

**MULTILATERAL TRADE  
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THE URUGUAY ROUND**

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Trade in Counterfeit Goods

MULTILATERAL FRAMEWORK FOR INTERNATIONAL TRADE IN COUNTERFEIT GOODS

Communication from India

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

MULTILATERAL FRAMEWORK FOR  
INTERNATIONAL TRADE IN COUNTERFEIT GOODS

This paper sets out the views of India on the multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods envisaged in the Punta del Este declaration and paragraph 7 of the decision of the TNC of April, 1989.

2. India recognises the need for appropriate measures for the suppression of international trade in counterfeit goods. However, it must also be recognised that such measures can become arbitrary or unjustifiable barriers to legitimate trade.

3. The basic objectives of a multilateral framework for dealing with international trade in counterfeit goods should be :

- (i) to provide for measures, procedures and remedies to discourage international trade in counterfeit goods; and
- (ii) to ensure that such measures, procedures and remedies do not themselves become barriers to legitimate trade.

4. The multilateral framework should comprise the following elements:

- (i) For the purposes of the multilateral framework, counterfeit goods shall mean any goods, including packaging, bearing without an authorisation a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark and which thereby infringes the rights of the owner of the trademark in question under the legislation of the country of importation.
- (ii) There should be provision for suspension of clearance from customs of goods suspected to be counterfeit on the application of the

owner of the registered trademark who has valid grounds for suspecting that the goods are counterfeit. The applicant should provide adequate documentary evidence to satisfy the customs authorities that prima facie there is an infringement of his trademark rights in respect of the imported goods.

- (iii) Such suspension should be for a limited period pending orders of a competent judicial or administrative authority and action should be taken only upon an undertaking by the applicant to indemnify the customs authorities against all liabilities and to compensate the importer for any loss or damage resulting from the suspension of clearance of goods in the event that they are proved to be not counterfeit.
- (iv) In cases where the goods have been placed under suspension in terms of (ii) & (iii) above, there should be provision for inspection of the goods by the owner of the registered trademark.
- (v) Where in judicial or administrative proceedings it is determined that the counterfeit goods are liable to forfeiture as prohibited goods, the customs authorities should dispose of the goods in a manner not prejudicial to the interests of the owner of the registered trademark.
- (vi) Ordinarily, action against the import of counterfeit goods shall be taken on the application of the owner of the registered trademark as pointed out in paragraph (ii) above. However, in exceptional circumstances, where there is a sufficient degree of certainty that the goods under import are counterfeit, the customs authorities may be authorised to suspend clearance of the goods for a very limited period and intimate the owner of the registered trademark that if he wishes the suspension to continue, he should take action as per paragraph (iii) above.

5. India is willing to consider extension of such a framework to imports of pirated goods as well. For this purpose, pirated goods mean any goods which are unauthorized copies made directly or indirectly from an article where the making of that copy constitutes an infringement of a copyright under the legislation of the country of importation.

6. The multilateral framework should also provide for cooperation between the customs authorities of the participating countries for the suppression of trade in counterfeit goods.