Intellectual Property for Economic Development, in particular 11.2, Innovators and SMEs, it said it should have enjoyed a larger budget. On program 11.3, it supported the concerns expressed by GRULAC on possible conditionalities of resources which would come in this respect from the private sector. It also expressed its concerns about the contents of the activities of sub-program 12.1, Demystification and Public Outreach, where resources should have been transferred to Main Program 08, Cooperation with Developing Countries. It noted that activities enumerated in Main Program 12, Development of IP Culture and Respect for IP, appeared closer to a campaign being carried out by an enterprise on the launching of a product rather than some kind of campaign relating to the improvement of the services and documents of a United Nations Organization. On sub-program 12.2, Intellectual Property Enforcement Issues and Special Projects, it supported the statement of Delegation of Brazil, on the content of the first activity, and requesting clarification on the meaning of “undertaking activities giving effect to the decisions by the Committee.” Concerning Main Program 13, particularly sub-program 13.3, Conference, Languages and Printing Services, it believed it was important to allocate resources to the effective distribution of documents and the translation of documents for meetings. The increase for this sub-program, was not seen as sufficient, as the greater part of the increase would go into staff costs. It noted some apparent discrepancies with approved levels from the revised budget for 2002-2003. For example on Main Program 08, it requested clarifications as to whether a reduction in this program had taken place, and if indeed such reduction had taken place, what was the basis for such decision.

49. The Delegation of Ecuador noted that it was essential that WIPO’s strategy be focused on the enhancement of intellectual property in order to give each country help in building an effective IP framework. It noted that many developing countries had great difficulties in strengthening IP rights, hence WIPO’s role in ensuring that each developing country could be helped in strengthening the IP rights and building of capacities and institutions. This essential aim could not be achieved if budgetary resources for cooperation for development were not increased. Reduction of funding and increase of expenditure in physical infrastructure and programs which were of less interest or not agreed upon by Member States made it difficult for the delegation to join in supporting the approval of this proposed program and budget.

50. The Delegation of the United States of America expressed its continued support for budget discipline, increased efficiency and prioritization in the financial resources of international organizations. It was concerned with the fee estimates underpinning the proposed program and budget 2004-2005 and the level of individual PCT fees associated with these estimates. It continued to believe that fees should be set efficiently and in consistency with costs of services provided and applications processed. It noted that this Program and Budget was based on fee proposals being made by the Secretariat to the Working Group on Reform of PCT. It noted that an alternative proposal was circulated by the Delegation. Such proposal offered a different base fee, plus a handling fee to be applied only in those cases where it was requested. It noted its concern with the decline in reserve funds, and the projection that reserve funds would not be restored to its target level until 2009. In addition, it remained concerned about the new construction project, supporting the use of an external consultant to oversee the construction management. The Delegation appreciated the Annex C, entitled “Streamlining and Automating the office of Patent Cooperation Treaty, preliminary assessment of the benefits obtained” and welcomed the information provided. It noted its interest in obtaining similar reports concerning efficiencies obtained in other offices, and its satisfaction to see continued integration and refinement of performance measures in the program and budget. It expressed concerns on sub-programs 7.1, 7.2 and 11.3 and wished

to seek further information. Specifically, on sub-program 7.1, Genetic Resources, Traditional Knowledge and Folklore, it noted that there was no agreed mandate yet for the IGC and the Delegation did not wish to see this as a perpetually ongoing activity, seeking further information from WIPO on its plans for this activity. For sub-program 7.2, Intellectual Property and Life Sciences, it was noted that this sub-program is duplicative of work being undertaken in the WTO Trips Council, that it was unnecessary and it should be discontinued. Concerning sub-program 11.3, Industry, NGOs and Private Sector Partnership, the private sector partnership was very unclear and the Delegation objected to the lack of clarity, as it perceived a risk in approving the establishment of a fund with the only constraint being that the Secretariat would develop guidelines for approval by members, in spite of the assertion that this was common practice in other UN agencies. It requested the Secretariat to present a revised draft Program and Budget for 2004-2005 that incorporated the PCT fee reduction proposed by the Delegation. If necessary, WIPO should make any appropriate spending reductions to implement this proposal, including such items as curtailed staff growth, forgoing the addition of several senior level positions, curtailment of some legal and technical assistance, or on WIPO Worldwide Academy activities, or other activities as appropriate. Under no circumstances should funding be cut for the income generating unions of WIPO, namely the PCT, Madrid and Hague Unions. Member States should be presented with such revised program and budget with adequate time for review prior to the next meeting of the Program and Budget Committee. The Delegation also sought further clarifications on some budget items, including the justification for a 20.5 per cent income increase in 2004-2005, proposed increases in posts at the P and D categories, particularly in view of the proposed budget decrease, and the need for three senior positions for the SMEs unit. It noted that until the Delegation received the additional information requested, it would not be prepared to join consensus on adoption of the WIPO 2004-2005.

51. The Delegation of Japan associated itself with the statement made by the Delegation of Portugal on behalf of Group B regarding the budget formulation and implementation processes of WIPO from a long-term perspective; the Delegation felt that budget discussions should include whether or not the current budget structure, greatly dependent on registrations and unions income, should be improved, and the question of balance between the benefits to be directly enjoyed by users of registration unions and infusion of their income into the activities outside their sphere. Regarding PCT fees, it said the PCT fee reduction was the key to expanded use of the PCT system in the context of global patent protection and that users of the PCT system should be allowed to enjoy the benefits of an improved patent system through the introduction of PCT reform including enhanced efficiency due to the IT projects of WIPO, and an 8 per cent fee reduction as envisaged in the adopted WIPO program and budget 2002-2003 should be implemented with effect from January 2004. On the issue of fees, it noted that the current proposal by the Secretariat combined a handling fee with the international filing fee, which would cause an unexpected fee increase for users who had not demanded the preliminary examination. The Delegation of Japan expressed its objection to such an inclusion, and requested that an eight per cent fee reduction be introduced.

52. The Delegation of the Russian Federation noted that the program and budget structure was now more transparent and clear-cut, including a reduction in the number of programs, and a consolidation of certain domains of activities and uncertain issues. It said this should allow members to focus their attention on those aspects of WIPO activities that were intended to meet certain strategic aims. It also allowed Member States to ensure that financial resources were dedicated to resolving specific problems. It regarded the establishment of programs on Intellectual Property for Economic Development, on Development of IP Culture and respect for IP favorably. The Delegation also noted the increase in the funding of

Program 9 and expressed its satisfaction with the introduction of the D-category post. At the same time it supported the statement made by the Group Coordinator (Belarus) who had noted the resulting decrease in funding for the main activities within Program 9. It also expressed its concern on the reduction in funding for Information Technology, Program 14. Concerning reserve funds, it noted with concern that they would only be replenished over the long-term, which increased the financial risk for WIPO. It considered that the Secretariat should give Member States a more detailed justification for the staff costs that were envisaged, as it felt, increasing costs in this area should not lead to any cut in funding for main activities of the Organization.

53. The Delegation of the United Kingdom believed that WIPO, in common with all the other United Nations Organizations, should make reference on the way it would contribute to United Nations Millennium Development goals agreed by the United Nations General Assembly, and the contribution it would expect to be able to make to other ongoing discussions in relevant fora. The introduction made clear that intellectual property protection could contribute to economic and social developments and it would be useful to relate WIPO's work to the wider development agenda being pursued by the international community, specifically the Millennium Development goals. This would help understand the relevance of WIPO's work across the development forum. On Main Program 8, Cooperation with developing countries, it expressed its satisfaction that the Program recognized the importance in developing intellectual property systems appropriate to the needs of particular countries, and the cooperation assistance also needed to be tailored to their requirements. The Delegation also recognized the links between intellectual property and other policy areas and the necessity of engaging a wide range of stakeholders when developing policy. It was important that technical assistance and advice empowers partner countries to effectively engage with their stakeholders and join up with other parts of government. In order to properly tailor such advice, a clear idea was needed at what success would look like both for WIPO and the partner country, as well as ways of measuring progress towards this success. The effect of such advice was very difficult to measure, and it was certainly not easy at all to measure the effects and suitability of specific laws in a country whose economy was in development. What was felt possible to measure and examine were the mechanisms used by developing countries in partnership with WIPO, and others, when developing or assessing effects when formulating policy.

54. The Delegation of Greece, speaking on behalf of the European Union, proposed two amendments to the text. The first of these amendments referred to sub-program 04.1, Development of International Law and Services. Under the heading activities, the European Union was of the view that any new start on issues relating to the Law on Trademarks, Industrial Designs and Geographical Indications should have been previously agreed upon Member States. For this reason, it was proposed that in the first paragraph on page 56, the second line after the word "indications," to insert the words "subject to prior agreement among WIPO Member States." Similarly, concerning the sub-program 04.2, International Registration Systems under paragraph 94, on page 60, fourth bullet from the bottom, the paragraph that starts with "developing guidelines and best practices as well as undertaking case studies, etc.," it proposed to insert the same sentence after the words "case studies." On the same page, the paragraph which deals with the meetings with government representatives for consideration of, and exchange of views on policy issues concerning the development of registration systems for trademarks, industrial designs and geographical indications, it underlined the need for transparency and the flow information to WIPO Member States on any such meetings and discussions.

55. The Delegation of Switzerland associated itself, generally, with the statement made by the Delegation of Portugal on behalf of Group B. It highly welcomed the efforts to render the budget process more transparent and appreciated the work WIPO had already accomplished to attain that goal, and encouraged the Secretariat to continue in this direction. It expressed the idea that it would be helpful if the budget document provided more detailed information about the distribution of funds within the main programs and sub-programs, which it felt would help the Member States to understand the budget variations and to propose eventual amendments. Regarding the revised income target for 2002-2003, Switzerland shared the view expressed by the Delegation of Portugal, that due attention should be paid to the situation of income as far as PCT fees are concerned. The early involvement of Member States and the regular contact with national offices could help to review future trends as early as possible and to provide more accurate forecasts. Given the growing importance of knowledge in the global economy and the rapidly changing perception of intellectual property, WIPO would continue to face major challenges and play a pivotal role in the establishment of intellectual property as a powerful tool for economic, social and cultural development. The Delegation attached high importance to the progressive development of intellectual property rights, especially in the area of patents, trademarks, industrial designs and copyright. Sufficient funds should therefore be allocated to permanent committees and working groups dealing with these questions. With regard to sub-program 04.1 the Delegation especially welcomed the reference to studies on the protection of industrial designs as this was a rapidly changing area of important developments such as the Geneva Act of the Hague Agreement, the Community Design of the European Union and the new Swiss Law on Design Protection that had taken place in recent years. Furthermore, it supported the statement the Delegation of Greece had made on behalf of the European Union, concerning sub-programs 04.1 and 04.2, and also wished to endorse the wording proposed by Greece in this respect. Furthermore it welcomed sub-program 07.1 (Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore) and strongly supported the activities contained in this program. It also shared the view expressed by the Delegation of Portugal on behalf of Group B that enforcement continued to be an important issue and a main concern for WIPO and that it was therefore important that sub-program 12.2 be sufficiently funded and efficiently implemented whilst ensuring close coordination with other programs. Finally it said that while it fully agreed that it was very important to keep an eye on the development of the number of staff members in order to maintain enough budget flexibility, it should not be forgotten that the workforce was a valuable or even the most important asset of an organization like WIPO. Due attention should therefore be paid to strike a balance so that WIPO continues to be an attractive and competitive employer being able to appoint and keep the best-qualified professionals.

56. The Delegation of France subscribed to the account given by the Coordinator of Group B, and in that context wished to mention once again how disappointed it was that all language versions of the documents had not been distributed in due time, which had made the work of some delegations difficult, and as yet incomplete. It also endorsed the other Group B comments, and especially its recognition of the work done by the International Bureau to ensure that the process of drafting the budget was conducted satisfactorily. It voiced its hope that the present meeting would produce different structures which would make it possible to improve the draft still more, and expected to have a new draft to consider in September which reflected the comments made by various delegations, according to the procedure adopted in September 2000. With that in mind it suggested that the Member States should immediately submit observations on four issues, namely budget layout, program content, the level of the budget and control machinery. On the matter of layout it declared itself satisfied with the new budget format, but in its opinion the layout of the actual document would benefit from still greater transparency: what it wanted was to be provided

with a document that made a distinction between the Organization's investment expenditure and its operating expenditure; there should also be a table to inform Member States on the status of achievement of investment financing targets and the balance of the Reserve Fund. As for the content of the programs, the Delegation wished to stress first and foremost the need for translation and interpretation facilities that were substantial enough to handle the translation and interpretation of documents in all the official languages of the Organization. Applying the same thinking to the work on the International Patent Classification (IPC), it wished to make its concerns known. The English and French versions of the IPC should be of equal quality and available within similar time-spans, as both were official versions within the meaning of the Strasbourg Agreement, so it wished to have assurances from the Secretariat that that aspect had been taken into account in the calculation of the budget funds made available to language services. As far as the information technology project was concerned, the International Bureau would have to provide a table in anticipation of the September meeting which showed the status of achievement of projects launched in 1998, notably WIPONET and IMPACT. So far the Delegation did not have a very clear picture of the date on which IMPACT would be operational and able to function unattended, making for efficiency as well as staff gains. To conclude on the matter of program content, the Delegation of France wished to recall its opinion that the WIPO proposals appearing in the budget document were of indicative character inasmuch as they described programs and were not substantively binding on Member States: in order to define the actual content of the programs and the attitudes adopted by Member States one should refer to the conclusions submitted by the various committees and working groups concerned and also by the General Assemblies. It mentioned in particular that the text of the WIPO document did not report proposals already approved by the Member States regarding future work on the protection of audiovisual performers, the choice of work topics for the Standing Committee on Copyright and Related Rights, folklore issues and the protection of geographical indications, or work in the field of "intellectual property and life sciences." Ultimately the Delegation wanted the recommendations of the Program and Budget Committee to refer in a general way to the findings of the competent bodies, as had been done in the course of the biennium for geographical indications. Turning to the level of the budget, the Delegation was pleased to note that the figures in the program and budget had been arrived at on the basis of projections made in close consultation with offices. That approach should indeed be the norm, but as far as the level of the budget was concerned the Delegation did want observations to be made and the Secretariat to be questioned. The first thing that the French authorities were wondering about was the criterion on which income projections had been based: the Proposed Program and Budget 2004-2005 provided for an income increase of 20.5 per cent compared with the 2002-2003 budget. Judging by the level of activity of national or regional offices, there was reason to doubt very seriously the realism of the growth patterns predicted. For instance, Europe had observed a drop in trademark filings since 2001 and relatively little growth in PCT expenditure for some months. The accession of new member States was unlikely, in the short term, to offset that tendency. The consequences of a misjudgment could be very worrying for the Organization's reserves, which were already below the level proposed by the Program and Budget Committee. The second thing that had caught the attention of the French authorities regarding the level of the budget was the expenditure structure, especially with regard to staff expenditure. In that connection the Delegation wished to ask the Secretariat for additional documentation that would explain why the level of staff expenditure had risen from 240,000 to 300,000 Swiss francs between 2001 and 2002 and 2004 and 2005. Apart from that staff expenditure seemed to increase considerably faster than income. The Secretariat's very optimistic forecast spoke of an income increase since 1996-97 of 55 per cent for 2004-2005, whereas staff strength was expected to have doubled in the course of the same period. While it was not possible to go back on past decisions, it did nevertheless seem necessary to reflect

on how another expenditure increase was to be financed when it was expected to be at a level as high as 7.8 per cent. The two sets of observations ultimately led one to believe that the WIPO budget could end up suffering from a structural deficit. The expenditure account, which was in deficit by 92 million at the end of 2002, was a matter of considerable concern to the Delegation. In order to ensure that the WIPO budget did not suffer from a structural deficit, the Delegation wanted WIPO to submit a document that would allow the Organization's operating budget to be distinguished from its investment budget, with a view to establishing that operating expenditure did not exceed foreseeable resources. The International Bureau could then draw up other income and expenditure scenarios to allow for less optimistic income assumptions. Finally, speaking of control machinery and referring to the statement by Group B, the Delegation encouraged the Secretariat to devise new evaluation tools, as suggested by the external auditor in his 1998-1999 report, in such a way as to improve its way of evaluating and reporting the Organization's activities. The Delegation declared itself willing to contribute to any work done in that area.

57. The Secretariat expressed its regret for the delay regarding the distribution of documents and assured the delegations that new measures would be put in place in order to avoid similar delays in future. On the issues concerning internal oversight activities, the Secretariat indicated that the work is currently underway to produce an internal audit charter within a short period of time. As to performance evaluation, the Secretariat pointed out that many references had been made about an effective assessment of performance in the program implementation. One of the important steps of such assessment is the indication and use of correct performance indicators, which are formulated in the framework of the WIPO result-oriented budget system. It indicated that since 1998-1999, WIPO had made improvements in assessing performance results through performance indicators. Performance evaluation also includes independent evaluations on topical issues which are undertaken either internally or for the benefit of Member States, for example, the review of the new construction project by the Swiss Federal Audit Office carried out in 2002 and an in-depth evaluation of specific activities in the Development Cooperation Sector undertaken by the Organization in 2000 and presented to Member States early in 2001 on the occasion of the meeting of the Permanent Committee on Development Cooperation. The Organization is currently working on the full integration of the evaluation strategy within the organization and its details will be made available to Member States as soon as they are refined. Concerning questions for Main Program 03, PCT), in particular the status of the patent agenda, the Secretariat recalled that the Director General launched this initiative with such an approach and framework within which the patent related issues would be structured and consulted with Member States in an integrated manner. As such, paragraph 58 of the proposed program and budget has been prepared with view of providing Member States with relevant background information. In this regard, the Secretariat pointed out that the list of activities shown on page 43 of the English version did not make any reference to specific activities directly linked to WIPO patent agenda. The Secretariat however noted the concern of delegations on this matter, and recalled that the Patent Agenda would continue to be discussed and would be on the Agenda of the Assemblies of the Member States of WIPO in September this year as decided at its last session. The Patent Agenda has included two activities, which had already given a mandate by the Member States, namely the PCT Reform and the discussions on patent harmonization. In reference to the concerns of some delegations on the patent harmonization, the Secretariat indicated that the wording utilized in the program description was intended to express the possible expected results associated with the indicative list of activities included in the document. Therefore it should not be construed as prejudging the outcome of the on-going discussions on the harmonization issue. Regarding to paragraph 63 of the program

and budget document referring to the possible convocation of the Diplomatic Conference as a result of the exercise of the Standing Committee on the Law of Patents, the Secretariat pointed out that the reference to the convening of the Diplomatic Conference on the treaty dealing with substantive patent law would be made only if so decided by the Member States. The program and budget simply makes a financial provision for the event in case it is to be held at the decision of the WIPO General Assembly. Concerning a request to elaborate the reference to “preparation of studies on important issues relating to the law of patents” mentioned as an activity for Main Program 03, the Secretariat pointed out that this activity was also included in the Program and Budget for the current biennium and the list of “important issues” is to be decided upon by the Member States.

58. The Delegation of Greece, speaking on behalf of the European Union, confirmed its proposal on changes for integration in the Program and Budget document mentioned in preceding paragraphs, i.e. with regard to the program description for sub-program 04.1, Development of International Law and Services, an expression “subject to prior agreement among WIPO Members” was proposed to be added to the first paragraph on page 56 of the English version after “preparing studies on issues relating to the law of trademarks, industrial designs and geographical indications.” Concerning the description for sub-program 04.2, International Registration Systems, the same expression “subject to prior agreement among WIPO Members” was proposed to be added to the fourth paragraph from the end on page 60 (English version) after the text reading “developing guidelines and best practices as well as undertaking case studies.”

59. In responding to a question raised on sub-program 07.1, Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, the Secretariat stated that the IGC’s activities have been given a mandate by the Assemblies to receive the recommendations to be made by the IGC with regard to future activities in its session in September, 2003. As such, the sub-program 07.1 has been prepared on the assumption that the Member States will approve the continuation of the activities in this area. This however does not indicate any intention to prejudge the outcome of the discussion, nor to indicate this sub-program as a perpetual program activity. On sub-program 07.2, Intellectual Property and Life Sciences, the Secretariat elaborated the rationale for such proposal by describing the increasing importance of life sciences in this century, similar to other facets of the biotechnology, and its enormous implications on intellectual property. A number of important study papers have been issued in the past year by intergovernmental organizations, non-governmental organizations and governments particularly on the question of how the result of life sciences’ research should be protected involving a number of social, ethical and environmental questions. There is no intention on the part of WIPO to proceed to the creation of international rules or guidelines but simply to start exchanging views between Member States and Delegations to get a better understanding of this issue. Concerning the resources allocated to sub-program 07.2, the Secretariat indicated that no significant funding was allocated to this sub-program given the current financial limitations. However, sub-programs 07.1 and 07.2 could be considered as mutually supportive. In reference to a question raised on the previous activity undertaken and proposed by WIPO Biotechnology Working Group, the Secretariat suggested to start the discussions on this document containing a number of recommendations by external experts and advisors in the area. However, since there is no predetermined exhaustive list of questions to be dealt with under sub-program 07.2, any emerging issues and questions could be taken up.

60. In response to the question raised by the Delegation of France on the origins and formation of the WIPO Working Group on Biotechnology, the Secretariat clarified the

establishment of the Working Group on Biotechnology by indicating that it took place in November 1999, in the form of a workshop and it was to invite external advisors to indicate possible questions and issues that Member States may wish to address and discuss.

61. The Delegation of France asked about the content of the meeting, its participants, results and outcome and whether the report was available for reference. The Delegation then questioned the relevance of re-establishing such a group, which had met almost five years previously, in view of the activity topics mentioned by the Secretariat such as the patentability of the human genome and also current priorities, such as cooperation for development activities, concerns over trends in staff costs and the possible risks of cuts for activities and programs.

62. The Delegation of Mexico inquired about the exactness of the translation of the term “life sciences” into Spanish as “*ciencias de la vida*” and proposed if it should not be translated as “*ciencias biológicas*,” or biological sciences. Furthermore, the Delegation expressed its support for the statement made by the Delegation of France on the results of the WIPO Working Group on Biotechnology and proposed that the text “subject to prior consent by the Member States” be included. However, the Delegation also indicated that it would accept the elimination of the sub-program in question if agreed by delegations given the current priorities.

63. With regard to the “South-knowledge transfer” mentioned in paragraph 160, the Secretariat clarified that its intention under Program and Budget 2004-2005 was to take full advantage of the deployment of the WIPONET Project by facilitating the transfer and sharing of relevant knowledge and experiences among developing countries. This initiative will at the same time complement the North-South cooperation mechanisms. Concerning paragraph 167 and 168, the Secretariat clarified that the paragraphs referred to the developing country beneficiaries under Main Program 08 and the expected use of expertise available in-house, under sub-program 12.2, in providing legislative advice to developing countries. On the subject of assistance to LDCs, the Secretariat recalled that a comprehensive program had been presented at the United Nations Conference for the Least Developed Countries, which had taken place in Brussels. Under the Program and Budget 2004-2005, development activities and programs for LDCs were foreseen not only under Main Program 08 but in several other programs as well. For instance, the connection of LDCs to the Global Intellectual Property Network is budgeted under the WIPONET budget. Another important area of interest for LDCs is the human resources development, which has been largely budgeted under the WIPO Worldwide Academy program. The Regional Bureaus will also carry out human resources development activities. Similar coordination among various units of the Organization will take place when implementing programs on SMEs. On the subject of the African Collective Copyright Network, the Secretariat expressed its readiness to provide the African Group with requested additional information and conveyed its hope for better understanding of mutual positions. Regarding comments made by the Delegation of India on the issues of tangible deliverables, the Secretariat recalled that NFAPs reflect country needs and government priorities and provided detailed information on the implementation of bilateral cooperation programs. With regard to inquiries on the level of resources for Main Program 09, Cooperation with Certain Countries in Europe and Asia, the Secretariat highlighted a proposed program increase of 5.4 per cent as compared to the average decrease of 4.8 per cent for WIPO, as well as an increase in staff posts. As to concerns raised by delegations over whether staff resources have been increased at the expense of non-post allocations, the Secretariat expressed its view that the main activities were indeed implemented by staff and the proposed structure was considered as an effective mix of resources between posts and

non-posts required to deliver the identified activities in a cost-efficient manner. On Main Program 10, the WIPO Worldwide Academy, the wording of paragraph 196 would be modified by the Secretariat to reflect the outcome of the Forum held during the last session of the Permanent Committee on Cooperation for Development which is mandated to provide guidance to the Program on Cooperation for Development. The Secretariat provided, at the request of some delegations, information on the types of distance-learning programs made available to users this year, such as modules on copyright, traditional knowledge and e-commerce. Also, the basic distance-learning course was translated into seven languages, including all six WIPO official languages and Portuguese. On a concern raised over a decrease of funding for activities, other than the distance-learning programs, the Secretariat referred to table 9.10 on the Detailed Budget 2004-2005 for Main Program 10, indicating an increase of 20.7 per cent in funding for the professional training activities within the Academy. Concerning inquiries on the grouping of Main Programs 11 and 12 in Part III of the Program and Budget, the Secretariat referred to a graphical overview of the relationships existing between WIPO's vision and strategy, on one hand, and the programs grouped in Parts I through IV, on the other hand. To achieve the vision "Intellectual Property as a power tool for economic, social and cultural development," a strategic goal "to create intellectual property culture" has been defined and could be achieved through two substantive programs grouped in Part II and Part III. Part II aims at strengthening and updating the current intellectual property infrastructure, including the legal system and provision of practical services through the global protection systems. The Part III is a group of program activities designed to support the users of intellectual property systems, including both in developed and developing countries, through advice, assistance, training and cooperation and thus constitute an important building block in creating an intellectual property culture. As to Main Program 12, Development of IP Culture and Respect for IP, it includes a number of programs present in the current biennium, such as public outreach, enforcement and liaison offices. This was done to ensure that all stakeholders and potential and prospective users of the intellectual property system could be effectively reached. In the 2004-2005 Program and Budget, several programs and activities have been integrated with a view to enhancing their coherence and coordination and improving focus on priority programs.

64. The Secretariat indicated, in response to inquiries about the criteria for the creation of new initiatives under Main Programs 11 and 12, that new initiatives on Intellectual Property Policy and the Economy, sub-program 11.1, were proposed by the Director General to promote the realization of the WIPO vision into reality so that intellectual property becomes an effective tool for economic development and assists policy-makers to understand the role of intellectual property. As indicated in paragraph 225, the sub-program will "provide useful, practical and highly focused services to Member States for policy formulation on intellectual property questions in government, departments and other relevant agencies and institutions." As to the initiatives on the private sector partnership, sub-program 11.3, the Secretariat expressed its readiness to provide additional information requested by delegations. It indicated that this new initiative aims at encouraging active participation by the non-government sector in discussions, activities and programs on intellectual property. With regard to a number of recommendations provided by the delegations, such as the step-by-step implementation of the new initiative, the Secretariat expressed its appreciation and assured the Committee that it will take them into consideration in due course, and the creation of certain mechanisms to allow Member States to closely monitor the implementation of new activities taking into account developmental needs. On the proposal to earmark private partnership funds for specific activities, the Secretariat expressed its readiness to provide additional information to delegations for the next Program and Budget Committee meeting, including proposals concerning the implementation, reporting and evaluation of the activities financed

by the private sector. Regarding the reference by some delegations to the United Nations regulations on the use of private sector funds, the Secretariat pointed out that the relevant United Nations rules and practices would be studied.

65. The Delegation of Mexico thanked the Secretariat for its explanations and its expressed willingness to maintain consultations with Member States regarding the implementation of the new initiatives. With regard to sub-program 11.3, Industry, NGOs and Private Sector Partnership, the Delegation proposed reformulating one of the expected results contained in the text, which makes reference to “advice from the Industrial Advisory Commission (IAC).” The Delegation was of the view that such reference may not be appropriate for the sub-program in question. In respect of the interaction and funding from the private sector, the Delegation expressed its satisfaction for the Secretariat’s clarification that, whatever funding for cooperation programs was supplied by other actors, it would be additional to the regular budget and would never substitute it. In the Delegation’s view, NGOs and the private sector already took part in WIPO’s meetings as observers and in that way, expressed their views which were considered by Member States. This practice should continue. Finally, it asked for further information on how the step-by-step approach would work and expressed that Member States should be kept informed of the developments of sub-program 11.3.

66. The Delegation of Pakistan, while expressing its appreciation to the Secretariat for its detailed answers, inquired about a possible overlapping between sub-programs 08.1 and 11.1 as inferred from their stated objectives.

67. The Delegation of Venezuela, having thanked the Secretariat for its clarifications, expressed its doubt about how many elements presented in Chart 1 of the Program and Budget coordinate with the general objective. With regard to sub-program 11.2, Innovators and SMEs, the Delegation referred to a reduction in the proposed budget as shown in table 9.11 and suggested that the funding be bolstered while reducing projected growths for sub-programs 11.1 and 11.3, which on the contrary were increased in this program. The funding should also be increased for the program on technical cooperation since a number of activities covered under intellectual property policy are indeed implemented within the technical cooperation framework. As to sub-program 11.3, the Delegation emphasized that no conditions should be attached to any private sector funding. In regards to Main Program 12, the Delegation referred to projected increases for sub-programs 12.2 and 12.3, but a decrease for sub-program 12.1. In such context, it pointed out that the best way to promote intellectual property is to ensure that the effective functioning of intellectual property and benefits of its development are understood. It also underscored the importance of technical cooperation programs on capacity building in national economies.

68. The Delegation of India referred to obtaining extra budgetary funding from the private sector under sub-program 11.3. It noted that delegations had raised concerns regarding the administration and usage of such funds as they may induce conditions that Member States may not perceive to be in the best interests of WIPO. The Delegation stated that WIPO’s work concerning interaction and funding from the private sector might unduly influence the policy direction of WIPO in a way that could not be supported by the Member States of the Organization. The Delegation inquired as to whether that aspect had been reflected upon, since in sub-program 11.3, the performance indicators and the expected results clearly aimed at obtaining private sector funding. It noted that the private sector was contributing to WIPO’s income through registration fees, which already had an enormous influence on the Organization. In the Delegation’s view, NGOs and civil society groups had clearly articulated

positions on intellectual property matters, and should therefore find a forum within the Organization so that there could be an interplay of views and opinions.

69. The Delegation of Brazil supported the statement of the Delegation of Mexico concerning the expected results for sub-program 11.3. It noted that the language used seemed to commit Member States to take into account the recommendations of the IAC, when in fact it was not created to advise the membership of the Organization. It also supported the intervention made by the Delegation of India with respect to sub-program 11.3. It noted that the scope of the sub-program was addressed not only to the industrial sector, but also to civil society and consumer groups. Some of these stakeholders were not sufficiently represented. On the title of sub-program 11.1, it understood that it referred to issues of development, yet the program was entitled merely "Intellectual Property Policy and the Economy."

70. The Delegation of France had noted that the Member States of WIPO decided on the activities which would be carried out by the International Bureau for the benefit of Member States, whereas the Industry Advisory Commission was primarily responsible for allowing the Director General of WIPO to seek opinions so that he could submit proposals to the Member States when the Assemblies met. Apart from that, the Delegation wished to receive broader explanations on sub-program 11.3, which, according to the Secretariat's explanations, actually amounted to a grouping of former programs. That rationalization should make for staff and efficiency gains. And yet what had ultimately come about was an increase in posts for that area with one more D-post, three more posts and three fewer G-posts, and in a staff expenditure increase of nearly 22 per cent. It also wished to receive clarifications on the subject of sub-program 12.3, Liaison Offices, which had gone up from 3.9 million to more than 6 million Swiss francs, representing an increase of almost 57 per cent, together with an operating expenditure increase of over 100 per cent. The Delegation wished to know what had brought about all these increases, and what was the cost-efficiency ratio of each Liaison Office.

71. The Delegation of Ecuador stressed the importance of obtaining satisfactory replies to the general concern expressed about Main Programs 11 and 12, including the reasons why these activities were presented into Part III of the budget, the reasons for having received such budget increases, and finally, whether these programs will be in cooperation with developing countries in the long term.

72. The Secretariat, concerning the question raised by the Delegations of Mexico and Brazil, regarding the first box of sub-program 11.3, referred to the second sentence of paragraph 230, noting that the IAC is aimed at providing advice to the Director General. Concerning the question raised by the Delegation of Pakistan on possible duplication of activities between sub-program 11.1 and Main Program 08, it referred to paragraph 228 which emphasized the internal coordination with Main Program 08, on the implementation of new policy measures. Concerning Chart 1 on page 7, the Secretariat took note of the intervention made by the Delegation of Venezuela referring to capacity-building as one deliverable of programs under Part III, which will be included in the revised text. Concerning the suggestion that a possible increase of resources be allocated to sub-program 11.2 in the light of the importance attached to these activities, the Secretariat stated that a review of the allocation of the resources within this Main Program would be undertaken. Concerning private partnership funds, it reiterated that these funds would not be a substitution of regular budget funds and regular budget resources, but additional resources. It also indicated that registration fees were used to cover the cost of processing applications and other related activities. In this regard, the PCT fees are different from voluntary contribution from certain

stakeholders aiming at assisting WIPO and its Secretariat. Concerning the request for clarifications about the definition of private sector, it indicated that sub-program 11.3 spelled out that the major players were included in the private sector: “non-governmental, civil society and industry sector.” On the question raised by the Delegation of France requesting further information on the increase of posts regarding sub-program 11.3, the Secretariat noted that the content of this program was of a new, rich and sensitive nature, requiring strong leadership, as well as additional posts to undertake them.

73. On the question raised by the Delegation of Ecuador about the increase of resources allocated to Main Programs 11 and 12, it emphasized that programs 11 and 12 should be viewed in conjunction with WIPO’s vision and strategy, keeping in mind that those two programs were designed to support other programs, namely 08 and 09, which were directly related to the technical and legal assistance to developing countries. On the question of the title of sub-program 11.1, raised by the Delegation of Brazil, it proposed to replace the current title of “Intellectual Property Policy and the Economy” with “Intellectual Property Policy and Economic Development.”

74. The Delegation of Mexico suggested that the best way of avoiding confusion on the role of the IAC was to have it placed under sub-program 2.2, together with the Policy Advisory Commission (PAC).

75. In response to a question raised by the Delegation of Brazil on sub-program 12.2 and concerning the invitation to NGOs to participate in the Advisory Committee on Enforcement (ACE), the Secretariat noted the Organization needs to have access to expertise and experience in implementing and enforcing intellectual property. This should also apply to the private sector. Regarding concerns to the third expected result under sub-program 12.2, describing good and cost effective practices, the Secretariat was of the view that to explore such practices was in the common interest of all Member States.

76. The Delegation of Brazil provided some additional clarifications with regard to the statement previously presented on behalf of the Group of Latin American and Caribbean countries (GRULAC). With regard to the objective outlined for sub-program 12.2, the participation of non-governmental participants in the meeting of the Advisory Committee on Enforcement (ACE) was supported. The Delegation objected, however, to the impression conveyed in the description of the objective that non-governmental participants would have the same status as Member States in the discussions and negotiations. This should be seen as a comment on principle, including that on the prerogative of Member States to provide guidance. The Delegation suggested that the text of the objective be modified. The same applied with regard to the text contained in the third result of sub-program 12.2 on good and cost effective practices. The current text would unfortunately prompt a repetition of the discussion on the mandate of the Advisory Committee, which was conducted during the last session of the Assembly. There was definite concern on the part of developing countries that the Advisory Committee should not be involved in elaborating or negotiating best practices in the area of Enforcement of the word “good” would have implied a valued judgment. The debate on this issue was considered over and a decision had been taken by the Assemblies on the mandate that the Committee. It was proposed to delete the words “good and cost effective practices” in order to avoid confusion.

77. The Secretariat assured the Delegation of Brazil that the formulation of objective and expected results under sub-program 12.2 would be reviewed.

78. The Delegation of India made reference to the recent discussions on the subject of enforcement. Against that background, the Delegation expressed surprise about the large increase in the budget allocation of sub-program 12.2 since the Assembly decided that the Committee would be an advisory one and that it would have a rather restrictive scope. It was recalled that according to the understanding of the Delegation of India, enforcement was not within the remit, or explicitly, within the remit of WIPO. It was argued that the current proposal to increase the budget for enforcement by 50 per cent would need to be justified on very clear grounds.

79. The Secretariat responded to the question raised by the Delegation of India by stating that the proposed budget allocation was determined following an internal study following the discussion and decision by the General Assembly during September 2002. The resources were adequate to the activities recommended by the Advisory Committee. The level of activities and the corresponding allocation of resources could be modified in accordance with recommendations agreed among the Member States.

80. The Delegation of Portugal, on behalf of Group B, stated that harmonization as well as enforcement were main issues, and both were within the scope of the Organization and the WIPO Conventions.

81. The Secretariat responded to a question of GRULAC on the comparison between revised budget 2002-2003 and the budget base for 2004-2005. Reference was made to table 15 of the budget document. It was noted that programs in both biennia often had similar titles, but the specific contents of some of them had been altered in formulating the proposed budget. It was clarified that the presentation did not imply a reduction of budget allocations for approved programs, it did also not imply a redeployment of resources between programs. Table 15 indicated the redeployment of activities and associated budgetary allocation between Main Programs in order to arrive at the new program structure. This was the case for program 12, Cooperation with Developing Countries, during the 2002-2003 biennium. In comparison with the new program structure for the 2004-2005 biennium, the activities related to the promotion of innovation were now under a different Main Program and not included in program 08, Cooperation with Developing Countries, during the 2004-2005 biennium. This would not imply, however, that activities had been deleted or that the budget for such activities had been reduced. The same applied for main program 11 and 12 for the 2004-2005 biennium.

82. The Delegation of India inquired whether it might be possible to provide additional information on the restructuring of the Organization and the relationship between the various program parts, including more detailed information on programs and budget lines. Such information would have obviated a number of questions, which Delegations had raised during the budget discussion.

83. The Secretariat confirmed that table 15 was a summary which was based on more detailed information documented in approximately 30 to 40 pages. A breakdown of the comparison was available not only by sub-program but also by organizational unit within each sub-program, and could be made available to Member States if requested. It was emphasized that the presentation contained in table 15 did not indicate a modification of activities approved in the context of the budget 2002-2003 or modification in the budget allocation. The presentation only rearranged the approved activities and budgets in accordance with the new program structure for the biennium 2004-2005. It was confirmed that the program structure partly followed the organizational structure and changes in the

organization-triggered changes in the program. In addition to organizational issues, program presentation follows new program priorities and focus. In that context, it was noted that new programs proposed for the biennium 2004-2005 contain a large share of ongoing activities already approved during the biennium 2002-2003. This was seen to be apparent when examining table 15 for the new programs 11 and 12. As indicated, both programs include an amount of approximately Sfr24 million in the budget base for 2004-2005. This corresponds to activities already approved in 2002-2003 under Main Programs 09, 10 and 12. The budget allocation indicated under program variations in the various budget tables describe the change in resources and activities.

84. The Delegation of Ecuador recalled the concern expressed by GRULAC and commented that the program and budget presentation required further clarifications. It was recognized that a major part of the activities proposed under the new programs had already been approved for the current biennium. The Delegation argued that the changes introduced were made to the detriment of cooperation with developing countries. Activities previously shown under cooperation for development were not attached to extremely controversial programs, such as main programs 11 and 12, including relationships with the private sector, NGOs and enforcement. The Delegation raised the question as to whether these changes really reflected the vision which Member States expected. The Delegation noted its difficulty in accepting such a concept.

85. The Delegation of France recalled that in 1999, the Secretariat had submitted a detailed document on the structure of the organization, including indications on the nationalities of directors and details on staff contracts, which provided a clear vision of the Organization. The Delegation requested that an updated version of the document be made available before the end of this meeting. Such a document would provide delegations with a minimum level of information.

86. The Delegation of Venezuela supported the request for additional information made by the Delegation of India and the comments made by the Delegation of Ecuador. The Delegation expressed concern with regard to information contained in table 15. In particular, it questioned the rationale of relocating resources from human resource management, cooperation with developing countries and WIPO Worldwide Academy to main program 13, Resources Management. This was seen also to apply to Main Programs 11 and 12, which included resources from cooperation with developing countries. The question was raised whether activities under cooperation with developing countries were maintained or whether resources were being reduced. The Delegation suggested that the resources for Main Programs 11 and 12 be reduced and redeployed to Main Programs 08 and 12. The Delegation emphasized that the priorities of Member States should be reflected.

87. In response to questions raised by the Delegation of Portugal on behalf of Group B and the Delegation of the United States of America, the Secretariat provided additional explanations on staff matters and posts. With regard to consultants, it was recalled that in September 1999 the Director General had indicated to the Coordination Committee that he planned to limit the number of consultants to 8.5 per cent of the Organization's overall staff. It was noted that the number of consultants employed by the Organization was 54 in 2001, 73 in 2002 and currently stood at 77. Of the latter, a total of 22 consultants were attributed to the IMPACT and WIPONET project. As a result, the total number of consultants accounted for 7.63 per cent of total staff, keeping within the limits established by the Director General. With the IMPACT projects being completed, it was planned to reduce the number of consultants during the 2004-2005 biennium. In order to keep the experience gained during

the work with WIPO, it was intended to recruit some consultants against vacant positions, whereas others would have to separate since their services were no longer required. With regard to short-term employees, it was indicated that the number had remained fairly constant during the years 2000-2001 and 2002-2003 and amounted currently to 331, including short-term translators in the PCT program and the linguistic services. Service suppliers recruited under a Special Service Agreement (SSA) contracts were not officials of the organization, but employed to fulfill a specific task during a short period of time and paid at rates according to the tasks which they were called upon to perform. This included, for example, payment based on the number of words for translation and preparation of abstracts in the PCT program. Special Labor Contracts (SLC) were mostly for young graduates, most of whom were engaged for the Internet Domain Name System with the contract limited to three years. With regard to the number of Director posts, it was noted that the proposal requested authority to establish 10 additional positions. In September 1999, the Coordination Committee limited the number of Director posts and above to 46, which accounted for 5.95 per cent of total posts. With the increase in the number of posts, this ratio had decreased to 5.28 per cent in 2003. This means that the number of proposed D grade post does not represent a significant change in WIPO's continued prudent Staff Management Policy. The increase in Director posts was required for three main reasons. First, the proposal included two additional posts in the area of Executive Direction, which had increased in size and complexity. Second, the substantial increase in the work of the global protection services, which comprised the PCT and the Madrid Registration System and other services, resulted in staff increase under the corresponding programs from 454 to 535. In addition, the implementation of the IMPACT project within the framework of the PCT changed the organizational structure, which required an increase of four Director positions. Third, four new Director positions were proposed for Main Programs 11 and 12 to manage new activities, designed to make Intellectual Property an effective tool for Economic Development and involve the promotion of dialogue with Member States and international authorities. It is important that WIPO staff entrusted with a role in this area have the seniority required for the aforementioned interaction. It was emphasized that following the approval of the new Director positions, the Secretariat would confirm the classification of the posts according to the standards applied by the UN common system and the International Civil Service System (ICSC) in order to ensure that the responsibility assigned to the posts are commensurate with the proposed level.

88. With regard to Professional posts, the Secretariat stated that the number of P-grade posts proposed for 2004-2005 would increase by 78 for two main reasons. First, posts are reclassified from G to P due to changes in the business process, content of work, scope of responsibilities and consequently the organization and structure of certain units. In Main Program 03, Patents and the Patent Cooperation Treaty (PCT), for example, a total increase of 38 P-posts was proposed. This was mainly due to the result of changes in the PCT operations and automation of the PCT system. The IMPACT project and system deployment in 2003 had led to the process being rationalized and modernized. It was stated that the previously rigid and staff specific organizational structure would become a flatter structure comprising a number of processing teams which would provide flexible and value-added services and improve cooperation between the Secretariat and receiving Offices and designated elected offices. In each processing team experienced senior staff would act as focal points for questions from applicants, Receiving Offices and other PCT authorities with the aim of providing a higher level of customer-orientated services. This new organizational structure would need more sophisticated and enhanced knowledge-oriented staff at the professional level to work and supervise the staff in the General service. It was added that the same reasoning applied to Program 04, Trademarks, Industrial Design and Geographical

Indications, although the number involved was much smaller. The second reason for the reclassification of G grade posts had to do with the creation of posts at the professional level in accordance with the increasing translation workload in the PCT and Madrid systems. Translator posts are all graded at the minimum of P2 level although they do not supervise General Service's staff. In response to a question by the Delegation of France on the average cost of staff, it was noted that the Secretariat followed strictly the standard cost for the calculation of budget provisions. Any increase in the average cost over the years could be due to two reasons. First, salary increases required additional budgetary provisions and, second, increases in the average grade of posts would result in cost increases. In response to a question on the rationale for 33 additional posts for PCT and 11 posts for Madrid, it was indicated that increases in posts were calculated according to the workload flexibility formula which adjusted budget provision according to workload estimates. The detailed descriptions of the workload flexibility formula were included in Appendix A of the budget document. The formula provided flexibility for the Director General to increase the number of posts and associated resources in cases where the actual workload was higher than the anticipated workload but also provided the obligation to decrease resources should the actual workload be lower than anticipated. In fact this had been the case for the 2002-2003 biennium and subsequently a budget reduction had been proposed following the application of the workload formula. The increase in 11 posts for the Madrid system was calculated in full compliance with the workload formula. For PCT, the application of the workload formula would have implied an increase in the range of 80 posts, whereas the actual proposal only included 33 posts. The reduction was possible due to the efficiency gains anticipated from the IMPACT project. It is intended to revise the workload formula for the coming biennia on the basis of experience gained in the operation of IMPACT.

89. The Secretariat referred to Annex B of the document that provided a great deal of detailed information on the subject of the new construction. He stated that informal information meetings had been held involving group coordinators. The meetings were open-ended so anyone could participate. The present stage was that of selection of an external consulting firm. As with the usual practice WIPO issued a call for tenders as was requested by the Assemblies of the Member States of WIPO, a number of companies replied and everything had been done in accordance with the rules governing tenders. Assistance from the *Conseil d'État* in Geneva had been requested to comment on all of the offers submitted and the *Conseil d'État* had given its confirmation on the results of the bid. The present steps involved negotiating a contract with an external consulting firm. The name of the firm in question would be published once negotiations, still ongoing, had been concluded. Consultations had also been held between the architect and the project manager and his team and this meant that a number of adjustments to the project had to be made to take into account comments made by Member States at the Assemblies of the Member States of WIPO. The evaluation report made by the external auditor provided a lot of ideas that had also been taken into account. Certain areas had been studied in depth. It should be noted that it will be possible to have at least 612 working places within the administrative building in the future, if necessary. Changes had been made to the design for ventilation and air conditioning systems that were cheaper and more efficient than those originally proposed had been selected. A free flow of air from the atriums had been ensured. A number of improvements have been made to the conference hall. The design, structure, acoustics, ventilation system, heating system and indeed the cooling system and air conditioning have all been looked at and significant improvements made in a cost effective manner ensuring as much flexibility as possible. The internal configuration of the conference hall was changed with that in mind in order to make it as flexible and as multi-purpose as possible. Environmental issues have also been considered and the concept of minergy, suggested by the auditor, will be applied. A rainwater recovery

system would be installed. These adjustments were finalized in February 2003. Thus in February it became possible to prepare the call for tender for a general contractor to undertake the building work with the deadline to receive the offer by June 16, 2003. Informal information meetings will be held so that Member States could be informed of progress and the schedule remains unchanged.

90. The Secretariat also provided further clarifications on some of the financial aspects in response to questions from the Delegation of France and the United States of America. It was noted that income was estimated to increase by 20.5 per cent during the 2004-2005 biennium. This was derived from a detailed analysis of all income sources. For the first time consultations were undertaken with the main patent Offices to examine the anticipated level of the PCT workload in the coming years. Data and projections had been utilized in particular from the USPTO, the JPO and the EPO. The Secretariat was confident that income estimates were reasonable and based on the best available data. It was noted that the increase of 20 per cent represented an increase over a two-year period, which would correspond to a 10 per cent increase a year. This was very similar to the workload increase estimated for PCT. For the 2002-2003 biennium, income did not increase despite considerable growth in PCT applications. This was seen as the result of successive fee reductions. The Secretariat did not anticipate fee reductions in the next biennium. Thus increases in the workload would imply increases in income which would be needed in order to fund the overall budget envelope. In response to the question of the Delegation of France on the distinction between recurrent and non-recurrent expenditures. The Secretariat noted that the only non-recurrent investment contained in the proposed budget was the new construction project which accounted for 81 million Swiss francs. The budget would be funded by anticipated income and the use of the reserve in the range of 52 million Swiss francs. Without this non-recurrent investment project, a surplus in the range of 29 million Swiss francs would result. This would imply that the overall budget did not include a structural deficit. On the issue of the reserve, it should be noted that due to the funding requirements for the new construction project, maximum use of the reserves was proposed. As a result, it was possible to reduce the level of fees somewhat without reducing program activities. The reserve was anticipated to decline to 41 million Swiss francs, to below the recommended level, but it would be a temporary situation. Once the building was finalized the reserve would be quickly replenished. In fact the reserves had been set up partly to provide for temporary use, such as investment in the new construction project. Other alternatives could have been considered, rather than using the reserves to fund the construction of the building through a loan arrangement as done by other United Nations organizations. Should this have been done by WIPO, additional flexibility would exist to increase the level of activities or decrease the level of fees. At this stage it was not recommended to consider that particular option as there were sufficient reserves and anticipated income for both recurrent activities and the new construction project.

91. On the subject of the PCT fees, the Secretariat stated that it became particularly complex in 2003 as the PCT Assembly had adopted a reform of the PCT system which, in turn also entailed a reform of the structure of the PCT fees. To set an appropriate fee within a new structure would need to strike, as many delegates pointed out, a fine balance. A balance that on the one hand provided a fee that was as low as possible to ensure that there are no disincentives against filing PCT applications, particularly disincentives that might discourage small-scale applicants or investors from developing countries from filing PCT applications and, that on the other hand, had to be balanced with the obligation and the need to provide sufficient income for WIPO so that it could cover the administrative costs and finance related activities. The Secretariat was convinced and committed to the fact that providing sufficient income to the organization was the best way to ensure that developing countries, in particular,

could benefit and develop the capacity to reap the greatest benefits from the PCT system. That being said, there was a dual process in the way that the fee had to be adopted and this dual process was not really unusual, in fact it was very normal to the Program and Budget and PCT way of operating. Given the discussions that were taking place at this Committee and the sense of the issues that were emerging delegations' views should be clearly communicated to a working group on reform of the PCT which would meet from May 19 to 23 in Geneva at which one particular document for that working group will focus on an aspect of the structuring of the fee and discussion on that document was expected to be broader. The results of the working group would then be reviewed by the Secretariat to see whether any adjustment would be needed with respect to the revised Program and Budget which would meet in September to further review the draft Program and Budget with the new fee structure if necessary, for approval by the Assemblies of the Member States of WIPO. Concerning the question on the new edition of the International Patent Classification (IPC) raised by the Delegation of France, the Secretariat explained that the IPC exists in English and in French, and assured the Delegation of France that the French translation would be prepared by the core of PCT translators, which was also responsible for producing significant amounts of translation into French of abstracts, bibliographic data which will be published in the French version of the PCT Gazette as well as international preliminary examination reports, all this indicated that the PCT Office was used to a very high level of technical skill and expertise in producing French language texts. Therefore the French translation of the IPC will be produced by the Secretariat hopefully, with limited additional expense and with verification by the offices concerned.

92. The Delegation of Zambia, speaking on behalf of the African Group, stressed the importance of balancing the interests of developing countries *vis-à-vis* the PCT fee, and it did not think that PCT fee reduction would be helpful to the activities of their interests. It reiterated the importance of balancing the interests of businesses and developing countries on the setting of the PCT fees. It noted some remarks made by congresswoman Diane Wattson on the occasion of a luncheon offered at the U.S. House of Representatives to a WIPO delegation on February 14, 2003, as follows: "Providing assistance for the global protection of Intellectual Property is beneficial for the United States and our fellow member nations. Treaties that protect the US Intellectual Property interests are essential in this growing global economy. However, if our international neighbors enter in this agreement without adequate Intellectual Property systems in place, such negotiated agreements are meaningless. Therefore, in the best interest of the international community, we must make sure that the United States contributes its fair share in supporting WIPO. Such resources allow WIPO to provide the technical assistance and legal training necessary to assist nations around the world. Once equipped, these member nations can successively address such problems as piracy and copyright infringement. Before I end, let me also express the importance of assisting the least developed countries. The LDCs face challenges on many fronts, in particular many of these nations cannot see the economic benefit in protecting the Intellectual Property. For IP treaties to be effective for the LDCs, these agreements must be viewed as an instrument for development for the poor, and not just for the rich foreign countries. Rather than fight or resist these treaties, LDCs must be encouraged to develop their own export revenues from Intellectual Property. Support from the international community will encourage these nations to invest their resources in IP protection and gain a new positive perspective on IP."

93. The Delegation of France thanked the Secretariat for the clarifications provided with regard to the French version of the International Patent classification, from which it understood that the necessary resources for the establishment of both the French and English

versions of this International Patent Classification had been allocated to ensure that both versions of the document were of the same quality and available within the same period of time, asked for that to be confirmed. Also in translation of documents, it noted that for the meeting on PCT reform scheduled to take place in the week of May 19, only the English version of the documents had been made available but not for the version in French, inquiring whether that meeting would be postponed to allow proper review of documentation by the different delegations. Concerning the new construction it noted that the Secretariat was maintaining the proposal of 560 working places in spite of the request made by many delegations to increase that number, while at the same time the floor area had increased by a third without any reasons having been given. It also noted that an additional 10 million Swiss francs had been added to the cost of the building, including 7 million in construction costs and 2.7 million in fees. On the increase in construction costs it inquired whether it corresponded to increases in the main building or in the conference hall. Concerning the interim financial results as of December 31, 2002, it noted a deficit in the regular budget of 92 million Swiss francs. Should that deficit be repeated this year, it would become 184 million Swiss francs for the biennium, exceeding by 38 million the anticipated deficit. It sought clarification as to the way the Secretariat planned to handle such an eventuality.

94. The Secretariat acknowledged that language versions of documents for the working group on the PCT reform were behind schedule, among other reasons, due to the large amount of work that needed to be done by January 1, 2004 concerning the reform to the PCT system, implementation of new regulations and automation processes for the operation of the PCT. Efforts were being made to alleviate the situation.

95. Concerning the new construction, the Secretariat noted that while the administrative building will be able to provide 612 workspaces, only 560 workspaces are planned in the projections in order to maintain similar office standards with other WIPO buildings. However, should the need arise, as mentioned before, it would be possible to increase the number of office spaces as indicated. Concerning floor space, it recalled that as architectural work had not been completed at the time of the Assemblies in September 2002, modifications were made following the meeting, in line with the requests of the Member States. This enabled the finalization of the construction details and the setting of the plans for the construction phase. It noted that to complete the project as defined the floor space was somewhat above the figure initially given by the architect. These changes have resulted in supplementary costs, for both the administrative building and the conference room with the effect of decreasing the reserve for contingencies. On the issue of surplus reserves and deficits and structure of deficits, the Secretariat recalled that when the budget for 2002-2003 was approved in 2001, a number of major investments have been included in the budget proposal. To finance those investments, reserves had been accumulated and it was a deliberate decision that the budget was considerably higher than the actual income generated during that same period, hence what was noted to be a deficit was in fact the use of accumulated surpluses for major projects, specifically IMPACT development, WIPONET deployment, the ex-WMO construction project, and the new construction project. In WIPO's financial plan, it was anticipated that the deficit and the use of the reserve would peak during the current biennium, as was the case, and that this use of reserves would decrease in the coming biennium, with no additional needs placed on the reserves after the completion of the new construction project. It further noted that the deficit alluded to by some delegations reflected the use of accumulated surpluses as previously intended and approved. This use of surpluses would continue into the next biennium at a slower pace with the additional use of the reserve in the range of 52 million as compared to 172 million for the current biennium. It noted that funding needs for the new construction project were some 81 million Swiss francs

in the 2004-2005 biennium, noting that part of the new construction is funded from annual income in the range of 29 million Swiss francs. In view of the way the new construction is financed, it noted that no structural deficit appeared in the years to come. By contrast and once projects are completed WIPO will be in a position to generate surpluses again. It also indicated that the option of taking a loan for one of those major construction projects had not been considered in the context of the proposed budget, as mentioned before, but it would be an option to providing additional funding for the Organization and additional flexibility for fee reduction as well as for additional activities, should Member States wish to consider adjusting current financial projections.

96. The Delegation of the United States of America said that some of the basic assumptions for this budget, which involve very prominently the projections of numbers of applications and the fees that are going to be charged for them needed careful examination given the importance of the revenue that is generated by the PCT filing system. It remained concerned that further PCT fee reductions were not contemplated until 2007, despite the fact that an eight per cent fee reduction was initially proposed by the Secretariat to take effect in 2003, while it recognized that the proposal was not finally approved at the 2002 Assemblies meeting. It noted that the PCT fee proposed for the 2004-2005 program and budget, actually requires the payment of the Chapter II handling fee for all applicants, even though fewer than 50 per cent of applicants are expected to utilize Chapter II, following recent PCT reforms, changing the time period for entering into national phase under Chapter I from 20 to 30 months. It indicated that the Delegation has drafted an alternative fee proposal including a single international filing fee without individual designations, and a payment of a handling fee only for those applicants who utilize Chapter II of the PCT. It had provided the text and encouraged members to obtain a copy (attached as Annex II). It recalled that at the PCT Assembly in September 2002, and in view that no fee reduction was proposed Group B indicated that it accepted the rationale of the Secretariat for the delay, but expected that once the new fee structure had been elaborated in the course of the preparing the program and budget for WIPO for 2004-2005, the new fees should be significantly lower, by a percentage that would represent not only the expected the eight per cent reduction, but also a further percentage in effect to compensate users for the one year delay. It reiterated that WIPO's current proposal on PCT fees was not acceptable to the Delegation, including the increase relative to current fee levels and the proposal to include the handling fee into the international filing fee. It noted that PCT fees have historically not had a direct relation to services provided or work required under the PCT and that in the proposed 2004-2005 budget, PCT fee income is expected to fund 80 per cent of the entirety of WIPO's budget, of which the PCT department absorbs only 21.5 per cent of WIPO's total budget. It noted the need to thoroughly contemplate the PCT reform issues in light of budget issues that needed to be resolved.

97. In responding to the point made by the Delegation of the United States of America concerning the Chapter II handling fee, and the incorporation of that handling fee into the proposal for a new flat international fee, the Secretariat noted that one of the most significant result of the PCT reform was to create a system of expanded international search and preliminary examination: until January 1, 2004, under the current system, every PCT applicant was entitled to receive an international search report, but if an applicant wanted to receive an international preliminary examination, a non-binding examination predicting the outcome of the patent application, a PCT applicant had to file an additional form, pay additional fees, and part of that preliminary examination has been referred as to filing for Chapter II, because preliminary examination is included in Chapter II of the PCT Treaty. As a result of the reform, in order to make sure that every application received enough feed-back

and enough support, which would enable the applicant to make a determination as to whether or not to proceed with the application, the Chapter II process was changed. It recalled that in the reform that had already taken place and certain deadlines for applicants had changed. Now the applicant could gain an additional 10 months by asking for an international preliminary examination report. And so it was felt on behalf of many offices that applicants were asking for a preliminary examination report merely in order to gain an additional 10 months of time before they had to actually enter the national phase, turning international applications into national applications. And so, the original 20 months deadline was eliminated, which presented to applicants a great incentive not to ask for preliminary examination, because in fact it could be possible to wait 30 months, regardless of whether you received a preliminary examination report or not. However, this practice created considerable problems for small and medium-sized patent offices and intellectual property offices that did not engage in their own examination of patent applications and had come to rely upon the preliminary examination report as a replacement for national patent examination. In order to rectify that situation, which was particularly threatening to small and medium-sized patent offices, the most recent round of negotiations created this expanded international search and preliminary examination. As a result, at the time when the international search report is issued, every applicant will also receive what is being referred to now as a “written opinion.” A “written opinion” is in essence the equivalent of the preliminary examination report.

98. The Secretariat further noted that every application will go through a written preliminary examination procedure, carried out by International Searching Authorities, and will be sent to the applicant as well as to the Secretariat for processing. The Secretariat will have to process the written opinion in the same way as it processes the preliminary examination reports producing translations when they are needed and dealing with the applicant and the Office if issues arise. In addition, the Secretariat will have to convert this written opinion into a new document called “an international preliminary report on patentability.” As such, the payment of the handling fee would be under the reforms as an integral part of every PCT application. The Secretariat felt it appropriate to incorporate such a fee into the basic international fee since the additional services are now provided with respect to every applicant and every application, and it is no longer a Chapter II fee. On the subject of PCT fee discussions, the Secretariat also referred to the rapid changes that have taken place recently including new information made available by the USPTO on data projections. The Secretariat felt that these developments should be reflected in the policy and fee structure. The income projections were based on the best available data and analysis, including those discussed with USPTO in February 2003. Moreover, the Secretariat pointed out that if projections do not fully materialize, there is a mechanism to adapt the level of the budget. For instance, the number of international applications has increased by 9.8 per cent in 2002 and 6.9 per cent in 2003, constituting lower-than-expected changes. As a result, the Secretariat is obliged under the flexibility formula to reduce the level of the budget, which has been done as shown in Chapter B of the Program and Budget. Therefore, the actual deficit is not equivalent to the loss in income but rather less since the budget is also reduced.

99. The Delegation of Nigeria inquired about the availability of parking spaces for WIPO staff and delegates and the issue of parking spaces under the new construction project.

100. The Secretariat indicated that, as recommended by the Member States in 2002, studies have been undertaken on the possible conversion of the additional storage space foreseen under current plans into additional parking facility to delegates and visitors to WIPO premises. Discussions are currently underway with the Geneva authorities to obtain necessary building permits for such conversion.

101. The Delegation of India referred to the issue of PCT reform and inquired about several points. First, it wished to know whether the discussions on PCT reform and fee structure would be centered on the Office of PCT or whether the Office of the Controller would have an important input in view of the importance of the PCT revenue for the organization. Second, it requested clarifications about the policy to maintain separate reserve and working capital funds. The Delegation was of the view that such policy creates an impression that PCT might be funding activities for which it has no obligation. At the same time, there would be less pressure to reduce PCT fees if there were not many separate reserve funds. While referring to the issue of a possible structural deficit, the Delegation was of the view that in light of the information provided by the Secretariat there may not be grounds for such concern. Furthermore, the Delegation expressed its belief that PCT applications from countries, other than developing countries, may not be overly sensitive to the level of fees.

102. The Delegation of Japan associated itself with the proposals of the Delegation of the United States of America concerning the setting of PCT fees.

103. On the issue of separate reserves and the use of PCT revenue for non-PCT activities, the Secretariat pointed out that the budget presentation is based on two perspectives: first, presentation by unions according to WIPO conventions, and, second, presentation by programs. In this regard, the Secretariat made a reference to table 7 of the Program and Budget where both budget presentations are shown. The underlying principle used in the budget presentations is the fact that income generated by various unions is maintained to fund the budget of those particular unions. For instance, PCT funds are not used to fund the budgets of Madrid Union or other Unions. On the other hand, since various administrative units and services support the PCT's activities their budgets were included in the PCT Union budget. For example, significant investments on buildings and information technology were linked to the PCT Union. The Secretariat also made a reference to table 25 on Resource Plan where union budgets interplay with the various reserves established and accumulated under each union. It is noted such a presentation of unions is required under the WIPO conventions. With regard to the issue of structural deficits, the Secretariat aligned itself with the statement by the Delegation of India in questioning the concerns raised regarding the use of reserves. The Secretariat was of the view that there was a mechanism to adjust reserves, such as through the deployment of resources for building and IT investments. As to the issue of sensitivity, the Secretariat noted that it had begun to look closely at the issue. There was some preliminary evidence that small variations in PCT fees did not have a major impact on filing; although, historically, decreases in PCT fees have been met with small increases in the volume of PCT filings. However, there are conflicting examples of how sensitive the level of filing was to the fee structure. For instance, some applicants were extremely cost sensitive, and very slight variations in fees could actually dictate or risk dictating a change in filing strategy. There are also preliminary studies on the sensibility of so-called "penetration ratios" to the level of fees.

104. The Delegation of France, having thanked the Secretariat for the information provided, requested additional information to be able to distinguish investment expenditures and the operating budget with a view to identifying any deficits of a structural nature. The Delegation also inquired about how the Secretariat would handle larger-than-expected deficits. With regard to the new construction project, the Delegation sought additional clarifications concerning the reasons for the large increase in the surface area for the new building.

105. The Secretariat expressed its readiness to provide additional information on investments and operational expenditures for the past and future years as well as the new construction project. On the issue of larger-than-expected deficits, the Secretariat assured that such a situation would not require modifications to the building project or other activities since there is sufficient flexibility afforded by the current level of reserves. Regarding the inquiries on the quantitative assessment of the usage of WIPONET, the Secretariat was of the view that it was too early to have reliable results given the fact the full project deployment will be completed this year.

106. In response to the question from GRULAC, the Secretariat wished to clarify that reduction in the IT program budget amounts to 39.2 per cent as shown in Table 3 of the Program and Budget, whereas no changes in the number of posts are foreseen as indicated in Table 6. This is a reflection of the transition in the projects from their development and deployment phase, largely undertaken by external contractors, to the operation phase which required a new mix of resources. The cost reduction for IT was attributed to the completion of work by external contractors. The number of staff would not be increased as the staff are shifted to the new task of operating new systems.

107. The Delegation of the Russian Federation inquired about Main Program 14, Information Technology. In particular it referred to a document adopted at the third session of the Program and Budget Committee on the development of five automation projects, of which two have deadlines in 2004. As there was no information as to whether these projects would be completed before their initial deadlines, the Delegation expressed concern over a 97.5 per cent reduction in the budget provision for sub-program 14.1, Information Technology Policy and Projects Development. Furthermore, the Delegation questioned the priority-setting for the activities appearing in paragraph 284 under sub-program 14.1 and expressed its concern over the availability of required funding for that sub-program at large including funding for meetings in this area.

108. The Secretariat confirmed that such projects as AIMS and PCT-SAFE were indeed reflected in the Program and Budget. In regards to PCT-SAFE project, its deployment was expected before the end of 2003, leaving the work on further maintenance and fine-tuning for the next biennium. As to AIMS project, some resources were allocated for its development phase in the next biennium due to scheduling. The Secretariat pointed out that significant reductions foreseen for IT projects are largely due to their completion and deployment by the next biennium. The resources needed for the operation of various systems were allocated under sub-program 14.2, Information Technology Services. The resource description shown in paragraphs 286 to 291 provided detailed information on resources required to operate different systems. Regarding to comments on the insufficiency of presented information on IT projects, the Secretariat expressed its readiness to provide more information as part of the revised proposed Program and Budget.

109. The Delegation of France aligned itself with the statement of the Delegation of the Russian Federation requesting additional information on the status of Information Technology projects. The Delegation then reiterated its inquiry about a reference to 39 million Swiss francs shown under "Other" in the budget allocation table for Main Program 14.

110. The Secretariat referred to paragraph 289 and its subparagraph (iii) where details are provided for the allocation of 39 million Swiss francs under the Other Contractual Services for Main Program 14 and sub-section 6 on Definitions of Budget Heading of Appendix A which provides the description of all budget headings, including the types of objects of

expenditures. Furthermore, the Secretariat elaborated that the amount of 39 million Swiss francs shown under Other Contractual Services is only a part of the main object of expenditure titled Contractual Services, which amounts to 44.4 million Swiss francs.

111. The Delegation of Belarus, speaking on behalf of the Central Asian, Caucasus and Eastern European Countries, expressed its concern over a 8.3 per cent reduction in Travel and Fellowships as shown in Table 9.9 in view of the importance of regional cooperation and participation in meeting and conferences, and a 0.5 per cent reduction in Contractual Services as it covered expenditures for interpretations at conferences and meetings.

112. The Secretariat wished to clarify that the budget was prepared with a view of delivering the activities contained in the program description and was based on recent experience of expenditure patterns. Therefore, reductions for various objects did not necessarily imply that there were lower levels of activity in the current biennium, but rather they should be seen as an adjustment of the resources to implement the level of activities as proposed in the new Program and Budget.

113. The Delegation of India sought clarifications regarding a different budget allocation for Information Technology program across unions in 2004-2005 as compared to the current biennium. In the 2002-2003 biennium, the PCT Union allocated a much higher proportion of its funds to IT than the other unions. This might, perhaps, be justified with the argument that the PCT Union is the most intensive IT user when compared to the other unions. The Delegation wondered, however, how this squared with the assumption made in the budget document (paragraph 30) that all unions shared equally in the IT costs.

114. The Delegation of the United States of America wished to clarify its earlier position on eliminating sub-program 07.2, Intellectual Property and Life Sciences, which was based on the concern of a possible overlap with work undertaken in the TRIPS Council. The Delegation expressed its satisfaction with additional information made available, specifically the fact the new sub-program was intended to provide factual information for debates, which were too often politically colored, in the framework of WIPO's larger demystification and technical assistance efforts, and it therefore will not advocate discontinuing this new activity.

115. Concerning comments on budget allocation for Information Technology by Unions, the Secretariat pointed out that the budget allocation policy for programs under administrative services is generally based on the same percentages for each Union. It however acknowledged that the principle was somewhat altered due to the integration of the heritage of the past reserve arrangement into the presentation of the current budget funded from previous surplus resources accumulated under certain unions. Since no more accumulated surpluses are foreseen to be integrated in the budget presentation in the future, same ratios would be applied to all unions.

116. The Program and Budget Committee:

(i) welcomes the elaboration of the proposed Program and Budget for the 2004-2005 biennium contained in document WO/PBC/6/2, which serves as a basis for discussion, and appreciates the further

improvement in presentation and transparency of the budget format;

(ii) takes note of the proposed budget ceiling of Sfr655,400,000 for the 2004-2005 biennium and the request by a number of delegations to have more resource allocations for certain programs, while some delegations had questioned the revenue projections;

(iii) notes the proposed level of average PCT fee of Sfr1,678 as of 2004 and associated income estimates for the 2004-2005 biennium as described in table 19 of Section C of document WO/PBC/6/2. Some delegations favored reductions in PCT fees that would result in lower level of revenues, while others favored the level of PCT fees as presented in the Proposed Program and Budget 2004-2005 (document WO/PBC/6/2);

(iv) requests the Secretariat to transmit the report of the Sixth session of the Program and Budget Committee (document WO/PBC/6/4) to the forthcoming meeting of the PCT Reform Working Group in May 2003, so that the Working Group can consider "inter alia" what is stated above in sub-paragraphs (i), (ii), and (iii) of this conclusion;

(v) requests Member States to make available to the Secretariat specific proposals in written form on the revision of the proposed program activities by May 30, 2003, in addition to those already contained in the report of the Sixth session of the Program and Budget Committee;

(vi) requests the Secretariat to prepare a short compilation of the proposed changes to the Program and Budget for the 2004-2005 biennium in order to facilitate informal interactive consultations;

(vii) requests the Director General to take into account views expressed during the Sixth session of the Program and Budget Committee, the outcome of the PCT Reform Working Group in May 2003, the proposals received and the result of informal consultations with Member States to be held in

June 2003, in submitting a revised program and budget document in all official languages not later than July 31, 2003;

(viii) requests the Director General to hold the Seventh session of the Program and Budget Committee in September 2003 to consider outstanding issues;

(ix) recommends to the Assemblies of the Member States of WIPO at its September 2003 Session to approve document WO/PBC/6/3 (Accounts for the 2000-2001 Biennium).

[Annex I follows]

LISTE DES PARTICIPANTS/
LIST OF PARTICIPANTS

*établie par le Bureau international/
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IV. BUREAU INTERNATIONAL DE L'ORGANISATION MONDIALE DE LA
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[Annex II follows]

ANNEX II

A PAPER MADE AVAILABLE FOR INFORMATION
BY THE DELEGATION OF THE UNITED STATES OF AMERICA
DURING THE SIXTH SESSION OF THE PROGRAM AND BUDGET COMMITTEE
FOR DISCUSSING PCT INCOME (see paragraph 96)

MATTERS CONCERNING THE PCT UNION:

PROPOSED AMENDMENT OF THE SCHEDULE OF FEES

ANNEXED TO THE REGULATIONS UNDER THE PCT

Introduction

1. This document contains a proposal for an amendment of the Schedule of Fees annexed to the Regulations under the Patent Cooperation Treaty (PCT). The proposal concerns the concept of the “flat” international filing fee for the automatic indication of all designations possible under the PCT that was approved by the PCT Assembly in September 2002 with effect from January 1, 2004 (see paragraph 45 and Annex V of PCT/A/31/10).
2. It is proposed that the international filing fee be fixed at 1210 Swiss francs and that the handling fee of 233 Swiss francs remain a separate fee applied only to applications in which a demand is filed. This is proposed in order to reflect the reduction in fees previously envisioned by the PCT Assembly in 2001, as explained below, and to ensure that applicants who, under the present system and fee structure, only use the Chapter I procedure will not be disadvantaged by having to pay considerably higher fees than is presently the case under Chapter I.

Background

3. The current fee structure of the PCT system includes a basic fee, a designation fee and, for international applications in which a demand is filed under PCT Chapter II, a handling fee. In addition, the maximum number of payable designation fees is currently five. For the year 2003, the fees are fixed at a basic fee of 650 Swiss francs, a designation fee of 140 Swiss francs and a handling fee of 233 Swiss francs. Because most PCT applicants indicate five or more designations per application, the great majority of applicants pay the maximum fee for designations of 700 Swiss francs. Under the current fee structure, therefore, most applicants using only Chapter I of the PCT pay a maximum fee of 1350 Swiss francs, and those utilizing Chapter II of PCT pay a maximum fee of 1583 Swiss francs.
4. A fee reduction was envisioned for the PCT that would have reduced the maximum number of payable designations to four with effect from January 1, 2003 (see paragraphs 347 of WO/PBC/4/2 and paragraph 60 of PCT/A/31/6) in the 2001 meeting of the PCT Assembly. Assuming other existing fee levels had remained the same, this would have resulted in a basic fee of 650 Swiss francs, a maximum designation fee of 560 Swiss francs, or a total of 1210 Swiss francs, plus a handling fee for international applications in which a demand had been

filed of 233 Swiss francs. In other words, the envisaged fee reduction, which was not approved, would have resulted in maximum fees under Chapter I of the PCT of 1210 Swiss francs, and maximum fees under both Chapters I and II of the PCT of 1443 Swiss francs as from January 1, 2003.

PCT Reform and Fees

5. The PCT Assembly, in September 2002, unanimously adopted new regulations (see PCT/A/31/10), that provide for a combined search and examination system, as well as automatic designation of all Contracting States, among other changes. In light of these changes, the designation-based fee system will no longer be continued as from January 1, 2004. Instead, the Assembly agreed to a single “flat” international filing fee as part of the amendment package (see paragraph 45 and Annex V of PCT/A/31/10). The new fee would combine the current basic and designation fees. At current levels, this fee would be 650 +700 or 1350 Swiss francs, while the fees envisioned by the reduction in paragraph 4 above would be 650 + 560 or 1210 Swiss francs.

6. Rather than attempting to implement the envisaged fee reduction, the International Bureau proposed that, in light of the significant revisions to the Regulations of the PCT, a review of the fee structure and the possible reduction of fees should be undertaken, in the context of the necessary determination of the new “international filing fee” (paragraph 27 of PCT/A/31/10). Although certain delegations at the 2002 PCT Assembly expressed concerns about this approach and doubts about the prospects for a fee reduction via this approach, the rationale of the International Bureau was eventually adopted.

7. The International Bureau now has produced a new proposal with respect to PCT fees for consideration at the May 2003 meeting of the Working Group on Reform of the PCT in document PCT/R/WG/4/8. In light of the fact that all applications will now require some type of report (International Preliminary Report on Patentability (Chapter I) and International Preliminary Report on Patentability (Chapter II)), the International Bureau proposes rolling the handling fee into the international filing fee, thereby applying a handling fee to all international applications. This is in contradistinction to the current system in which only those applications where the applicant files a demand are charged handling fee.

8. The International Bureau proposes an amount of 1530 Swiss francs for the new fee. This represents a fee of 1297 Swiss francs in addition to the current level of 233 Swiss francs for a handling fee. This is 87 Swiss francs higher than the reduction originally envisioned for January 1, 2003, as noted above, and additionally would provide that each and every international application be subject to a handling fee. That is, in addition to the issue of the handling fee, the International Bureau’s proposal does not provide the previously promised 8% reduction in fees or any reduction to compensate for the delay in implementing that reduction. Rather, the International Bureau proposes a substantial increase in PCT international fees. The International Bureau has indicated that the specific figures are based on the calculation of estimated income in the context of WIPO’s proposed program and budget for 2004-2005 presented in document WO/PBC/6/2 (paragraph 5 of PCT/R/WG/4/8). The current PCT fees in effect in 2003, the original reduction plan described in paragraph 4 above, WIPO’s fee proposal in PCT/R/WG/4/8 and WO/PBC/6/2, and the fees under this proposal are compared in Appendix B of this document.

9. It is proposed instead that the international filing fee be fixed at 1210 Swiss francs and the handling fee remain a separate fee applied only to applications in which a demand is filed, in order to reflect the reduction in fees previously envisioned. With particular regard to the

handling fee, while we recognize the existence of the new report, the International Bureau does not appear to have justified the need for the entire handling fee to be applied to all PCT cases. Therefore we propose to leave that fee as is.

10. The Assembly of the PCT Union is invited:

to adopt the proposed amendment to the Schedule of Fees annexed to the Regulations under the PCT as appearing in Appendix A of this document and to decide that it will enter into force on January 1, 2004, and that it will apply only in respect of international applications filed on or after that date.

[Appendix A follows]

APPENDIX A

PROPOSED AMENDMENT OF
THE REGULATIONS UNDER THE PCT

SCHEDULE OF FEES

(as proposed to be amended with effect from January 1, 2004)

Fees	Amounts
1. International Filing Fee: (Rule 15.2)	1210 Swiss francs plus 15 Swiss francs for each sheet of the international application in excess of 30 sheets
2. Handling Fee: (Rule 57.2)	233 Swiss francs

Reductions

3. The international filing fee is reduced by 200 Swiss francs if the international application is, in accordance with and to the extent provided for in the Administrative Instructions, filed:
 - (a) on paper together with a copy thereof in electronic form; or
 - (b) in electronic form.
4. All fees payable (where applicable, as reduced under item 3) are reduced by 75% for international applications filed by any applicant who is a natural person and who is a national of and resides in a State whose per capita national income is below US\$3,000 (according to the average per capita national income figures used by the United Nations for determining its scale of assessments for the contributions payable for the years 1995, 1996 and 1997); if there are several applicants, each must satisfy those criteria.

[Appendix B follows]

APPENDIX BCOMPARISON OF PCT FEES*(all fees shown in Swiss francs)*

	Basic Fee	Designation Fee	Maximum Designations	Maximum Combined Fee	Maximum Combined Fee with Handling Fee (plus 233 Sfr)
Current PCT Fees	650	140	5 (700 Sfr)	1350	1583
Original Reduction Plan	650	140	4 (560 Sfr)	1210	1443
WIPO Proposal (in PCT/R/4/8)					1530 flat fee for all cases
Proposal in this Document				1210 flat fee	Plus 233 Sfr for ONLY those cases in which a demand is made

Note that the WIPO Proposal in PCT/R/4/8 of a flat fee of 1530 Swiss francs in ALL cases represents a Maximum Combined Fee of 1297 Swiss francs (1530-233 handling fee), which is 87 Swiss francs higher than the estimated fee under the original reduction plan of 1210 Sfr.

[End of Appendix B and of document]