

**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

GUIDELINES FOR NEGOTIATIONS THAT STRIKE A BALANCE BETWEEN  
INTELLECTUAL PROPERTY RIGHTS AND DEVELOPMENT OBJECTIVES

Communication from Peru

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

I. INTRODUCTION

At the Meeting of the Trade Negotiations Committee held last April at the level of high officials, agreement was reached on a number of principles that should govern the negotiations on trade-related aspects of intellectual property rights, including trade in counterfeit goods.

Paragraph 5 of the text agreed upon at that Meeting provides that in the negotiations consideration will be given to concerns raised by participants related to the underlying public policy objectives of their national systems for the protection of intellectual property, including developmental and technological objectives. Given the restrictive and monopolistic nature of intellectual property rights, it is essential that all countries should be able to adjust their protection system to their national development programmes and ensure the transfer of technology from countries that are advanced in that field.

Peru therefore ventures to submit herewith for consideration by the Negotiating Group the following guidelines which seek to achieve a balance in the negotiations between intellectual property rights and the objectives of development and transfer of technology; it reserves the right subsequently to expand, modify or comment upon them.

II. OBJECTIVES OF BALANCED NEGOTIATIONS

- (a) To strike a balance between the encouragement of creativity, adequate protection and the attainment of economic and social development objectives and needs.

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- (b) To increase the real and effective transfer of technology and the flow of scientific knowledge towards developing countries.
- (c) To avoid the emergence or development of further new barriers to the circulation of scientific and technological knowledge.
- (d) To maintain the State's sovereign right to regulate its national system of protection in accordance with development objectives.
- (e) To maintain a balance in the results of the multilateral trade negotiations in all areas, in accordance with the final paragraph of the Punta del Este Ministerial Declaration.

### III. SUGGESTIONS CONCERNING THE AVAILABILITY, SCOPE AND USE OF TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS

#### 1. Patents

Given the importance of patents for national development, there must be a balance between the rights conferred upon owners and the interests of public welfare. Thus, some sectors or products should be excluded from patentability, as being essential for the population, as in the case of pharmaceutical products produced under a generic name and intended to meet the needs of the poorest sectors of the population. Likewise, it is necessary to ensure that patents are suitably worked, with the consequent transfer of knowledge. In light of the above, some criteria that should govern the patent system are given below.

##### 1.1 Subject matter for protection

Patents shall be granted for new creations that are capable of industrial application and involve an inventive step as well as for those which improve upon such creations. An invention is considered capable of industrial application if its object can be manufactured or used in any kind of industry. The following shall not be considered inventions: principles or discoveries of a scientific nature; discovery of naturally-occurring substances; commercial, financial accounting or other plans or systems to the extent that they are purely abstract in nature; therapeutic or surgical methods of human or animal treatment and diagnostic methods; and purely aesthetic creations.

##### 1.2 Patentability

Patents shall be granted for inventions in all fields of technology except in the following cases: inventions the publication or exploitation of which would be contrary to "ordre public" or morality; plant or animal varieties, or essentially biological processes for the production of plants or animals; pharmaceutical products, medicaments, active therapeutical substances, beverages or foods for human, animal or plant use; inventions which affect national development, or the processes, products or groups of products whose patentability is excluded by governments.

### 1.3 Rights conferred by patents

A patent confers upon its owner the exclusive right to exploit the invention on his own account or to grant one or more licences for its use by third parties. The patent shall not grant the exclusive right to import the patented product or the product manufactured by the patented process.

### 1.4 Term of a patent

The patent shall be granted for a period considered suitable in accordance with national development interests.

### 1.5 Compulsory licensing

The patent owner shall notify within a reasonable period that he has begun working the patent. Any person may apply for the grant of a compulsory licence to work the patent after that period has expired, provided one of the following has occurred: the patented invention has not been exploited in the country; the exploitation does not satisfy local market demand on reasonable terms and conditions as regards quantity, quality or price; the exploitation of the invention has been suspended for more than one year; the patent owner has not granted contractual licences on reasonable terms and conditions in such a way that the holders of such licences may satisfy local market demand on reasonable terms and conditions as regards quantity, quality or price. The owner of a compulsory licence shall pay the patent owner suitable compensation.

## 2. Trademarks

A trademark may consist of any sign, word, design, letter, number or any combination thereof capable of distinguishing the products or services of one undertaking from those of other undertakings. One of the main objectives of granting registration of trademarks shall be to protect the consumer public from being confused or deceived concerning the origin of a product or service.

### 2.1 Subject matter for protection

New, visible and sufficiently distinctive signs may be registered as marks of products or services. Any group or legal entity may register collective trademarks to distinguish its products or services. Among others, marks which are contrary to "ordre public" or morality or which may deceive the trade intermediaries or the consumer public as to the nature or origin of the product or service in question may not be registered as trademarks.

### 2.2 Rights conferred

The owner or licensee of a trademark shall have the exclusive right to use it and may request the protective measures to enforce his rights provided for in the respective national legislations.

### 2.3 Duration and renewal

The term of registration of a trademark shall be in accordance with existing national legislation and may be renewed indefinitely for a similar period.

## 3. Industrial designs

### 3.1 Subject matter for protection

New industrial designs and models may be registered. A design will be considered to be any pattern of lines or combination of colours incorporated in an industrial or handicraft product to give it a particular appearance without changing the purpose of the product; and a model shall be considered to be any plastic form which serves as a type for the production of industrial or handicraft products which gives them a particular appearance and does not involve any technical effects.

Designs or models relating to apparel may not be registered. Designs or models contrary to morality or "ordre public" are likewise excluded from protection.

### 3.2 Rights conferred

The registration of industrial designs or models shall confer upon the owner the exclusive right to their use.

## IV. GEOGRAPHICAL INDICATIONS AND APPELLATIONS OF ORIGIN

Geographical indications, including appellations of origin, are any designation, expression or sign which aims at indicating that product originates from a country, region or locality.

These shall be protected against use which is likely to confuse or mislead the public as to the true origin of the product. In this connection, suitable measures should be taken to ensure that a geographical indication does not become a generic designation as a result of its use in the trade in products having a different origin.

## V. COPYRIGHT

Peru considers that the Berne Convention for the Protection of Literary and Artistic Works grants the necessary protection in this area.

## VI. INTEGRATED CIRCUITS

The protection provided by the Treaty on the Protection of Intellectual Property in respect of Integrated Circuits, concluded in Washington in May 1989, is sufficient.

## VII. SOFTWARE

Peru considers that software needs to be protected; however, it is necessary to draw up a set of special provisions and rules that are in keeping with the specific features of this technology. A number of studies that have been carried out by international organizations could be most useful for the elaboration of a novel system of protection for this technology.

## VIII. BIOTECHNOLOGY

Biotechnology is a new science which will have applications in various fields, such as agriculture and chemical and pharmaceutical products, which are all essential sectors for mankind. It is therefore necessary to carry out a thorough assessment of the consequences of granting protection for this technological field.

## IX. RESTRICTIVE BUSINESS PRACTICES

In order to limit the impact of restrictive business practices on trade, a patent or trademark owner should be prohibited from imposing conditions on the licensee. The following cases are among those that should be considered: that the supply of technology or trademark licence should be accompanied by the obligation for the host country or undertaking to acquire goods or services from a specified source; that the owner should reserve the right to fix the sales price of the products manufactured using the technology in question or the right to use the trademark; the imposition of restrictions on the volume or structure of output and the prohibition or limitation of exports to specific countries of the products manufactured using the patent or trademark; the prohibition of the use of competing technologies; the payment of royalties for unused patents or trademarks; the imposition of a purchase option for the supplier of the technology and/or trademark; or the requirement that any inventions or improvements obtained as a result of the use of the technology in question should be transferred to the supplier of the patent.

## X. TRADE SECRETS

Trade secrets do not fall within the Negotiating Group's mandate, since the basis of intellectual property rights is that they should be disclosed, published and registered, which by definition is not applicable to the notion of trade secrets. In this case protection should be governed by the relevant provisions of civil law and not by intellectual property law.

## XI. COUNTERFEIT GOODS

The problem of counterfeit goods has reached alarming proportions, and there is a pressing need for multilateral action to curb it, not only for the benefit of legitimate trade but also as a means of protecting consumers. In this connection, the negotiations which resulted in the draft agreement to discourage the importation of counterfeit goods should be pursued.