

**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

ENFORCEMENT OF TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS

Statement by Switzerland

The delegation of Switzerland has requested that the following statement, made by it at the meeting of the Negotiating Group on 11-13 September 1989, be circulated to participants.

1. Switzerland welcomes the fact that, so far, a considerable number of detailed proposals on enforcement have been tabled by delegations, in particular the United States, Japan, the EEC, India and Canada. Indeed, without appropriate rules on enforcement, improved standards and disciplines on intellectual property rights and, therefore, the task of this negotiation, the reduction of trade problems, cannot succeed and work in practice.

2. At this stage, my delegation merely wishes to submit a number of basic elements which an agreement on enforcement of IPRs would need to contain, without going into a similar degree of detail as other proposals have done so far.

3. It seems essential to us to state at the outset that rules and disciplines of GATT on enforcement necessarily need to extend to a wide range of intellectual property rights. The inherent link between standards, substantive rules and enforcement is valid for all types of IPRs. The agreement therefore needs a comprehensive coverage. We would not agree to limit, for example, penal rules to violations of some IPRs, such as trade marks. Protection and deterrence are equally necessary, for example, with respect to indications of origin or industrial designs. In this context we particularly welcome the Japanese proposals. Since all types of intellectual property rights need to be covered, it necessarily follows that rules and disciplines on enforcement have to include both procedures at the border and internally. Problems with respect to some intellectual property rights, such as copyrights, neighbouring rights, patents, geographical indications, designs, topographies of integrated circuits will frequently arise in relation to foreign goods already within the jurisdiction of a contracting party, without losing, by any means, their relationship to international trade.

At the border, in particular trademarks, copyrights, industrial designs and indications of origin may be the object of procedures. Coverage with respect to enforcement must therefore be broad in order to avoid distortions caused either by lack of, insufficient or excessive, protection.

4. A second and equally central basic element is the need to fully apply the principles of Most-Favoured-Nation (Art. I GATT) and of National Treatment (Art. III GATT) to the entire range of rules on enforcement. We could not support the limitation of these fundamental principles of the multilateral system, which are of crucial importance in particular to all the smaller trading nations, to specific aspects of enforcement. Nor could we support, subject to exceptions to Article I under regional arrangements under Article XXIV, a dilution of the principle, such as for example, by limiting the concept to a mere prohibition of arbitrary or unjustifiable discrimination. This does not exclude slightly different procedures for domestic and foreign products or rightholders, as long as they aim at rendering procedures more expeditious and do not constitute disguised means of creating obstacles to trade. Yet, it seems essential that the general idea of equality of opportunity is strictly respected, as elaborated in a recent panel report.

5. The Swiss delegation also considers that the existence of a variety of different legal systems among the contracting parties of GATT has to be sufficiently taken into account in accordance with paragraph 4(c) of the TNC agreement of April 1989, if we want to achieve fruitful results. Rules and disciplines should be of such a nature that they can be implemented by all legal systems without a need to introduce elements strange to them. We should not make the task more complicated than necessary. This does not mean, of course, that such rules and disciplines would not be of a fairly ambitious level. The quest for general forms does not prevent the drafting of rules and principles which will effectively protect intellectual property rights and avoid trade distortions, and do not themselves become obstacles to legitimate trade. In this context, we believe that the Canadian proposal made a valuable contribution by distinguishing general enforcement principles from separate proposals on more detailed obligations.

6. The Swiss delegation suggests that the Group addresses the basic problems of coverage, MFN, National Treatment and compatibility with legal systems. It seems to us that a general discussion of these essential points would help us to make progress in this complex and difficult field.

7. The Swiss delegation reserves the right to submit further proposals on enforcement at a later stage of the negotiation. It would wish to benefit from a discussion of the basic elements before possibly submitting more specific rules and disciplines on enforcement.