

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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of Intellectual Property Rights, including
Trade in Counterfeit Goods

DISPUTE SETTLEMENT

Communication from the Nordic Countries

The delegation of Norway on behalf of the Nordic countries (Finland, Iceland, Norway and Sweden) has requested that the following statement made by it on dispute settlement at the meeting of the Negotiating Group on 11 December 1989 be circulated to the Negotiating Group.

The Nordic countries believe that an efficient dispute settlement system along with adequate standards for the protection of IPRs and procedures for their enforcement are the main pillars upon which a TRIPS agreement will have to be built. A TRIPS agreement should contain an effective dispute settlement mechanism which would provide a multilateral forum for dealing with disputes in this area. Such a mechanism would ensure the preservation of rights and obligations of signatories and provide security and predictability to the operation of the international trading system.

Consequently, we propose that a TRIPS Agreement should contain an obligation to exclusively rely on the multilateral dispute settlement mechanism. That would imply that all Signatories will ensure that domestic legislation conforms to their international commitments.

The Nordic countries believe that the rules and procedures of the GATT dispute settlement mechanism, as contained in Articles XXII and XXIII, the 1979 "Understanding" and the improvements made in Montreal, should be applied to settle disputes also in a TRIPS agreement. Thus, we see no reason to construct a mechanism with alternative features to deal with TRIPS disputes. The application of the GATT mechanism will also secure that there is no alternative to the multilateral mechanism for settling disputes among Signatories.

There are certain issues regarding an Agreement on TRIPS which may need accommodation as compared to the GATT dispute settlement mechanism. We see two issues in this respect:

- issues relating to technical expertise, and
- issues relating to sanctions.

Regarding technical expertise, we believe that it would be useful to provide for IPR expertise not only in the secretariat that will service a TRIPS Agreement, but also in the panels or working groups that may be established to deal with specific disputes.

Parties to a dispute, as well as a panel itself, will of course be free to consult with any expertise they wish on all issues of relevance to a particular dispute. Presumably most panels would find it useful to consult with members of the WIPO secretariat.

We would, however, caution against attempts to institutionalise links between panels and international organizations. The panel system, as we know it from GATT, is not a proper counterpart to international organizations or to intergovernmental bodies of such organizations. Panels are ad hoc creations composed of independent members set up for specific purposes. We therefore believe that it would be improper to instruct panels to consult with organizations that represent a member constituency.

In order to have an effective dispute settlement mechanism it is necessary to provide for the possibility of sanctions, i.e. compensation and/or retaliation. The Nordic countries believe that also in this respect the GATT mechanism provides the model; in case of non-implementation of rulings or recommendations, Article XXIII of GATT refers to the possibility of suspending concessions or other obligations, subsequent to authorization by the Council. This principle should be applicable also for TRIPS.

In parallel to the GATT dispute settlement provisions, we would propose that a Signatory to the TRIPS Agreement should only be allowed to take action against another signatory for failure to carry out its obligations or for any action which nullifies or impairs any benefit accruing under the Agreement, when such action was agreed to by all Signatories.

Trade retaliation is the ultimate consequence under the GATT system when a party does not comply with rulings and recommendations. We recognise that there are well-known problems with the concept of retaliation, but it cannot, on the other hand, be denied that the mere possibility of trade sanctions being formally provided for also in the TRIPS area will act as a powerful deterrent against non-compliance and, not least, as an important counterweight against unilateral action.