

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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Group of Negotiations on Goods (GATT)

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

SUGGESTION BY THE UNITED STATES FOR
ACHIEVING THE NEGOTIATING OBJECTIVE

Revision

The attached communication, dated 13 October 1988, has been received from the Office of the United States Trade Representative in Geneva.

I. Introduction

In October 1987, the United States submitted a suggestion for achieving the Negotiating objective of this Group (MTN.GNG/NG11/W/14). In that submission, the United States set forth its objectives for these negotiations. Specifically, it sought an agreement that would reduce distortions of and impediments to legitimate trade in goods and services caused by inadequate standards of protection and ineffective enforcement of intellectual property rights.

The submission then outlined the means of achieving this objective. Specifically, parties would undertake obligations to bring national laws and enforcement mechanisms into conformity with the provisions of a GATT agreement. That agreement would include obligations to adopt and implement (1) adequate substantive standards for the protection of intellectual property, drawing such standards from international conventions where adequate, and from national laws that provide a sufficient level of protection where the provisions of such conventions are inadequate or do not exist; (2) both border and internal enforcement measures; (3) a dispute settlement mechanism, taking into account existing GATT procedures and negotiations and adapting them to intellectual property; and (4) provisions drawn from existing GATT principles, such as national treatment and transparency, adapted to intellectual property. Each of these obligations would be undertaken with a view toward minimizing interference with legitimate trade.

Finally, the U.S. suggestion included preliminary thoughts on the standards that might be included in an agreement and provisions of general concern, such as provision of technical assistance and the potential for revision and amendment of the agreement.

In the year since submission of the U.S. proposal, participants in the negotiating group have made further detailed proposals on how the negotiating group could achieve its objective. Indeed, the United States has orally and in informal submissions further developed its thoughts on the details of how we should achieve that objective. These evolving thoughts are set forth in the following paper.

II. Objective

The objective of these negotiations remains unchanged, i.e., a GATT intellectual property agreement to reduce distortions of and impediments to legitimate trade in goods and services caused by deficient levels of protection and enforcement of intellectual property rights. Parties would undertake specific obligations to

enact adequate substantive standards in their national laws for the protection of intellectual property and for border and internal enforcement measures consistent with the terms of the agreement. Thus, Parties would agree to:

- Recognize and implement standards and norms that provide adequate protection for intellectual property rights and provide a basis for the effective enforcement of such rights;
- Provide an effective means of preventing and deterring infringement of intellectual property rights;
- Create an effective economic deterrent to international trade in goods and services which infringe intellectual property rights through implementation of internal and border measures;
- Ensure that such measures to protect intellectual property or enforce intellectual property rights minimize interference with legitimate trade;
- Extend international notification, consultation, surveillance and dispute settlement procedures to protection of intellectual property and enforcement of intellectual property rights; and
- Encourage non-signatory governments to adopt and enforce the agreed standards for protection of intellectual property and join the agreement.

III. Standards for the Protection of Intellectual Property Rights

During the course of these negotiations, the United States and other participants, such as the European Community and Japan, have commented in significant detail on the standards or principles that should be included in a GATT agreement. The United States takes this opportunity to elaborate its evolving views on adequate standards for the protection of intellectual property rights.

A. Patents

1. Patentable Subject Matter and Conditions for Patentability

A patent shall be granted for all products and processes which are new, useful, and unobvious. In this regard, the terms "useful" and "unobvious" encompass or are synonymous with the terms "capable of industrial application" and "inventive step." Examples of items which do not meet these criteria

are: materials consisting solely of printed matter, scientific principles, methods of doing business, and algorithms and mathematical formulas per se, including those incorporated in computer programs. A patent application or a patent, however, may be withheld from publication if disclosure of the information contained therein would be detrimental to the national security.

2. Term of Protection

A patent shall have a term of at least 20 years from filing. Extension of patent terms to compensate for delays in marketing occasioned by regulatory approval processes is encouraged.

3. Rights Conferred

A patent shall provide the right to exclude others from the manufacture, use or sale of the patented invention and, in the case of a patented process, the right to exclude others from the importation, use or sale of at least the direct product thereof, during the patent term.

4. Conditions for Compulsory Licenses and Revocation Provisions

A compulsory license may be given solely to address, only during its existence, a declared national emergency or to remedy an adjudicated violation of antitrust laws. Patents may also be used non-exclusively by a government for governmental purposes. In the case of a license to address a national emergency or in the case of use by a government for governmental purposes, a patent owner must receive compensation commensurate with the market value a license for the use of the patented invention. A compulsory license must be non-exclusive. All decisions to grant compulsory licenses as well as the compensation to be paid shall be subject to judicial review. A patent shall not be revoked because of non-working.

B. Trademarks

1. Definition

A trademark may consist of any sign, word, design, letter, number, color, shapes of goods or of their packaging, or any combination thereof, capable of distinguishing the goods of one undertaking from

those of other undertakings. The term "trademark" shall include service mark and certification mark.

2. Derivation of Rights and Rights Conferred

Trademark rights may derive from use or registration or a combination thereof. The owner of a trademark shall have the exclusive right to use that mark and to prevent others from using the same or a similar mark for the same or similar goods or services where such use would result in a likelihood of confusion. Rights shall be subject to exhaustion only in the country or customs union where granted.

3. Registration Systems

A system for the registration of trademarks shall be provided. Use of the trademark may be a prerequisite to registration. Regulations and procedures shall be transparent and shall include provisions for written notice of reasons for refusal to register and access to records of registered trademarks. Each trademark shall be published within 6 months after it is approved for registration or is registered and owners of the same or similar trademarks and other interested parties shall be afforded a reasonable opportunity to challenge such registration.

4. Protection of Well-Known Marks

A country shall refuse or cancel the registration and prohibit the use of a trademark likely to cause confusion with a trademark of another which is considered to be well known either in that country or internationally well known. A period of at least five years from the date of registration shall be allowed for requesting the cancellation or prohibition of use of such a trademark. No time limit shall be fixed for requesting the cancellation or the prohibition of the use of trademarks registered or used in bad faith.

5. Subject Matter for Registration as a Trademark

The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to the registration of the trademark.

6. Term of Protection and Conditions on Maintenance of Protection

A trademark shall be registered for no less than ten years and shall be renewable indefinitely for further terms of no less than ten years when conditions for renewal have been met. Where use of a registered trademark is required, the registration may be cancelled only after five years of continuous non-use, and then only if the person concerned does not justify the non-use. Justified non-use shall include non-use due to import prohibitions or other government laws, regulations, policies, or practices. A country shall not impose any special requirements for the use of a trademark such as size or use in combination with another trademark. Authorized use of a trademark by a third party shall be considered use by the trademark owner for purposes of meeting use requirements.

7. Prohibition of Compulsory Licenses

No compulsory licensing of trademarks shall be imposed and assignment of trademarks shall be permitted.

C. Copyrights

1. Rights Conferred

A. Parties shall extend to copyright owners at a minimum, the exclusive rights to do or to authorize doing of the following:

(a) to copy or to reproduce the work by any means or process, in whole or in part, and whether identically or in substantially similar fashion;

(b) to translate, revise, and otherwise adapt and prepare derivative works based on the protected work;

(c) to distribute copies of the work by sale, rental, or otherwise, and to import copies; and,

(d) except in the case of sound recordings, to communicate publicly the work, directly or indirectly

(e.g., perform, display, exhibit, broadcast, transmit and retransmit) whether "live" or from a fixation, by any means or process, (e.g., by electronic network, by terrestrial links, broadcast signals, satellites, or otherwise) and regardless of whether the signal emanates from beyond national borders.

- B. Restrictions of exclusive rights to "public" activity (e.g., the right of public performance) shall not apply to the reproduction or adaptation right; and with respect to the communication right, "public" or "publicly" shall mean:

(a) places open to the public or any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; and

(b) communications of works in any form or by means of any device or process, regardless of whether the members of the public capable of receiving such communications receive them in the same or separate places and at the same time or at different times.

2. Subject Matter of Copyright Protection

Copyright protection shall extend to all forms of original expression regardless of the medium in which the work is created, expressed, or embodied or the method by which it is communicated or utilized. Such works include literary works (including all types of computer programs expressed in any language, whether application programs or operating systems, and whether in source or object code); musical works (including accompanying lyrics); dramatic works, cinematographic and audiovisual works; sound recordings; pictorial, graphic and sculptural works; choreography and pantomime; compilations (whether of protected or unprotected materials and whether in print, in a machine-readable data base or other medium); derivative works (without prejudice to any rights in preexisting material upon which they are based); and works created with the use of computers, as well as works in forms yet to be developed.

3. Securing Protection

Copyright protection shall vest automatically upon the creation of a work and shall subsist whether or not the work is published, communicated, or disseminated. The enjoyment and exercise of rights under copyright shall not be subject to any formality. Economic rights under copyright shall be freely and separately exploitable and transferable; transferees (assignees and exclusive licensees) shall be entitled to full enforcement of their acquired rights in their own name.

4. Limitations and Exemptions

Any limitations and exemptions to exclusive economic rights shall be permitted only to the extent allowed and in full conformity with the requirements of the Berne Convention (1971) and in any event shall be confined to clearly and carefully defined special cases which do not impair actual or potential markets for, or the value of, copyrighted works.

5. Conditions For Compulsory Licenses

Compulsory licenses shall not be adopted where legitimate local needs can be met by voluntary actions of copyright owners. Implementation, where necessary, of compulsory licenses shall be strictly limited to those works and those uses permitted in the Berne Convention (1971); shall be implemented in accordance with relevant treaty standards; shall preserve all material interests of authors and copyright owners; and shall be accompanied by detailed laws and regulations that provide strong safeguards, including notification of the copyright owner and effective opportunity to be heard, mechanisms to ensure prompt payment and remittance of royalties consistent with those that would be negotiated on a voluntary basis, and workable systems to prevent exports.

6. Term of Protection

The minimum term of copyright protection shall be the life of the author plus fifty years; and for anonymous and pseudonymous works and works of juridical entities (works made for hire), shall be at least fifty years from publication with the consent of the author, or, failing such an event within fifty years from the making of a work, fifty years after the making.

7. Parties that have afforded no effective copyright protection to foreign works shall provide copyright protection for pre-existing works that are not in the public domain in the country of origin of the work.

D. Trade Secrets

1. Scope of Protection

Trade secret protection should be broadly available and cover items such as any formula, device, compilation of information, computer program, pattern, technique or process that is used in one's business or that has actual or potential economic value from not being generally known. Protection should be accorded both to technical information, such as technical drawings or operational specifications, and commercial information, such as price or customer lists or business methods, regardless of whether the trade secret is in a tangible form, such as a machine or written record, or is maintained without tangible means, for example, by memory.

2. Term of Protection

A trade secret should be protected so long as it is not public knowledge, general knowledge in an industry, or completely disclosed by the results of a use of the trade secret.

3. Maintenance of Right

To maintain legal protection, the owner of a trade secret may be required to make efforts reasonable under the circumstances to maintain such secrecy but need not show that no one else possesses the trade secret. Without losing the requisite secrecy, the owner may communicate a trade secret to employees involved in its use, communicate a trade secret to others pledged to secrecy or make any other communications required by law or as a condition for marketing.

4. Definition of Misappropriation, i.e., Infringement of a Trade Secret

Misappropriation means the acquisition, disclosure or use of trade secret without a privilege to acquire, disclose or use it. Misappropriation

includes discovery of the trade secret by improper means; use or disclosure of a trade secret in breach of a confidence; acquisition of a trade secret from a third person with notice that it was a secret and that the third person misappropriated it; acquisition, disclosure, or use of a trade secret with notice that its disclosure was made by mistake; or use or disclosure of a trade secret after receiving notice that it was disclosed by mistake or by one who had misappropriated it.

5. Rights Conferred

Trade secrets must be protected from actual or threatened misappropriation, and the owner shall be entitled to full compensation for misappropriation. In assessing liability for misappropriation involving use or disclosure of a trade secret disclosed by mistake or by one who had misappropriated it, authorities may take into consideration whether the recipient has in good faith paid value for the secret or changed position to his detriment as a result of its receipt.

6. Conditions on Government Use

Trade secrets submitted to governments shall not be disclosed or used for the benefit of third parties except in compelling circumstances involving major national emergencies posing an imminent unreasonable risk to health or the environment, or to facilitate required health and safety registrations. Government use or disclosure on the basis of a national emergency may only be made where other reasonable means are not available to satisfy the need for which the government seeks to disclose or use the trade secret, and the government may use it only for the duration of that emergency. Government use or disclosure to facilitate required health and safety registrations may only be made if the trade secret has not been submitted within the previous ten years and full compensation is made for the use or disclosure. In any case, a government shall not use or disclose a trade secret to an extent greater than required to achieve one of the above needs without providing the submitter with a reasonable opportunity to oppose the proposed use or disclosure, including the opportunity to secure judicial review, or without providing for the payment of full compensation as in the case of personal property.

E. Integrated Circuits

1. Subject Matter for Protection

Protection shall be granted to any original layout-design incorporated in a semiconductor integrated circuit chip however the layout-design may be fixed or encoded.

2. Term of Protection

The term of protection shall be at least ten years from the date of first commercial exploitation or the date of registration, if required, whichever is earlier.

3. Conditions of Protection

Protection may be conditioned upon fixation or registration of the layout-designs. The applicant for a registration shall be given at least two years from first commercial exploitation of the layout-design to apply for registration. Also, if deposits of identifying material or other material related to the layout-design are required, the applicant for registration shall not be required to disclose sensitive or confidential information unless it is essential to allow identification of the layout-design.

4. Rights Conferred

Subject to the provisions herein, and without prejudice to other intellectual property rights, the owner of a layout-design shall have the exclusive right to:

- (a) reproduce the layout-design;
- (b) incorporate the layout-design in a semiconductor integrated circuit chip;
- (c) import or distribute a semiconductor integrated circuit chip incorporating the layout-design; and
- (d) authorize others to perform any of the above acts.

5. Limitations on Rights Conferred

- (a) Protection shall not extend to layout-designs that are commonplace in the integrated circuit industry at the time of their creation or to layout-designs that are exclusively dictated by the functions of the integrated circuit to which they apply. A layout-design may be reproduced for the purposes of teaching, analysis or evaluation in the course of preparation of a layout-design that is itself original.
- (b) It shall not be unlawful to import or distribute semiconductor integrated circuit chips incorporating a protected layout-design in respect of such chips that have been sold by or with the consent of the owner of the layout-design. Any Party may provide that there shall be no liability with respect to the importation or distribution of a semiconductor integrated circuit chip incorporating a protected layout-design by a person who establishes that he or she did not know, and had no reasonable grounds to believe, that the layout-design was protected; however, there shall be a right to a reasonable royalty for such acts after notice is received.

6. Conditions on Compulsory Licenses

A compulsory license may only be given to address, only during its existence, a declared national emergency or to remedy an adjudicated violation of antitrust laws. Semiconductor integrated circuit layout-designs may also be used non-exclusively by a government for governmental purposes. In the case of a license to address a national emergency or use by a government, a semiconductor integrated circuit layout-design owner must receive compensation commensurate with the market value of the license. A compulsory license must be non-exclusive. All decisions to grant compulsory licenses as well as the compensation to be paid shall be subject to judicial review.

IV. Enforcement Procedures

Obligations for the enforcement of intellectual property rights internally and at the border are an essential part of any agreement on trade-related aspects of intellectual property rights. Standards and enforcement are equal partners in the effort to reduce

distortions of trade in goods and services protected by intellectual property.

Enforcement measures and sanctions must effectively deter infringing activity. Thus, Parties should undertake obligations to provide procedures to enforce rights against entities engaged in infringing activities and to provide appropriate remedies. In appropriate cases, this must include criminal sanctions. Safeguards against arbitrary action or abuse of procedures must also be included and Parties must take action to ensure that enforcement measures minimize interference with legitimate trade. The U.S. views on the specifics of enforcement obligations follow:

1. Types of Procedures Required

Governments must provide procedures and take actions which are effective in preventing and deterring infringement of intellectual property rights and deprive entities trading in infringing goods and services of the economic benefits of such activity.

2. Standing to Initiate Procedures

(a) Procedures must be available to owners of intellectual property rights and other persons authorized by the owner and having legal standing to determine the validity and enforceability of intellectual property rights for the assertion of such rights against any legal or juridical person or governmental entity.

(b) Governments should initiate procedures ex officio where effective enforcement requires such action.

3. Competent Bodies to Hear Complaints

Competent bodies to implement procedures may include administrative or judicial or both types of bodies so long as Parties designate a competent body and devote sufficient resources to ensure the prompt and effective enforcement of intellectual property rights.

4. Activities Subject to Jurisdiction of Competent Bodies

Procedures to enforce intellectual property rights should apply at the point of production and commercial transactions, e.g., point of sale, offer for sale, lease, distribution etc. as well as at the border.

5. Procedural Requirements

(a) Procedures for the enforcement of intellectual

property rights, whether they be administrative or judicial, civil or criminal must ensure due process of law including:

(i) the right to receive written notice prior to commencement of proceedings which contains information sufficient to determine the basis of the dispute;

(ii) application of the same substantive standards for determining whether an enforceable intellectual property right exists and whether it has been infringed with respect to all products whether imported or locally produced;

(iii) prompt, fair, reasonable, and effective means to gain access to and present to relevant judicial or administrative authorities statements of witnesses and information, documents, records and other articles of evidence for the enforcement of intellectual property rights;

(iv) determinations in writing relating to the infringement of intellectual property rights which must be reasoned and made in a fair and open manner.

(b) Procedures shall not impose overly burdensome requirements concerning personal appearances by the parties, but shall, to the greatest extent possible, permit the parties to appear through representatives and provide a fair and reasonable opportunity for all parties to present evidence, in writing or orally, or both, for consideration by the authorities. Subject to procedures and conditions to ensure reliability and fairness, such as cross-examination and disclosure of adverse information, Parties shall facilitate the acceptance of evidence, including expert testimony, and technical or test data, in order to assist in expediting and reducing costs of participating in enforcement procedures.

(c) Parties shall provide a means to effectively identify and protect confidential information. Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information or which is provided on a confidential basis for a procedure relating to an enforcement action shall,

upon cause shown, be treated as such by the authorities. Such information shall not be disclosed without permission of the party submitting it except pursuant to a protective order sufficient to safeguard the interest of such party.

- (d) Parties shall facilitate the gathering of evidence needed for an enforcement or related action in the territory of another Party. Procedures may be carried out in other countries to obtain statements of witnesses and information, documents, records, and other articles of evidence relating to an enforcement action, including the assessment of remedies. Parties shall facilitate the taking of such statements and production of such materials in their territories by establishing adequate, timely and efficient procedures. Such procedures shall permit such evidence to be taken in any manner not prohibited by national law. A Party may require prior notification of a competent authority before a statement is taken or materials produced.
- (e) In cases in which a party to the proceeding or a government refuses access to, or otherwise does not provide, necessary information within a reasonable period, or significantly impedes the procedure relating to an enforcement action, preliminary and final determinations, affirmative or negative, may be made on the basis of evidence presented by the opposing party.
- (f) Relevant authorities shall provide opportunities for the intellectual property right owner, other parties to the proceeding and the governments of the affected countries, to see relevant, non-confidential information that is used by the authorities in a procedure relating to an enforcement action, and to prepare presentations based on this information.
- (g) Parties shall make available ex parte proceedings to preserve evidence and take other actions urgently required provided that the parties shall be provided subsequent notice of the action and the right to participate in an administrative or judicial procedure providing due process of law.
- (h) Parties shall ensure that procedures to enforce intellectual property rights minimize interference with legitimate trade.

6. Right of Judicial Review

Parties shall provide the right of judicial review of initial judicial decisions on the merits of a case and final administrative decisions on the merits of a case in disputes arising in connection with the obtaining, maintaining or enforcing of intellectual property rights.

7. Civil Remedies

- (a) Remedies for infringement of intellectual property rights shall include seizure at the border and internally, forfeiture, destruction, and removal from commercial channels of infringing goods, or other effective action as may be appropriate.
- (b) Parties must provide interim relief in the form of preliminary injunctions and other appropriate and prompt procedures to prevent the sale or other disposition of allegedly infringing goods pending a final determination on infringement.
- (c) Final injunctions, as well as monetary awards adequate to compensate fully owners of intellectual property rights must also be available. In appropriate cases, this should include provision of statutory damages.

8. Criminal Sanctions

Criminal remedies shall be available for at least trademark counterfeiting and copyright infringement which are willful and commercial and shall include seizure of infringing goods, materials and implements used in their creation, and forfeiture of such articles, imprisonment, and monetary fines.

9. Procedures Related to Border Measures

- (a) Parties shall afford owners of intellectual property rights and other persons authorized by the owner and having legal standing the judicial or administrative means necessary to initiate procedures to enforce their rights against imported infringing goods before they are released from the jurisdiction of the customs authorities. Parties shall designate the authorities to which owners of intellectual property rights may address themselves for this purpose. Procedures shall also apply to goods in transit provided that they cover goods infringing an intellectual property right of the country through which the goods were being shipped.

- (b) The person initiating such procedures shall be required to present adequate evidence of the right to protection in accordance with the relevant laws of the country of importation.
- (c) Seizure of goods at the border by competent authorities may be either ex officio, sua sponte or at the request of the rights holder when the competent authorities are satisfied that imported goods infringe an intellectual property right.
- (d) When the competent authorities have reason to believe imported goods may be infringing, they shall detain such goods pending a determination whether the goods are infringing.

10. Entities Subject to Remedies and Sanctions

Sanctions and remedies shall be available against the producer, seller, distributor and in appropriate cases the user of an infringing good or service. Remedies against Parties, however, may be limited to payment of compensation to the owner of the intellectual property right.

11. Indemnification

- (a) In order to prevent abuse of interim procedures and border enforcement measures, Parties may require a rights owner to provide security up to an amount sufficient to hold the authorities and importer harmless from loss or damage resulting from detention where the goods are subsequently determined not to be infringing. However, such securities shall not unreasonably deter recourse to such procedures.
- (b) Parties shall make remedies available to provide indemnification in appropriate cases of persons wrongfully enjoined or restrained.

VI. Consultation and Dispute Settlement

The GATT's concept and mechanisms for consultation and dispute settlement set it apart from many international conventions and provide a significant benefit to Contracting Parties. The United States believes that a multilateral mechanism should be available to settle disputes between governments arising out of the obligations undertaken in any agreement on trade-related aspects of intellectual property. We would take this opportunity to reiterate our views on this question. (See MTN.GNG/NG11/W/14.)

- A. The dispute settlement mechanism should follow the model of consultation and dispute settlement mechanisms in GATT agreements, recognizing that additional elements may be needed to address unique features of the subject matter.
- B. Resort to the consultation and dispute settlement mechanisms would be available to any Party to the agreement that considers that the obligations of the agreement are not being met or that any benefit accruing to it, directly or indirectly under the Agreement is being nullified or impaired, or that the attainment of the objective of the agreement is being impeded.
- C. Recourse to technical expert groups and panels should be available.
- D. In the event that recommendations are not complied with, the Agreement should provide for retaliation including the possibility of withdrawal of equivalent GATT concessions or obligations.

VI. Revision and Amendment of the Agreement

As noted in our previous submission, any GATT agreement must be sufficiently flexible to accommodate future consensus on improved protection of intellectual property. The agreement should include new forms of technology and creativity as they appear. Parties should agree to a mechanism for amendment and revision of the agreement and should provide for regular review of its terms.

VII. Provisions Drawn From GATT Principles and Other General Concepts

A. National Treatment and Most-Favored-Nation Treatment

The negotiating group will need to address the complex questions of national treatment and most-favored-nation treatment. The task of the negotiating group will be to reconcile the concept of national treatment of products and national treatment of persons who are owners of intellectual property. Similar considerations apply with respect to MFN treatment, particularly if one equates MFN treatment with national treatment for persons.

B. Transparency

Concepts such as those embodied in Article X of the GATT should apply to intellectual property provisions.

Specifically, laws, regulations, judicial decisions and administrative rulings of general application pertaining to obtaining and enforcing intellectual property rights should be published promptly in such a manner as to enable governments and persons to become familiar with them.

C. International Cooperation

- (1) Parties would undertake to coordinate the provision of technical assistance, such as training of appropriate officials, in the implementation of the obligations of the agreement. Assistance could be made available to Parties that request such assistance under mutually agreed terms. Parties with economic assistance programs would undertake to include in their programs means to provide direct assistance to Contracting Parties interested in improving their intellectual property regimes in order to become Parties to the Agreement.
- (2) Parties shall cooperate to enhance the protection of intellectual property rights in countries not a Party to a GATT agreement by:
 - (a) Monitoring and exchanging information on the adequacy of intellectual property protection in such countries; and
 - (b) Taking joint or coordinated action to encourage such countries to provide adequate intellectual property protection consistent with the agreement.
- (3) Consistent with mutual assistance agreements for the production of evidence, Parties shall cooperate with each other in the production of evidence for use in civil, criminal and administrative proceedings to enforce intellectual property rights.