

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

RESTRICTED

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

STANDARDS AND PRINCIPLES CONCERNING THE AVAILABILITY, SCOPE
AND USE OF TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS

Communication from Switzerland

The following communication has been received from the delegation of Switzerland, with the request that it be circulated to members of the Negotiating Group.

Based on the decision on trade-related aspects of intellectual property rights, including trade in counterfeit goods, as adopted by the Trade Negotiations Committee on April 8, 1989, and in further elaboration of previous communications from this delegation (MTN.GNG/NG11/W/7/Add.2, W/15 and W/25), the following communication is submitted by Switzerland to the Negotiating Group.

A. INTRODUCTION

It is recalled, at the outset, that the application of GATT principles, adequate standards and principles concerning the availability, scope and use of intellectual property rights and the elaboration of adequate means for effective enforcement of such rights all aim at the prevention and elimination of trade distortions and nullifications and impairment of rights and advantages under the General Agreement. Switzerland reiterates the view held before that the application of basic principles of GATT, in particular non-discrimination in terms both of the most-favoured-nation treatment and of national treatment, are essential components of an agreement on intellectual property rights and trade in counterfeit goods. They are inherently underlying the following propositions.

The present communication is particularly addressing the problem of trade distortions caused by the absence, or the existence of inadequate protection of intellectual property rights. It addresses the issues within the meaning of paragraph 4(b) of the decision of the TNC of April 8, 1989. Switzerland reserves the right to submit further communications related to the other aspects of the negotiation. Also, the following proposals are subject to further developments depending on progress in other fora dealing with adequate protection of intellectual property rights.

The following substantive standards, in addition to those already set forth by other participants and summarized in MTN.GNG/NG11/W/32, address adequate protection of patents, trademarks, geographical indications, designs, topographies of integrated circuits, proprietary information, copyright and neighbouring rights. All areas are essential and of equal importance to this delegation.

The following standards should apply to all participants alike. This does not exclude transitional periods, taking into account the need of participants to adapt to the standards proposed.

Finally, it should be emphasized that the form given to the following standards and principles is not necessarily definitive. The Swiss delegation merely wishes to indicate adequate and appropriate levels of protection required to avoid trade distortions at the present stage of negotiations. The formulation of such standards and principles will depend on the conceptual framework of the future agreement on trade-related intellectual property rights.

B. STANDARDS AND PRINCIPLES CONCERNING THE AVAILABILITY, SCOPE AND USE OF TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS

I. PATENTS

Patentability

1. A patent shall be granted for any invention if it is new, involves an inventive step and is industrially applicable.

An invention may relate to a product or a process.

2. Patents shall be available for inventions in all fields of technology.

Patent Term

3. The term of a patent shall be for no less than 20 years from the filing date of the application.

An extension of the patent term should be provided for in order to compensate for delays regarding the exploitation of the patented invention due to regulatory approval procedures.

Patent Rights

4. A patent shall confer on its owner the right to prevent third parties not having his consent from making, offering, putting on the market or using a product which is the subject matter of the patent, or importing or stocking the product for these purposes.

If the subject matter of the patent is a process, the patent confers on its owner the right to prevent third parties, not having his consent, from using that process, and from offering, putting on the market, using, or importing or stocking for these purposes at least the product obtained by that process.

Compulsory Licences and Exploitation for Governmental Purposes

5. Compulsory licences shall be non-exclusive.

Compulsory licences may be given in the event that the acts of manufacturing, selling or importing of the patented product or using of the patented process and the performance of any of these acts regarding the products obtained by the process do not suffice to satisfy the basic needs of the local market before the expiration of a period of 4 years from the date of the patent application, or 3 years from the date of the grant of the patent, whichever period expires last, and provided that the owner of the patent had refused to grant a contractual licence on terms that are in line with normal commercial practices.

Where the exploitation of the patented invention is required by reason of an overriding public interest, the possibility of exploitation of the patented invention by the government, or by third persons authorized by it, may be made available by means of a compulsory licence at any time, provided that the owner of the patent had refused to grant a contractual licence on terms that are in line with normal commercial practices.

Where the invention claimed in a later patent cannot be exploited without infringing an earlier patent, a compulsory licence may be given to the extent necessary to avoid infringement of the patent, provided that the invention claimed in the later patent involves an important technical advance in relation to the invention claimed in the earlier patent or serves an entirely different purpose.

Compulsory licences shall be granted to permit local manufacture only.

Given the possibilities of compulsory licensing, there shall be no revocation of the patent, except for invalidity.

Any decision relating to the grant of a compulsory licence or to the exploitation for governmental purposes, including the amount of the payment commensurate with the value of the invention to which the owner of the patent is entitled, shall be subject to judicial review.

II. TRADEMARKS

Definition of a Trademark

6. A trademark is a sign capable of distinguishing the products of one enterprise from those of another enterprise.

It may in particular consist of words, letters, numerals, graphical representations, three-dimensional shapes, colours, or any combination of these elements.

The term "trademark" shall include service marks, collective and certification marks.

Protection of Prior Rights on Trademarks and Well-Known Trademarks

7. Protection shall be denied to signs which are in conflict with rights acquired by third parties on trademarks, or in conflict with well-known trademarks.

Acquisition of Trademark Rights

8. Trademark rights may derive from registration or from use.

A system for the registration of trademarks without exclusion of any product shall be provided. Actual use of the trademark prior to the application for registration shall not be required.

Rights Conferred by a Trademark

9. The registered trademark shall confer the right on its owner to prevent all third parties not having his consent from using in the course of trade any sign which is identical with, or similar to, the trademark in relation with the same or similar products where such use would result in a likelihood of confusion.

Term of Protection

10. Trademarks shall be registered for no less than 10 years from the filing date and may be renewed indefinitely for further terms each of them of no less than 10 years.

Use of Trademarks

11. The use of a trademark shall not be encumbered by any special requirements, such as use in a special form or use which reduces the indication of source or use with another trademark.

If use of the registered trademark is compulsory, the registration may be cancelled only after the trademark has not been used during an uninterrupted period of not less than 5 years, and provided that such non-use cannot be justified. Justified non-use shall include non-use due to import restrictions on products protected by the trademark or other governmental laws, regulations, policies or practices.

Compulsory Licensing of Trademarks

12. The compulsory licensing of a trademark shall not be permitted.

Assignment of Trademarks

13. Trademarks may be assigned with or without the transfer of the enterprise to which they belong.

III. GEOGRAPHICAL INDICATIONS

Definition of Geographical Indications

14. A geographical indication is any designation, expression or sign which aims at indicating that a product is originating from a country, a region or a locality.

The norms on geographical indications also relate to services.

Use of Geographical Indications

15. Geographical indications shall be protected against use which is likely to mislead the public as to the true origin of the products. Shall notably be considered to constitute such use:
- any direct or indirect use in trade in respect of products not originating from the place indicated or evoked in the geographical indication in question;
 - any evocation, even where the true origin of the product is indicated or the designation is used in translation or accompanied by expressions such as "kind", "type", "style" or "imitation";
 - the use of any means in the designation or presentation of the product likely to suggest a link between the product and any geographical area other than the true place of origin.

Appropriate measures shall be taken so as to prevent a geographical indication from developing into a designation of a generic character as a result of the use in trade for products of a different origin.

The registration of a trademark which contains or consists of a geographical or other indication designating or suggesting a country, region or locality with respect to products not having this origin shall be refused or invalidated, if the use of such indication is likely to mislead the public as to the true geographical origin of the product.

IV. DESIGNS

Definition

16. A design consists of a two- or three-dimensional form, sole or combined with colours, to be used as a prototype for the manufacturing of a product.

Protection

17. Protection of designs shall be granted, upon registration, if they are new.

The system of registration of designs shall be efficient, expeditious and available at reasonable cost.

Protection shall not extend to features required by technical reasons.

Such protection shall be granted without prejudice to the protection under the copyright law or other laws.

Design Rights

18. The owner of the design right is entitled to prevent third parties not having his consent from manufacturing, offering, putting on the market or importing for these purposes, goods which infringe his design right.

Compulsory Licensing of Designs

19. The compulsory licensing of a design shall not be permitted.

Term of Protection and Renewal

20. The term of registration shall be 5 years from the date of application with a possibility of renewal for two consecutive periods of 5 years each.

Exploitation

21. The protection of designs shall not be subject to any forfeiture by reason of failure to exploit.

V. TOPOGRAPHIES OF INTEGRATED CIRCUITS

Subject Matter for Protection

22. Protection shall be granted to any three-dimensional disposition of an integrated circuit (topography), irrespective of the manner by which such disposition is fixed or encoded, and provided that it is not commonplace.

Such protection shall not prevent protection under other laws.

Registration may be required.

Term of Protection

23. Topographies shall be protected for a term of no less than 10 years from the filing date or from the date of the first commercial exploitation, whichever is earlier.

If registration is required by law, and no application is filed, the protection of the topography shall lapse after 2 years from the date of the first commercial exploitation.

Notwithstanding the preceding, protection shall lapse 15 years after the creation of the topography.

Rights Conferred

24. The owner of the topography right shall have the right to prevent third parties not having his consent from:

- copying the topography by any means or in any form;
- putting on the market, offering to the public, selling, renting, lending, importing, or otherwise distributing the topography or copies thereof.

Limitation of Rights Conferred

25. It is lawful to reproduce topographies for the purposes of research and teaching.

Further developments of the topography may be exploited independently, provided that they are not commonplace.

VI. PROPRIETARY INFORMATION PROTECTION

26. Proposals related to this subject matter will be submitted at a later stage.

VII. COPYRIGHT

Definition of a Work

27. "Work" means any original intellectual creation, of literary or artistic character, irrespective of its value or purpose.

Computer software shall be considered to be a work within the meaning of the preceding definition.

Protection

28. Copyright protection shall begin automatically, upon the creation of the work.

The exercise of the exclusive right shall not be subject to any formality.

The author shall enjoy the rights to his work as stipulated in the Berne Convention for the Protection of Literary and Artistic Works as revised in 1971 (hereinafter the Berne Convention).

The rights under copyright shall be assignable and transferable.

Term of Protection

29. The duration of protection shall amount to the life-span of the author and 50 years in addition. Other terms of protection may be granted to certain categories of works in conformity with the Berne Convention.

The term of protection of computer software shall be 50 years from the date of creation.

Rights Conferred

30. The copyright shall confer the right on its owner to prevent third parties not having his consent from:

- copying or reproducing the work in any form, such as printed matter, phonograms, videograms, or data carriers;
- offering to the public, selling, or otherwise distributing copies of the work;
- performing publicly the work, directly or indirectly by any means or process, live or in a place other than that of the performance;
- broadcasting the work by radio wave, by cable or other devices;

- retransmitting the transmitted work by technical means or processes, including cables or other devices, the exploitation of which is not made by the initial broadcaster;
- communicating broadcasts or retransmitted broadcasts.

Limitations, Exemptions and Compulsory Licensing

31. Limitations and exemptions to rights, including compulsory licensing, may be made in accordance with the Berne Convention.

Limitations made to the rights in favour of private use shall not apply to computer software.

VIII. NEIGHBOURING RIGHTS

Protection

32. Protection shall be available to performers, producers of phonograms and videograms, and broadcasters.

Term of Protection

33. The term of protection shall be no less than 20 years from the date of the performance, of the production of the phonogram or videogram, and of the broadcast.

Rights Conferred to Performers

34. The performer shall have the right to prevent all third parties not having his consent from:

- producing his performance in a place other than that of the performance;
- broadcasting the performance by any technical means or process, such as by radio wave, or by cable;
- affixing his performance on phonograms, videograms or data carriers, and from reproducing such fixations;
- offering to the public, selling, or otherwise distributing copies of the fixation containing his performance.

Rights Conferred to Producers of Phonograms or Videograms

35. The producer of a phonogram or a videogram shall have the right to reproduce it, and to put on the market, to sell, or to otherwise distribute copies thereof and to prevent all third parties not having his consent from undertaking such acts.

Rights Conferred

36. The broadcaster shall have the right to prevent all third parties not having his consent from:

- retransmitting his broadcast;
- communicating it;
- affixing it on phonograms, videograms or data carriers, and from reproducing such fixations;
- putting on the market, selling, or from otherwise distributing copies of the broadcast.