

# GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MDF/W/25

5 March 1985

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Group of Experts on Trade in Counterfeit Goods

Original: English

STATEMENT ON BEHALF OF DEVELOPING CONTRACTING PARTIES TO THE  
GATT ON TRADE IN COUNTERFEIT GOODS, MADE BY THE DELEGATION  
OF INDIA AT THE COUNCIL MEETING OF 6-8 AND 20 NOVEMBER 1984

This statement has been received from the delegation of India with the request that it be circulated to members of the Group of Experts on Trade in Counterfeit Goods.

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At their thirty-eighth Session, the CONTRACTING PARTIES, meeting at Ministerial level, had instructed the Council to examine the question of trade in counterfeit goods with a view to determining the appropriateness of joint action in the GATT framework and, if such joint action is found to be appropriate, the modalities for such action having full regard to the competence of other international organizations. For this purpose, the CONTRACTING PARTIES had requested the Director-General to hold consultations with the Director General of W.I.P.O. in order to clarify the legal and institutional aspects involved.

Considerable work has been done in the GATT since the said decision was taken by the Ministers. Not only has the process of informal consultations held under your able Chairmanship facilitated a deeper understanding of the trade aspects of commercial counterfeiting, but the secretariat have also attempted an informal compilation in the form of a document based on submissions by certain delegations and published material. And yet some of the fundamental issues which confronted the Ministers still remain unclear. For instance, issues pertaining to the legal and institutional aspects, those with regard to the competence of other international organizations, specifically W.I.P.O., are still far from clear. In fact, the Director-General's report on his consultations with the Director General of W.I.P.O. (C/W/418), apart from indicating that consultations have been held, does not go very far in clarifying the legal and institutional aspects involved.

Mr. Chairman, I would like to assure you, on behalf of developing contracting parties to the GATT that we are extremely keen to ensure that the trade disruptive and inhibiting effects of commercial counterfeiting be curbed. To that end, the Paris Convention for the Protection of Industrial Property permits us to deal with the issue of counterfeit goods both at the border and at the point of production. Indeed, Article 9 of that Convention establishes that such goods shall be seized on importation. They shall also, under the same Article, be subjected to prohibition of importation or seizure inside the country where counterfeiting is incurred. Furthermore, the provision applies to direct or indirect use of a false

indication of origin or identity of the producer, manufacturer or merchant. Last, but in no way least, there is no possibility that the GATT can settle the essential question of what is counterfeit and what is not, a question which can only be settled in the domain of industrial property.

It seems abundantly clear that the Paris Convention already contains all the basic rules to deal with this problem both from the trade and the production angles, being therefore a more effective instrument than the GATT for the desired purpose. If it is felt that specific measures are required to ensure the effective application of such rules in national legislations, it is a matter of simply initiating action to draft and approve, in the context of the organization that administers the Convention - that is, W.I.P.O. - the necessary international regulations to that effect. The basic rules already contained in the Paris Convention need not be altered or revised for this purpose. If developed contracting parties so desire, the developing contracting parties which are members of W.I.P.O. would be quite prepared to jointly initiate appropriate action in that forum. In fact, an opportunity for such action has just been provided by the Director General of W.I.P.O. In his circular note C.N.848/04.1, of 19 October 1984, he invites member countries to communicate to him any activity they would wish to see included in the draft programme and budget of that organization.

We are surprised that even though informal consultations were continuing, some delegations have thought it fit to request the establishment of a Working Party in GATT at this stage. We do not rule out examination of the question of counterfeit goods in GATT. We believe, however, that this stage has not yet been reached, and it may well be rendered unnecessary by consideration of the matter in W.I.P.O.