

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

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

SUGGESTION BY THE NORDIC COUNTRIES FOR  
ACHIEVING THE NEGOTIATING OBJECTIVE

The following communication, dated 8 February 1988, has been received from the delegation of Norway.

With a view to contributing to the fulfilment of the Negotiating Objective, the Nordic countries hereby submit suggestions on a number of broad elements to be addressed in the subsequent negotiating process.

Introduction

When elaborating upon the elements addressed below, the Nordic countries principal point of departure has been an assessment of the trade problems related to the protection of intellectual property rights (IPRs). The work undertaken in the Negotiating Group has revealed that such problems may arise from a complex set of factors involving in one way or another the basic standards/norms applicable for the protection of IPRs, as well as the mechanisms established to enforce those standards/norms. From a trade perspective, it is therefore logical - with the aim of, inter alia, elaborating appropriate new GATT rules and disciplines - to consider the two issues of standards/norms and enforcement, since both are of importance in a trade context.

Without prejudging the outcome of the negotiations, including the content and form of commitments to be entered into, another basic consideration of the Nordic countries at this stage of the negotiations has been to incorporate a number of key GATT principles into the work of the Negotiating Group on TRIPs. In the light of trade problems stemming from inadequate, excessive or discriminatory standards/norms and/or enforcement mechanisms respectively, principles such as non-discrimination and national treatment, as well as the need for dispute settlement provisions and enhanced transparency, would seem to deserve particular attention when addressing the below elements.

I. Coverage of intellectual property rights (IPRs)

The initial phase has revealed that problems in the area of TRIPs are related to a wide variety of - if not all - IPRs. It would therefore seem logical to pursue negotiations on the working hypothesis that a broad coverage of rights should be addressed. To further clarify this point it would be useful for participants to indicate - without any prejudice to the scope of IPRs to be discussed or the outcome of the negotiations - their specific interests and priorities attached to the various IPRs. For their part, the Nordic countries have encountered particular problems in the areas of trademarks, industrial design and patents.

II. Basic standards/norms of IPRs

Participants have complained about inadequate or non-existing standards/norms of IPRs in international Conventions, as well as in national legislations, and thereby inadequate protection of such rights. A first step to develop a common assessment and knowledge in this field would imply an examination of the existence, scope and form of generally internationally accepted and applied standards/norms. The purpose of such an exercise would be to focus on general national practices in relation to existing levels of protection in international standards/norms.

III. Enforcement mechanisms of relevance to TRIPs

Participants have put forward information on inadequate, excessive and/or discriminatory enforcement mechanisms of relevance to TRIPs. Particularly with a view to avoiding potential discrimination and the establishment of barriers to trade, it would appear useful to pursue a further examination of such risks and flaws. Moreover, different types of enforcement mechanisms (border measures, administrative arrangements and court procedures) are likely to have different applicability in respect of the various IPRs. In particular, the determination of IPR infringement may require somewhat different procedures and provisions, depending on the IPR in question. Bearing in mind, inter alia, individual participants' different points of departure in this area there is a need to determine more thoroughly the applicability of various enforcement mechanisms in relation to different IPRs.

IV. GATT commitments pertaining to IPRs

Problems in the area of TRIPs are stemming from standards/norms or enforcement mechanisms or a combination of the two. Enhanced discipline and new rules must therefore - in one way or another - comprise all these elements. The basis for the commitments to be entered into in GATT would thus have to be an agreed set of standards/norms as well as requirements, scope and effects of appropriate enforcement mechanisms.

V. Dispute settlement

New commitments will necessitate a determination of how such commitments would affect the dispute settlement procedures of the General Agreement and the need for additional or separate dispute settlement provisions in the area of TRIPs.

VI. Technical assistance

Work undertaken in the initial phase has clearly demonstrated that the formulation and implementation of new rules and enhanced GATT discipline in the field of TRIPs will be a highly complex exercise, which in all probability will require participants to determine provisions/resources for technical assistance.

VII. Relationship between GATT commitments and work on IPRs elsewhere

Negotiations should seek to establish mutual beneficial relations and co-operation between GATT and WIPO so as to exploit the professional knowledge and expertise of the latter in formulating and implementing GATT commitments in the area of TRIPs, as well as to avoid duplication of work.