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one with more complex contents: there was hardly any genuine EC law in place

say the least. In most of the 15 member states of the EC, different cultures, different languages, different economic realities and, in some cases, different legal traditions prevailed.[3] Also, some EC member states were net exporters; others were net importers of IP-based products, such as pharmaceuticals, brand-named products, such as cars or consumer electronics, products with a link to a geographical indication (GI), music and films; and member states' views on the protection of IP were not always identical. However, they were all trading partners with respect to goods and services protected by IP and had to find common ground on the parameters of protection. Note the similarities with the TRIPS negotiations!

T EC 1990

At the time of the TRIPS negotiations, the EC had harmonized its member states' laws only to a certain extent: in the area of patents, the European Patent

are not contradictions in terms but, rather, very valuable policies and instruments that have to be seen together in perspective; this is also reflected in Article XX(d) in the GATT and Article 36 of the ECT mentioned above, which were designed to do justice to all these policies and strike an appropriate balance among them.

TRIPS

The Berne Convention had last been revised in 1971. Further revisions would have been called for in view of the rapid progress of technology, such as in computers, but revising the Berne Convention directly through a diplomatic conference at WIPO had apparently not been a realistic option. Such a revision would havey, adi

doing justice to the interface between IP protection and free trade; and respecting, and building upon, the existing international IP obligations. Let me highlight in the following some of the features of added value that we accomplished.

Copyright

There are plenty of such added-value elements already in the area of copyright. We settled the dispute about the "work" character of computer programs and creative databases by (i) clarifying that computer programs, by definition, and databases, on condition that they are "intellectual creations", are protected as literary works within the meaning of the Berne Convention's terminology, and (ii) drawing explicitly the borderline with the public domain in Article 9(2). For the first time in an international IP agreement, rental rights were explicitly granted for

position to agree on. In addition, several other provisions were adopted to fill gaps or overcome controversies that were left by the IPIC Treaty. For my taste, the added value of this section stems from both its contents on substance and the chosen method of international law-making, namely, the particularly interesting use of the “compliance clause” – referring to a treaty that never came into force.

Trade secrets

enforcement systems, including civil law and common law concepts); we consulted experts, judges and customs officials; we cross-checked our ideas with the interested circles concerned; and we relied on advice from WIPO.

I think Part III is a particularly successful result of our negotiations. Even if it may appear to be too detailed for some and too general for others, it does reflect the common ground among all negotiators – and, as I am convinced, it was a balanced breakthrough based on common sense.

TRIPS and beyond: The impact of the TRIPS Agreement on international intellectual property law and EU law

I just described Part III of the TRIPS Agreement, on enforcement, as a

Negotiating for the European Communities and their member states

Endnotes

1 See Jörg Reinbothe and Anthony Howard, “The state of play in the negotiations on TRIPs (GATT/Uruguay Round)”, *European Intellectual Property Review* 13(5) (1991), 157-64.

2 This was the number of EC member states between 1986 and 1995.

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