

MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND

RESTRICTED

MTN.GNG/NG11/W/7/Add.1  
9 June 1987

Special Distribution

Original: English

Group of Negotiations on Goods (GATT)

Negotiating Group on Trade-Related Aspects  
of Intellectual Property Rights, including  
Trade in Counterfeit Goods

SUBMISSIONS FROM PARTICIPANTS ON TRADE  
PROBLEMS ENCOUNTERED IN CONNECTION WITH  
INTELLECTUAL PROPERTY RIGHTS

Addendum

This note contains the submission of the Nordic countries (Finland, Iceland, Norway and Sweden).

I. Introduction

1. There is clear evidence that trade problems related to intellectual property rights (IPRs) have grown significantly in scope and magnitude. The experiences of the Nordic countries also point in this direction, although the nature of the problem makes it difficult to quantify it in absolute terms.
2. The problems referred to in this submission are based on specific cases known to the authorities of the Nordic countries involving in one way or another Nordic IPR holders. The paper does thus not pretend to be an overall analysis of possible trade problems related to IPRs, but is limited to the national experiences of the respective Nordic countries in this field.
3. One of the general observations that can be drawn from these experiences, as well as from those reported by other countries, is that trade problems related to IPRs are not confined to certain regions or parts of the world. Various forms of IPR infringement and problems stemming from the establishment and enforcement of intellectual property rights are world-wide phenomena, a fact that underpins the need to address such trade problems by multilaterally developed rules and disciplines.
4. Another general observation points to the fact that there is a growing number of product categories frequently subject to counterfeiting or other types of IPR infringement. The resulting trade problems have thus been spreading far beyond the originally most exposed sectors, such as fashion goods.

## II. Infringements of various types of intellectual property rights

5. International attention to trade problems related to IPR protection has traditionally been focused primarily on trademark infringements. Nordic experiences illustrate that the problem is not confined to trademarks only. On the contrary, several cases involving Nordic companies/IPR holders seem to be trade problems stemming from infringement of other types of intellectual property rights, such as designs, copyrights, patents, as well as other rights covered by international IPR conventions. The impact of such problems has, inter alia, been lost market opportunities for trade in genuine goods.

## III. Problems arising from inadequate levels of protection of intellectual property rights

6. Even between signatories to international IPR Conventions, there are significant discrepancies with regard to the level of protection granted intellectual property rights. Several of these conventions do not contain specific obligations on the extent to which IPRs are to be attainable and protected, and many countries do not offer an acceptable level of protection in respect of various types of IPRs. Shortcomings include, inter alia, a too limited period of protection to make an idea on a product commercially viable on a given market, as well as unavailability of appropriate protection for certain product categories. This latter point is highlighted by the immense speed with which new technologies are emerging.

7. Another problem having trade effects is the practice of some countries posing excessive requirements regarding compulsory licensing. Such practices may imply that if local production is not started within a period of three to five years, the patent expires and the protection is thus of little or no value in many cases where local production - for a variety of reasons - is simply not economically feasible.

## IV. Problems arising from national procedures to protect intellectual property rights

8. Nordic experiences demonstrate that various national procedures to protect intellectual property rights may have adverse trade effects. One such potential problem is the length of time between the filing of an IPR application in a country and final granting or registration of the right in question. If that time span is excessively long, serious infringement on the IPR seeker may occur while the application is pending, a period in which the IPR seeker may have limited possibilities of protecting the relevant trademark, invention, design, etc.

9. Another potential trade problem in this field is related to the complexity of the procedures as such. In some countries the procedure to register an intellectual property right is perceived as being so excessively complicated as to represent a serious obstacle, to foreign IPR seekers in particular.

V. Problems arising from inadequate or discriminatory enforcement of intellectual property rights

10. Time-consuming and costly legal procedures to obtain court orders necessary to enforce intellectual property rights subject to infringement place small IPR holders at a disadvantage. Furthermore, in countries with local jurisdiction in addition to federal jurisdiction on such issues, these problems - for obvious reasons - are liable to become aggravated.

11. Nordic IPR holders have encountered trade problems related to IPR protection in certain countries due to discriminatory enforcement laws and provisions. Elements of discrimination have, inter alia, been based on whether illegal copies are made domestically or imported from third countries, as well as on whether or not IPR infringement caused damage to domestic industries.

12. The sanctions for IPR infringement in a given country may also have a significant impact on the trade problem resulting from such infringement. Depending on the characteristics of the individual case, the impact of a court order enforcing the rights of an IPR holder may, for instance, vary according to whether illegal copies become subject to import prohibition, whether the prohibition is related to the production of such copies or both. The question of confiscating illegal copies already on the market is also of great importance, particularly for small manufacturers seeking enforcement of their intellectual property rights. This can also be said of possibilities available to attain provisional measures while a final legal decision is pending.