

# GENERAL AGREEMENT ON TARIFFS AND TRADE

**RESTRICTED**

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Special Distribution

## Multilateral Trade Negotiations

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Group "Non-Tariff Measures"

Sub-Group "Customs Matters"

## COMMERCIAL COUNTERFEITING

The following proposal is being circulated at the request of the United States delegation.

## Article I - Scope of Agreement

The parties to this Agreement shall, in accordance with its provisions, deal with counterfeit merchandise unladen with a view to its importation so as to deprive the parties to a transaction involving counterfeit merchandise of the economic benefits of the transaction and to prevent such merchandise from entering or reentering commerce. (Footnote 1: Parties to this Agreement may exclude nominal quantities of articles destined for personal or non-commercial use from the requirements of this Agreement.)

## Article II - Definitions

For purposes of this Agreement the term:

"Counterfeit merchandise" means any article to which a spurious trademark or tradename has been affixed or applied without the consent of the person having the right to the protection of the trademark or tradename under the legislation of the country of importation. Nothing in this Agreement shall require the parties to the Agreement to consider parallel imports as counterfeit;

Merchandise "unladen" means landed or unloaded merchandise;

"Importation" means the customs entry of articles for home use, or warehousing, but does not apply to articles in transit;

The terms "trademark" and "tradename" are to be defined by the law of the country of importation and can cover any word, name, symbol or device of any industrialist, merchant, agriculturalist, or other person or business entity to identify their business, vocation, occupation, or goods, and distinguish them from those of others.

A "spurious" trademark or tradename is one which is identical with or substantially indistinguishable from a trademark or tradename which is entitled to legal protection in the country of importation.

## Article III - Procedures

Any counterfeit merchandise unladen with a view to its importation shall be detained or seized by the appropriate authorities in accordance with the law of the country of importation. Such action shall normally be taken on the written request of the person having the right to the protection of the trademark or tradename who shall be required to establish that right in accordance with relevant national legislation.

Determinations concerning counterfeit merchandise shall be reasoned and made in a fair, open, and expeditious manner, and subject to appeal by the trademark or tradename owner, or the importer, or their representatives to an impartial body, so as to prevent the application of this Agreement from becoming a non-tariff barrier to legitimate trade. (Footnote 2: The parties to this Agreement recognize that perishable goods or merchandise with seasonal markets may necessitate special provisions such as the security authorized by the last sentence of this paragraph.) Importers, trademark or tradename owners, or their representatives shall be given prompt notice of actions taken. Authorities may require security by bond or deposit of money in an amount sufficient to indemnify the government, and where appropriate, to hold importers or trademark owners harmless from loss or damage resulting from the application of laws promulgated in conformity with this Agreement. (Footnote 3: It

is intended by this provision that authorities may require security for loss or damage caused by the invocation of the Agreement, but that such expense should, where possible, not be imposed on the successful complaining party or an importer of legitimate merchandise.

#### Article IV - Disposal of Counterfeit Merchandise

Upon a final determination that merchandise is counterfeit authorities shall act to have such merchandise, or security for its full value, forfeited to the government of the country of importation. Forfeited merchandise shall be disposed of in a manner that minimizes harm to the trademark or tradename owner including specifically requiring obliteration of removal of counterfeit trademarks or tradenames where feasible before disposal.

#### Article V - Information and Review

1. Any law, regulation, judicial decision, administrative ruling of general application, and any procedures regarding commercial counterfeiting as subject to this Agreement, shall be published promptly by the parties to this Agreement in such a manner as to enable other parties and traders to become acquainted with them. Parties to this Agreement shall be prepared, upon request, to explain to any other party, or to any trader from a country which is a party to this Agreement, their practices and procedures concerning commercial counterfeiting.
2. Available information concerning individual cases arising under domestic proceedings envisaged by the provisions of this Agreement shall be provided, upon a request, to any other party.
3. Confidential information provided to any party to this Agreement which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private, shall not, except as required by domestic law or judicial process, be revealed without formal authorization from the party providing the information.
4. Parties to this Agreement shall collect and provide to the Committee on an annual basis a report on the application of its commercial counterfeiting procedures. Such reports shall contain the following information:
  - (a) the number and source of requests for the invocation of procedures concerning counterfeit merchandise indicating the disposition or status of each such request;
  - (b) the kind, value source, and disposition of counterfeit merchandise.

## Article VI - Enforcement of Obligations

### Institutions

There shall be established under this Agreement:

1. A Committee on Commercial counterfeiting composed of representatives from each of the parties to this Agreement. This Committee shall elect its own chairman and shall meet as necessary but not less than once a year for the purpose of affording parties the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives.
2. Ad hoc panels which shall carry out the responsibilities assigned to them under paragraph 7 of this part.
3. Working parties or other subsidiary bodies which shall carry out such other functions as may be given to them by the Committee.
4. Parties to this Agreement shall have procedures for the hearing and reviewing of complaints arising in connection with any phase of the application of the procedures concerning commercial counterfeiting, so as to ensure that, to the greatest extent possible, disputes under this Agreement shall be equitably and expeditiously resolved between the interested private parties and the appropriate authorities in the country of importation.
5. If any party considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective of the Agreement is being impeded by another party or parties, it may, with a view to reaching a satisfactory resolution of the matter, make written representations to the other party or parties which it considers to be concerned. Each party shall afford sympathetic consideration to and adequate opportunity for prompt consultation regarding such representations as may be made by another party.

### Resolution of Disputes

6. If no mutually satisfactory solution has been reached between the parties concerned, the Committee shall meet at the request of any party to the Agreement within thirty days of receipt of such a request, to consider the matter, with a view to facilitating a mutually satisfactory solution.
7. If no mutually satisfactory solution has been reached by the Committee within three months from the time the matter was referred to it, the Committee shall, at the request of any of the parties concerned, establish and direct a panel, inter alia, promptly to:
  - (a) examine the matter;
  - (b) consult regularly with the parties to the dispute and give full opportunity for them to develop a mutually satisfactory solution;

(c) make a statement concerning the facts of the matter as they relate to application of the Agreement and such recommendations to the Committee as the facts warrant.

8. In order to facilitate the constitution of panels, the Chairman of the Committee shall maintain an informal list of governmental persons experienced in the field of trade relations. This list may also include non-governmental persons. If a panel is requested, the Chairman, after securing the agreement of the parties to this Agreement directly concerned shall propose the composition of the panel, consisting of three or five members and preferably governmental, to the Committee for approval. Panel members shall serve in their individual capacities and not as governmental representatives or as representatives of any organization. Citizens of countries whose governments are parties to a dispute shall not be eligible for membership of the panel concerned with that dispute. The parties directly concerned shall respond within a short period of time, e.g., seven working days, to nominations of panel members by the Chairman and shall not oppose nominations except for compelling reasons.

9. Each panel shall develop its own working procedures. All interested parties, including third parties, shall have an opportunity to be heard. Each panel may consult with and seek information from any source it deems appropriate. Any party to this Agreement shall respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information provided to the panel shall not be revealed without formal authorization from the government providing the information.

10. The time required by panels will vary with the particular case. Panels should aim to deliver their finding, and where appropriate, recommendations, to the Committee without undue delay, taking into account the obligation of the Committee to ensure prompt settlement in cases of urgency, normally within a period of four months.

11. Reports of panels shall be given prompt consideration by the Committee. The Committee shall take appropriate action on reports of panels within a reasonable period of time. Any recommendations by the Committee shall aim at the positive resolution of the problem consistent with the purpose of this Agreement.

12. The Committee shall keep under surveillance any matter on which it has made recommendations or given rulings.

13. If a party to which recommendations are addressed considers itself unable to implement them, it should promptly furnish reasons in writing to the Committee.

14. When disputes arise concerning the obligations under the Agreement, the parties to this Agreement shall exhaust the dispute settlement provisions under the Agreement before resort to other actions.