

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

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Special Distribution

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Group of Negotiations on Goods (GATT)

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

SUGGESTION BY JAPAN FOR  
ACHIEVING THE NEGOTIATING OBJECTIVE

The attached communication, dated 20 November 1987, has been received from the Permanent Mission of Japan.

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## 1. The Purpose of This Paper

The Japanese government proposes the following in order to bring improvements in the problems concerning trade related aspects of intellectual property rights which were brought to light by the paper (MTN.GNG/NG11/W/12) prepared by the secretariat on the basis of contributions and submissions made by the countries participating in the Uruguay Round. The proposals made below represent the Japanese government's points of view at the present stage, and they remain subject to modification.

## 2. General Rules and Disciplines to Be Agreed Upon

### (1) Principles in the Protection of Intellectual Property Rights

Three principles -- Most-Favored-Nation Treatment, National Treatment, and Assurance of Transparency -- are widely acknowledged as the basic framework of the GATT; it is important that they be applied also to the protection of intellectual property rights by the countries participating in the Uruguay Round (hereinafter referred to as "the participants").

#### (i) Most-Favored-Nation Treatment

With regard to the protection of intellectual property rights, a participant shall not give the nationals or products of any country treatment which is less favorable than the treatment given to the nationals or products of any other country.

#### (ii) National Treatment

With regard to the protection of intellectual property rights, a participant shall not give the nationals or products of any country treatment which is less favorable than the treatment given to its own nationals or products.

(iii) Assurance of Transparency

With regard to the laws, regulations, procedures, etc., for the protection of intellectual property rights, transparency shall be ensured as much as possible by organizing a system which will provide other countries with access to information through notification, publication, and so forth.

(2) Intellectual Property Rights Which Are To Be Protected

Patents, trademarks, designs, copyright, and semiconductor integrated circuit layout right shall be the rights to be protected.

Concerning objects to be protected in the new frontiers of technology, deliberate study shall be made on them with an aim to having an appropriate way of protecting each object in accordance with its nature.

(3) The Norms for the Protection of Intellectual Property Rights

Trade restricting and distorting effects have been emerging due to the lack of established international norms adequate for protecting intellectual property rights. It is therefore necessary to establish, by taking the present international treaties into consideration, adequate international norms for the protection of intellectual property rights which are to be protected (in concrete terms, norms such as the ones in the Annex can be considered) and for each participant to frame national laws on the basis of such norms.

(4) Enforcement of the Protection of Intellectual Property Rights

For intellectual property rights to be protected effectively, effective and adequate enforcement of protection must be secured in addition to the establishment of international norms for such protection. To this end, the participants shall establish and implement procedures at the domestic and border levels according to the type of intellectual property rights.

Such procedures at the domestic and border levels must comply with the following points in order to meet the need to act swiftly against infringement of intellectual property rights and give relief to the intellectual property right holder, and to ensure, at the same time, that the measures taken according to such procedures do not become barriers to any legitimate trade.

(i) Assurance of Due Process of Law

The principle of due process of law must be ensured in the enforcement of the protection. Those who are to be subject to the enforcement procedures shall be given a prior notification concerning the procedures and shall be given ample opportunities for explanation and defense.

(ii) Injunction and compensation for damages

A person who is incurring or who is in danger of incurring damages from infringement of his intellectual property rights shall be relieved through injunction, compensation for damages, etc., set by judicial procedures and/or administrative procedures.

A system shall be established in which the petitioner for a preliminary injunction or temporary order compensates for the damages incurred by an innocent person as a result of such measures imposed on him on the assumption that he committed infringement of intellectual property rights.

(iii) It should be guaranteed that judicial review is conducted over dispositions by the administrative branch.

(iv) Sanctions

Sufficient sanctions should be imposed on an infringer of intellectual property rights.

(5) Consultation and Settlement of Disputes

For settling disputes among participants over intellectual property rights, an international mechanism should be established, following the examples of the consultations and dispute settlement procedures under various agreements of the Tokyo Round.

(i) In the case of disputes among participants over intellectual property rights, a participant must not take any unilateral action but settle the disputes in accordance with the above mechanism.

(ii) As the contents of intellectual property rights are complex and diverse, participation of experts may become necessary.

(6) Review

The agreed rules and disciplines shall be reviewed periodically on the basis of the experience gained by their application, technological progress, and other information.

3. International Cooperation

The participants shall cooperate actively with each other for exchanging information and conducting surveillance at the international level in the GATT and so forth. Furthermore, the participants shall contemplate giving cooperation to the developing countries by granting technical assistance and sending trained personnel needed by such countries for adhering to the agreed general rules and disciplines.

## Annex

### Patents

- (1) Patents are defined as exclusive rights given under certain conditions for inventions that are novel, unobvious, and industrially applicable in exchange for prompt disclosure of the inventions to the public.
- (2) Equal and non-discriminatory treatment shall be guaranteed in the requirements for application for a patent, and obtaining, maintenance and exercise of a patent.
- (3) Participants may exclude such inventions as are contrary to public safety or health, or to the maintenance of public order or morality from what patents are given for.
- (4) Participants shall take measures to ensure that the expiration of a patent term is not unduly delayed from the filing date. The duration of a patent shall be at least 15 years.
- (5) Issuance of a compulsory license and forfeiture of a patent shall be conducted in accordance with the present Paris Convention and in a way that the interests of all the parties concerned are taken into account in a balanced manner. They are also subject to judicial review. A patentee shall be appropriately compensated at the time of issuance of a compulsory license.

Trademarks

Participants shall comply with the rules below besides those of the present Paris Convention in protecting trademarks.

(1) Equal and non-discriminatory treatment shall be guaranteed in the requirements for application for trademark registration, and obtaining, maintenance and exercise of a trademark right.

(2) Well known trademarks must be protected if they are so widely known among consumers that their use by non-holders for goods, even if those goods are dissimilar in nature from the original goods, is liable to cause confusion about the origin of those goods.

Designs

Participants shall comply with the rule below besides those of the present Paris Convention in protecting design.

(1) Equal and non-discriminatory treatment shall be guaranteed in the requirements for application for design registration, and obtaining, maintenance and exercise of a design right.



Copyright

(1) A production in which thoughts or sentiments are expressed in a creative way and which falls within the literary, scientific, artistic or musical domain is "work" that is entitled to copyright protection.

(2) The author shall enjoy the exclusive rights as stipulated in the Berne Convention such as the right to reproduce his/her work.

(3) Copyright protection shall attach automatically upon creation of the work.

(4) The term of protection of works shall be, in principle, the life of the author and fifty years after his/her death in accordance with the Berne Convention.

(5) The protection of computer program works shall be given appropriate considerations in accordance with their nature which include not extending the protection to any programming language, rule or algorithm used for making such works.

Semiconductor Integrated Circuit Layout Right

(1) Exclusive rights for semiconductor integrated circuit layout shall include;

- ① the right to manufacture semiconductor integrated circuit from such circuit layout,
- ② the right to transfer, to lease, to exhibit for the purpose of transferring or leasing, and to import such semiconductor integrated circuit or products containing the circuit, and
- ③ the right to authorize others to do the same as in ① and ② above.

Such rights, however, do not extend to circuit layout that is one of these below;

- ① layout that is not produced as the result of a creator's intellectual effort,
- ② layout that is already commonplace in the semiconductor integrated circuit industry at the time of its creation, and
- ③ layout that is exclusively dictated by the function of semiconductor integrated circuit to which it applies.

(2) Protection may be conditioned upon registration of layout. In the case that commercial exploitation precedes registration, the registration shall be completed within 2 years from the first date of the commercial exploitation.

(3) Manufacturing another semiconductor integrated circuit utilizing the layout of original circuit for the purpose of analysis or evaluation is permitted.

(4) The duration of protection shall be at least 10 years from the date of registration or from the first date of commercial exploitation.