PANEL TWO: GENERAL DISCUSSION

Mr. Gakunu

I think we all agree that the main aim of trade liberalization in the context of the GATT is to benefit all countries, developed and developing. But on the many issues that are the subject of this conference, it appears to me that the majority of the developing countries are consumers and not producers of services, intellectual property rights and investment. My question is: How would you justify the participation of these countries in the current negotiations? Considering that these countries stand to gain little or nothing, is it really necessary to bring these matters within the framework of GATT?

Mr. Richardson

I have some comments which may be helpful. With respect to the World Intellectual Property Organization there is no question that one of the reasons the GATT became the focus of these discussions is because WIPO did not do the job. The WIPO spent a lot of time addressing issues such as standardizing the formal requirements for filing patent applications, whether inventors should be named on those applications, or whether a company can file in its own name. These things are not unimportant matters, because it is helpful to be able to file patent applications in countries around the world in this standard way. But in terms of the impact of those kinds of concerns on the company's business and on international trade in a broader sense, they are not going to have any impact. Those were the kind of concerns that WIPO did focus on; it did a lot of model law work, most of which proposed fairly low standards. It did not get into the kind of discussions that are in the GATT now until after the proposals were already brought to the GATT. They are now substantially also being addressed in the present harmonization treaty in parallel discussions, but they are playing catch-up in that area.

I do not see anything in the GATT discussions that detracts from the existing conventions. Rather, we are supplementing those and I see no reason why WIPO does not have a role. If it goes into the GATT it has to be implemented. There is clearly going to be a lot of development, training and assistance, and clearly WIPO is probably the agency to play that kind of role. The other major reason is that there were and are no dispute settlement procedures in the in WIPO, whereas there are in the GATT. Countries are signatories to the Paris Convention yet have laws that are inconsistent with the Paris Con-

vention. There is no procedure whereby that problem has been or can be addressed.

On another point, referring to the African countries, the lesser developed countries which primarily import technology, it is quite clear that countries such as Brazil and Mexico and the so-called newly industrializing, or "NIC", countries are in a different phase of development. Presumably, intellectual property is going to have a different impact in those countries. There is greater need and we have greater problems in countries like Brazil than we would in an African country. It is by no means clear to me that if an African country were to introduce, for example, a patent law that has product protection and a reasonable term, and the kind of things that I talked about earlier, that would in any way impede their development. It may not be particularly relevant at an early stage in their development but I would like to think that it would encourage that development and in due course it will become more relevant. This is an ongoing process.

On the questions of barriers, it seems to me you have to be careful to distinguish between barriers and legitimate trade. From my perspective, trade in my company's drugs means trade that originates from our company or with the approval of that company. It does not mean trade by generic copiers of our products and I do not find that increasing levels of intellectual property protection place barriers in the sense that barriers are used in the trade concept as I would understand it.

One underlying principle of patent law is that people have some sort of property right in their creations, which is certainly the case in U.S. law. Intellectual property under U.S. law has all the attributes of personal property. If anybody invested 125 million dollars and spent 10 years of development with respect to any other kind of property, personal or real property, and somebody took that property from them, nobody would have any problem characterizing that activity. It is characterized as theft. I find it difficult to understand why people would have the same problem when the property that is being discussed is called intellectual property. I would not want to confuse that with what we have described as developmental objectives. I cannot believe that taking other people's property is to be considered a legitimate way of achieving development objectives.

Mr. Morford

Let me say first of all that I commend Mr. Gakunu on his presentation; we did not miss the Brazilian Ambassador at all. He did

a wonderful job of presenting the developing country views, and much of what he has said I have had the privilege of hearing before in Geneva on the fringes of negotiations in the GATT. We have a different interpretation of a lot of the things Mr. Gakunu described as being the developing country's approach to the GATT negotiations. The Punta del Este Mandate is one of those, and the idea of going and looking at existing GATT provisions which he described as being the developing country approach is something which indeed is in the mandate of Punta del Este. Also in the mandate is something about new rules of discipline, and of course we have a lot of fun in Geneva reading different parts of the mandate and then interpreting them differently. Unfortunately that does not get anyone anywhere, but the mandate is subject to any number of different interpretations.

The idea of going in and looking at existing GATT provisions and clarifying them is something that the group did spend time on, and there is a GATT report which was prepared by the secretariat describing the GATT provisions bearing on intellectual property.

There are two kinds of GATT provisions that potentially deal with or actually deal with intellectual property. One of the general provisions deals with, for example, national treatment, which presumably could deal with intellectual property; another example of this type is most-favored-nation treatment. The other provisions are those that have specifically mentioned intellectual property. They generally do so not in a manner saying that you should protect intellectual property, but in a manner saying that you can do certain things necessary to carry out your intellectual property laws despite what it says elsewhere in the GATT. For example, Article 20(d) of the GATT is kind of an exception article.

There is nothing in the GATT per se, however, which requires any country to have any laws that protect intellectual property in any particular specific manner at any particular level. That is one of the problems we have with going back and looking at clarifying existing GATT provisions. We can clarify as much as we want but we will not get to any kind of addressing of the trade problem that exists, because of the lack of intellectual property protection.

One related point is the question of why we should be dealing with intellectual property in the GATT when intellectual property regulation is something that is a national system done for national purposes at the national level. I would like to mention that subsidies presumably are also something that is done at the national level for national purposes, yet they are something that the GATT has seen to address. Intellectual property, like subsidies, is another one of these issues

that, because it has become so important in a trade sense, needs to be addressed by the GATT, or else the GATT is not addressing the whole trade situation. If the GATT is going to be excluded from looking at issues that relate to trade, then the GATT becomes less and less of an instrument for resolving trade problems and a less effective institution. The GATT has to look at these new areas and intellectual property is just one of the new areas. The fact that intellectual property is administered by nations on a national basis is true, but as with other things that need international discipline, there have to be rules and regulations when the problems become major enough that they need to be addressed by the international community.

One other thing that came up is the question of whether this monopoly of patents or intellectual property creates a risk that countries will not have the benefit of products. This is something that we hear frequently, and regardless of how many times we have heard it, we have not found an example of where products were really purposefully taken away from a country's market and became unavailable. It is in the interest of companies that they have products to sell wherever they can find markets. If there are cases where there are abuses of monopoly powers—where there is price fixing or failure to deal—these kinds of abuses are much better addressed by antitrust law than by patent law. Despite this being brought up, we have not found the examples of companies withholding products from the market. I do not know whether Mr. Richardson's company, after spending 125 million dollars, would go and say to a country that, "we are not going to sell it to you because we do not want to make any money." That is not the way the market works.

Ms. Bilzi

Just one brief comment on the development issue. The IPC opposes including language that would permit developing country adherents to an agreement to maintain their lower standards of protection for developmental reasons. The IPC opposes this first, because it implies that strong intellectual property protection does not further economic development and technology transfer; the IPC would argue that it does. Also, the IPC does not want to see a two-tiered system of intellectual property protection where there is protection on one tier for developed countries and on another tier for developing countries.

Rather than institute a system of permanent derogations from an agreement, the Intellectual Property Committee supports a transition period for developing countries to allow them to bring their level of

intellectual property protection into compliance with the agreement. The transition period would allow developing countries time to bring their level of protection up to the floor created by the agreement as well as give them time to adjust to any economic dislocations caused by adherence to the agreement. There are incentives for developing countries to join the agreement. The discipline provided by an agreement will be an incentive for all countries to join. For example, signatories will have to exhaust multilateral dispute settlement procedures which will provide protection to countries against unilateral actions. Developed country parties could agree to provide technical assistance to developing countries to encourage them to join an agreement. While all countries might not become signatories to a code from the outset, there would be incentives for all countries to join, including developing countries.

Mr. Morford

There is a difference between the private sector and the U.S. Government here that I should clarify. The U.S. Government position as far as whether it is a code or an amendment of the GATT articles is that we should negotiate the substance of the agreement and we will decide at the end of the day what form it will take. We haven't quite come down on that yet.

Mr. Gakunu

The mandate regarding intellectual property is divided into two stages. The first is the clarification stage and the second is the framework stage. The developing countries feel that the negotiations should be limited to the clarification stage. The rest is not considered to fall within the GATT framework.

The second point is regarding Article 20(d) which I agree does not oblige contracting parties to undertake any enforcement measures with respect to intellectual property rights. The article also recognizes that enforcement measures applied to international trade are more likely to be restrictive, so therefore GATT itself provides for exemptions from these provisions. But what is now being proposed is that this should be made the law rather than the exemptions. The developing countries argue that it is inappropriate to expand the operation of article 20(d) in this manner.

Finally, the opinion that WIPO has not done its job and that the Bonn and Paris Conventions are inadequate does not in itself justify the GATT superseding those conventions. The United States and other developed countries should see what modifications can be in-

troduced to those conventions to make them more useful. We should build on the existing conventions rather than outside of them.

Mr. Wilner

The question of the desirability of protecting intellectual property rights is not a new one. Countries which, in the past, were not parties to the Paris Convention system and which may have pirated technology are now staunch defenders of protection for intellectual property.

Another point that is often made is that the protection of intellectual property rights ought to be a part of the international trading system under GATT because such protection has a positive influence on the ability of companies or individuals to trade across borders. If all that is necessary for inclusion in the GATT system is that the subject matter have a positive relationship to trade, we would have to make sure that all aspects of commercial relationships that give rise to acquired rights, including all sales agreements, also be brought under the GATT. Such a prospect is intriguing and certainly daunting. Finally, if, in fact, only certain aspects of trade are to be singled out for inclusion in the GATT system, one might ask why the protection of intellectual rights has been selected rather than, for example, trade-related aspects of access to technology.

Scott Birdwell

It is my understanding that if some of the developing countries did not infringe patents and violate copyrights, many of their industries would collapse. In that vein, the developing countries do not have $125 million to spend on research and development to develop a new marketable chemical; nevertheless, the industrial countries are calling for increased protection of the intellectual property rights. It is like asking developing countries to protect something that they might never have. My question is, does this increased protection not condemn the industry of the developing countries to permanent exclusion from competing with the industry of the developed and industrial countries? The question is put to Dr. Richardson and Ms. Bilzi.

Mr. Richardson

First of all, Pfizer sells in all of these countries despite the varying degrees of patent protection. We do whatever we can to enforce our patent rights. We have a very vigorous program of patent infringement litigation throughout the world and our policy is that if there is

infringement, we will take legal action to prevent it. We have a lot of difficulty in enforcing our rights.

The mere fact that sales of our products by other companies goes on does not mean that the stealing of our rights should be allowed to continue. I do not see that because they do not have the ability, that justifies taking it from somebody else.

The theory of intellectual property, of patent law, is that it will help countries get to the point where they have the ability for themselves by providing its incentives for innovation and investment in R & D. They will develop the ability. My patent is supposed to prevent somebody from selling one particular product or class of products covered by that patent. As I pointed out earlier, this is not done in a vacuum. It is not the only product that will fulfill that purpose. There are usually many products to choose from. Others are excluded only for a limited period of time. In my industry, that means that if you wait five years after I have introduced it, you are free to use it and there is nothing that I can do, because the patent will have expired. That is hardly denying them the benefit of the products.

The way it is supposed to work is that you disclose your invention to the public. The public gets the benefit of the teachings of your patent and the products that are embodied in that patent. People in countries throughout the world get the benefit of that. They go on and do their own research. To the extent that they are blocked by an important patent held by my company or somebody else, they do their best to invent around it. They develop their own technology. Clearly you are correct that at early stages of development, people do not have the education, scientific expertise and the money to develop a research based pharmaceutical industry of the type that we know today in the United States, in Europe, and Japan. But again, I do not see how that justifies violation of other people's rights and I see it as an incremental development process. I do not think that anybody thinks that if they put these laws into place, all of a sudden they are going to be developed countries over night, but it is one small step that if you go through the process ultimately they will get there.

Scott Birdwell

My point is that the industry of the industrial countries is so far beyond the capacity of the industry of the developing countries that it seems unlikely that the industry of developing countries will be in a position to spend $125 million to develop a product to compete

with a company like Pfizer. How long are you asking the developing countries to hold off, and is it worth the wait?

Mr. Richardson

Obviously that goes with the whole social and economic underpinnings of the country and the system they choose to adopt. There is no reason why what I called stealing should be allowed to continue. I do not see that you can justify stealing as a means of promoting development. Everything is not going to be on equal footing; that is reality and it will take a long time to change, but I am not sure what alternatives there are. What are generally accepted as violations of intellectual property laws should not continue.

Mr. Wilner

Dr. Richardson, the question is: Whose intellectual property law we are talking about? The United States has intellectual property laws that protect certain knowledge and products such as pharmaceuticals. Another country might consider that pharmaceutical technology is knowledge that belongs to society in general; thus, it will allow anyone who gets hold of the information to use it in the public interest. While that country will surely have certain regulations on the production of pharmaceuticals, it will not protect private property rights in the technology used. The policy decision will have been made that no pharmaceutical products, whether produced by foreigners or by nationals, can enjoy industrial property protection. My point is, that in the extreme case, what amounts to stealing according to the public policy of one country may be strongly approved in another country.

In certain countries, local producers in certain industries would have to rely on something other than patents and trademarks for market protection. They would have to depend on the reliability of their product over a period of time, or, as Coca Cola does, they might rely on a trade secret. As long as we think of the protection of rights in technology solely in terms of traditional property rights, there will be conflict. Views on the nature and extent of property rights to knowledge vary; what is a property right in one country is not so in another. Ms. Bilzi advocates a global uniform set of policies which would specify the widest array of property rights in intellectual property. I believe that many countries will resist a uniform approach and will prefer to maintain their freedom of action to fashion their own rules, particularly in the pursuit of specific social policies.

Mr. Richardson

That is obviously the problem, and that goes to the whole concept of minimum standards and to the remark that I made earlier that an underpinning of intellectual property law is that people do have some sort of inherent right in creations. That is embodied in national legislation. The United States says that you do, and that if somebody tries to take it from you, then that is infringement and you have a right to prevent it. Obviously, U.S. law does not apply to other countries. The point is, that if you accept the patent system and if you accept it as a principle that people do have a property right, then the fact that some countries choose to legislate so that things that we would call theft are conveniently not defined as theft and so that it is therefore okay to use another's invention, this fact merely begs the question. Which comes first?

In terms of countries legislating and being free to legislate in this way, if you take your proposition to the extreme, it means that there will be no more development of new drugs because we have to get the returns somewhere. If every country says medicines are very important and everybody ought to be able to get hold of them at low prices and anybody is free to make any drug, then there is no incentive for anybody to take the time and spend the money to develop the drug. The principle of the patent laws is to provide some reward at the end of the day as an incentive for people to develop their inventions.

In the real world, where some countries provide that protection and others do not, the effect is that the countries that do not provide the protection are getting a free ride at the expense of the innovator who loses sales, and at the expense of those countries that do provide the protection. We have to operate on a basis where the costs of our businesses are going to be passed on to the consumers. If everybody is looking for a free ride, that is going to destroy the whole system. There has to be the incentive in there. That is the very underpinning of the patent law. If you want to question that premise, then you are moving towards a totally different economic system.

Even all of the communist countries have some form of intellectual property laws. We take out protection in communist block countries. We have had very little experience in enforcing those patents, but they honor the patents in the sense of dealing with the person that owns the patent rather than others.

Pharmaceuticals is obviously one of the more difficult areas to discuss. Nobody can question that there are concerns that go to the

provision of medicines. I do put to you, as I did before, that the patent law is not the place to deal with those concerns. The purpose of the patent law is to promote innovation. People who innovate will reap the benefits of the patent system. It is not going to happen overnight, it is going to be a slow process. The experience is that it works.

Mr. Gakunu

I want to share the following viewpoint. Developing countries are not saying that they want to be pirates of property rights. Let me put it this way. Suppose a country like Zimbabwe has a special arrangement with a firm in the U.S. on property rights in its country. Should that arrangement be extended to all firms? The MFN standard would require that once one reaches such an agreement, that arrangement should be extended to all firms. I am raising this question because it is those kinds of considerations that the developing countries feel are not being taken into account. In most developing countries it is not firms that are dealing with the question of intellectual property, it is the governments. When the government decides to reach an agreement with the firm or another government, it does not feel obliged to extend the terms of this agreement to countries with which it has had no dealings. That is where the problem arises. It is not so much a question of pirating patents, because these countries that I represent are unlikely to use this technology without the assistance of the person or firms that produced it. They do not feel that once they reach this kind of arrangement, it should necessarily be extended to every other firm or every other country.

Todd Kocourek

If I might steer the discussion away for a moment from questions of natural right and morality. I wonder if the speakers could speak more specifically on the economic benefits which they have briefly alluded to that would result from an adoption of this system of intellectual property protection on the part of the developing countries. I ask that because it was my impression that multilateral agreements like the GATT arose not out of a system of natural rights but out of nations' perceptions of their own long-term self-interests.

Mr. Morford

As Mr. Richardson said, one of the purposes of a patent system is to encourage innovation. The wider the patent system is, presumably the more it will do to encourage innovation. If all the nations in the

world were to protect intellectual property, presumably the incentive would be better than if nations here and there protected intellectual property and pirates were allowed to copy in other countries. In that perspective, as an economist, you would look at it on a social or an economic welfare model. Certainly the idea of having common standards worldwide would be better for the whole world because the level of inventiveness all over the world would presumably be increased.

That does not answer your question about developing countries. Mr. Gakunu is correct in pointing out that developing countries cannot be looked at as one block for purposes of intellectual property and what effect it will have on their development. Certainly as far as we are concerned, if you look at countries like Mexico, Brazil, Korea, and India you are looking at countries with well developed infrastructures, high levels of educated people, countries that are capable of competing across the board in different levels of technology. The fact that India and Brazil are the two leaders of opposition to this in the GATT is a little bit confusing to us because they are at that level where they should want to be taking a different position.

If you look at Brazil, for example, in the information sector where they are attempting to self-develop, they have essentially cut themselves off from foreign technology and have stagnating industries. By not allowing the technology in, by not protecting the technology, their own firms cannot get the boost that is needed from the dynamism that results from being open to the rest of the world. Technology flows. If it does not flow to you, it is hard for you to keep up with what is going on elsewhere. There is probably not any country or any company in the world that can rely upon its own creativity and innovation to keep itself ahead of everyone else. It has to look and see what's going on elsewhere. Having a good intellectual property system helps in that. Intellectual property systems also require inventions from around the world to be disclosed in the local language. Patents are open to the public. This allows you to look at it, find out what it is, invent around it. That is the kind of thing that many inventors find to be helpful.

The question is how much money is it worth to have an intellectual property system? I do not think anybody can answer that. Economists have been slow to really come up with economic models or empirical studies to conclude how much it is worth. There have been some studies done on the amount of growth percentage for example in the United States from the beginning of this century until now that came from technological innovation as opposed to population growth or

other factors. The rates range from 40 to 90 percent of the growth in the United States that is due to technological innovation. That is pretty high. I do not think that you will find that it is any less for developing countries.

Another interesting study compares social gain versus private gain. In other words, what does the patentee, the person who has patented an invention, gain from his invention. How much does he get back, versus how much does society gain in better products, lower prices, better standards of living, etc. The study finds that the private rates of return were very much smaller than the social rates of return. Even with the extra rights given to inventions protected by the patent system, the private rate of return was only a small percentage of what society gained as a whole from the innovations. There is social benefit for all from encouraging innovation.

For developing countries, the technology transfer aspect is perhaps the most important. If you have intellectual property protection, companies are much more likely to have licensing agreements and share technology. This is not just the patents. It may be much more valuable to have the know-how that goes with the patent rights. If you do not have intellectual property protection for a widget, then companies in that country can try to copy any widgets that are made elsewhere, any of the newest designs of widget making. But they may not know how to do it. You may see what a widget looks like in the patent specs, but you also have to find out how best to make it and how to make it work. That technology is missing. If you license that technology you can get the know-how in addition to the patent rights. But is a local industry in a developing country without adequate intellectual property protection willing to take that risk of buying technology if it knows that somebody else can go and freely copy? It has no legal right to protect its licensing investment. Thus, there is a question of whether an indigenous businessman will even try to get that transfer of technology if he does not have protection in his own country. There are a lot of reasons why it might make sense economically for developing countries to protect intellectual property.

But we have been talking about the Mexicos and Brazils, not countries, frankly, that could not, as I mentioned earlier, put 125 million dollars into developing a new pharmaceutical product. By the way, not even all pharmaceuticals take $125 million dollars to develop. As we have seen in history, technology jumps from country to country and place to place, so it may be Brazil (or in Africa or Asia) where the next breakthrough comes. But for those countries that do not

have the level of infrastructure education facilities, the stimulus to local invention may not seem worth the administrative costs of an intellectual property system. There is a real role for technical assistance and aid as far as we can see because clearly there is a cost involved in administering systems and training people.

Roger Wilson

I have a couple of questions on the developing country point of view, really more strategic questions than legal questions. For the purposes of my question let us discard the NIC countries and think more about the least developed countries. What is the strategy of the developing countries in their reluctance to raise the standards of protection for intellectual property? Specifically, do the developing countries think that the transfer or the licensing of technology will not diminish if the levels of protection are not increased? Do they think that this will not really diminish the amount of technology that is being transferred to the developing countries? If the reluctance of the developing countries to increase protection does eliminate or diminish the flow of technology from the developed countries, and with it the abilities of developing countries to tap this market themselves without the technology present, is it thought that these countries will nevertheless be able to develop the technology on their own more quickly since there is no protection?

My second question is related to the least developed countries again. It is my understanding that there is a great need for more labor-intensive technology and processes in these countries. Is most of the technology that is being transferred from the West labor-intensive or is it more capital-intensive? If it is the latter, do we need to proceed on a single track or is it possible for the developing countries to provide more protection for technology that they need less (i.e. capital-intensive technology) and less protection for technology that they need more (i.e. labor-intensive technology), or is that even a consideration?

Mr. Gakunu

It is a problem, though the answer to your question is very simple. The developing countries are not avoiding the question of protection of intellectual property rights. They are saying that GATT is not the only appropriate framework. They say that there are already existing conventions for that. There are the Berne and the Paris Conventions, so why move it from there? What is the purpose of moving it from there? That is the first point to bring out in the open. It is not a

matter of refusing protection but rather it is a question of why must it now be brought up in the context of a multilateral framework? They feel that they already give protection anyway for the technology, because if a firm is establishing in Kenya, for example, and Kenya wants to use the technology of such a firm, then Kenya will have to provide the necessary conditions and climate for the firm to establish there. Kenya would be bound to protect that technology. Thus, the bilateral pressures lead us to protect the property rights within our national laws.

The second question, with respect to which kind of technology we are resisting granting protection for, does not arise because we really have no objection to the protecting of property rights. We question whether protection must be on a multilateral basis because we do not see why national laws are not adequate. We do not feel, for example, that the U.S. laws are more relevant for us than our own laws. We do not see why protection must be on the basis of U.S. laws. We wonder why it is that U.S. laws are becoming multilateral laws, because that is the way we perceive the trend developing. The U.S. laws may not work in our countries.

Secondly, the argument you are raising against the developing countries is that we are unlikely to produce that technology so why should we be involved in the process? What benefit is there for us? Why must fate be sealed and forced on us? This is tantamount to saying that if a country is able to develop in the future, it cannot, because there are already preset rules to follow. Laws, especially national laws, evolve with time. If we are going to accept multilateral disciplines, then it means that our domestic laws cannot evolve, which we feel is a restriction on us. The developing countries say, look here, we only want to clarify the competence of the GATT. Let the GATT deal with those matters with which it has competence. Leave these other matters to the Berne and Paris Conventions. Therefore, if there are things that need to be improved in those organizations, let these improvements be made in those organizations, not outside them.

Mr. Dogauchi

Will the developing countries agree to change the structure of WIPO to reflect the concerns that are being expressed in the GATT negotiations?

Mr. Gakunu

Instead of the United States and other OECD countries indicating within the WIPO the changes that should be made, they have decided

to take the issue away from WIPO. It is better to try to see whether it can be brought into WIPO. Many argue that the WIPO deals with the developmental aspects of intellectual property and the trade aspects are coincidental. They are prepared to examine the possibility of those shortcomings which you said exist, but we are perceived as a burden that you industrial countries do not want.

The argument made earlier that there is a dispute settlement procedure does not satisfy the developing countries, since this procedure is meant for trade in goods and cannot be extended for intellectual property rights. If you are thinking of a dispute settlement procedure, then it must be one that is specifically developed for those disputes that relate to intellectual property. Maybe the dispute settlement procedures under the Berne and Paris Conventions are not complete. But why do we have to take them out of WIPO and bring them into the GATT? Why should we not seek to introduce within WIPO the changes that we want in that organization? Within the GATT, it is possible to impose rules on developing countries by using bilateral pressures on the countries to agree to the new rules on intellectual property protection. Within WIPO, the bilateral pressures are not as exacting or as effective as they would be in the context of the GATT. Maybe that is why the OECD countries are pushing for intellectual property protection within GATT.

Mr. Wilner

I was involved in some work in one of the more industrialized West African countries. The country wanted to create an institution to strengthen both the private and public innovative power of the economy. We looked at the number of patents that had been registered in the country over a period of years, and in particular, at patents that concerned manufacturing sectors. In one of the years studied, a number of patents had been registered; all but one had been registered by foreign companies. Yet, no manufacturing had been commenced using any of the inventions or processes that had been registered.

The country I visited was a member of the West African intellectual property organization, under whose rules it is easy to obtain approval of a patent merely by registering it at the central headquarters. Apparently, foreign companies register their patents to exclude imports and to protect their eventual entry into the regional market at some future time. Obviously what the country needed was the capacity to innovate on its own. However, its immediate preoccupation was

with whether it could sell its raw materials at prices that would keep its economy going.

I believe that what is needed is a comprehensive system for intellectual property that would foster protection, on the one hand, and assistance and cooperation in research, development and innovation, on the other. Support by producers of technology for such a system would be much more likely to bring about the participation of a large number of developing countries in an effective harmonization of the international protection of intellectual property rights.

Concluding Comments to Panel II

Gabriel Wilner

The discussions on intellectual property in the GATT are being undertaken as part of a reworking of GATT rather than a separate code. The idea of a special code has been replaced by the idea of something much broader.

The discussion by this panel has highlighted both the conviction held by proponents that strong intellectual property protection is an integral part of any successful international trading system for the future, and the skepticism of others regarding the view that the further strengthening of intellectual property protection will, in itself, serve the interests of the entire international community. The debate is certain to be continued in the current MTNs as well as in other fora.