

GENERAL AGREEMENT ON TARIFFS AND TRADE

Preparatory Committee

TRADE IN COUNTERFEIT GOODS AND OTHER
ASPECTS OF INTELLECTUAL PROPERTY

Note by the Secretariat

1. This note is issued under the responsibility of the secretariat and is intended to facilitate further discussion in the Preparatory Committee. It seeks to identify, in the light of the discussions recorded in PREP.COM(86)SR/3 and earlier discussions, the main considerations which would appear to be relevant should the Committee decide to formulate recommendations on trade in counterfeit goods and other aspects of intellectual property. The note is not intended to be a summary of the discussions. It in no way prejudices the views delegations may have as to whether and how the question of trade in counterfeit goods and other aspects of intellectual property might figure in the Preparatory Committee's recommendations to Ministers, nor should the listing of points for further discussion be regarded as exhaustive.

Main points emerging from the discussion

2. One view was that trade in counterfeit goods was a major problem facing the world trading system and that multilateral action should be taken in the new round to curb its trade disrupting and inhibiting effects while safeguarding against obstacles to trade in genuine goods. A number of provisions in the General Agreement demonstrated GATT's competence in these areas. Full regard should, however, be paid to the competence of other international organizations such as WIPO and CCC by ensuring that the work of the different organizations was complementary. Another view was that, while counterfeiting was undoubtedly a problem, the competent body was the WIPO, which had set up machinery to deal with it, and to take up the matter in GATT would be to prejudice WIPO's work. Nor was it appropriate for the GATT to deal with the problem as it should concentrate on more pressing questions already on its agenda.

3. It was suggested that a key agenda item for the new round should be the better protection of intellectual property rights - patents, trademarks, trade dress, copyright, mask works, trade secrets. It was also stated that the arguments against taking action in the GATT on questions relating to counterfeit goods applied with even more force to the proposal to extend this item to other aspects of intellectual property.

Points for further discussion

4. In the area of trade in counterfeit goods the main questions are now familiar. They include:

- (a) Would the proposals put forward in this area require the CONTRACTING PARTIES to go beyond their existing competence to facilitate the operation and further the objectives of the General Agreement as laid down in Article XXV?
- (b) Assuming that this question is settled, is it appropriate to deal with problems of trade in counterfeit goods in the new round given, inter alia, the competence of other organizations? If so, how should account be taken of their competence? Should the Declaration lay down specific objectives and define the scope of negotiations in this area?

5. In regard to "other aspects of intellectual property", can these aspects and the problems to be addressed be more clearly defined? It would then be necessary to address the same questions as outlined in paragraph 4 in relation to trade in counterfeit goods.