

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNG/NG11/W/71

14 May 1990

Special Distribution

---

Group of Negotiations on Goods (GATT)

Original: English

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

COMMUNICATION FROM ARGENTINA, BRAZIL, CHILE, CHINA, COLOMBIA  
CUBA, EGYPT, INDIA, NIGERIA, PERU, TANZANIA AND URUGUAY

The attached communication is circulated at the request of the delegations of Argentina, Brazil, Chile, China, Colombia, Cuba, Egypt, India, Nigeria, Peru, Tanzania and Uruguay.

The countries presenting this proposal reserve the right to amend or supplement it in the light of the course and progress of the negotiations.

PART I: INTELLECTUAL PROPERTY AND INTERNATIONAL TRADE

Preamble

Desirous of providing for adequate procedures and remedies to discourage international trade in counterfeit and pirated goods while ensuring an unimpeded flow of trade in legitimate goods,

Deeming it highly desirable to ensure competition in international trade and to prevent arrangements which may restrain such competition,

Recognizing the need to take into consideration the public policy objectives underlying national systems for the protection of intellectual property, including developmental and technological objectives,

Recognizing further the special needs of the least developed countries in respect of maximum flexibility in the application of this Agreement in order to enable them to create a sound and viable technological base;

Hereby agree on the following provisions:

Chapter I  
OBJECTIVES

Article 1: Objectives

With respect to intellectual property and international trade, Parties agree on the following objectives:

- (1) To clarify GATT provisions related to the effects of the enforcement of intellectual property rights on international trade, in particular articles IX and XX(d), and to provide for adequate procedures and remedies to discourage international trade in counterfeit and pirated goods.
- (2) To ensure that such procedures and remedies do not themselves become barriers to legitimate trade and are not applied in a discriminatory manner to imported goods.
- (3) To ensure free flow of goods and prevent arrangements, effected by private or public commercial enterprises, which may result in the division of markets or otherwise restrain competition, thus having harmful effects on international trade.

Chapter II  
GUIDING PRINCIPLES AND NORMS

Article 2: Trade in Counterfeit and Pirated Goods

Parties undertake to discourage trade in counterfeit and pirated goods and to combat such trade without inhibiting the free flow of legitimate trade.<sup>1/</sup> For this purpose, Parties shall exchange information and promote co-operation between customs authorities with respect to trade in counterfeit and pirated goods. They shall also adopt in their respective national legislation the necessary measures, procedures and remedies in this respect.

Article 3: Safeguard against Creation of Trade Impediments in the Application of Measures and Procedures to Enforce Intellectual Property Rights

In the application of national measures and procedures to enforce intellectual property rights, Parties undertake to avoid the creation of impediments or distortions to international trade, and to refrain from applying their national legislation in a discriminatory manner to imports from the territories of other Parties. For this purpose, they shall observe the principles of national treatment and MFN enshrined in the GATT.

---

<sup>1/</sup>For the purposes of this Agreement, trade in counterfeit goods means trade in goods which infringe a trademark validly registered in respect of such goods in the importing country, while trade in pirated goods means trade in goods which constitute a slavish copy of a work protected by copyright under the legislation of the country of importation.

**Article 4: Non-recourse to Unilateral Measures**

Parties shall refrain, in relation to each other, from threatening or having recourse to unilaterally decided economic measures of any kind aimed at ensuring the enforcement of intellectual property rights.

**Article 5: Control of Anti-competitive and Trade-distorting Practices**

Parties shall co-operate with each other to ensure the free flow of goods and prevent that intellectual property rights are used, through arrangements among enterprises, to create restrictions or distortions to international trade or to engage in anti-competitive practices having adverse effects on their trade. For this purpose, they undertake to exchange information and to agree upon the request of any other Party to consult with respect to any such practices and to take such measures in their territory as may be deemed appropriate with a view to eliminating the adverse effects of such practices.

**Article 6: Transparency**

Laws, regulations, judicial decisions and administrative rulings pertaining to the application of the principles and norms prescribed in articles 2 to 5 shall be made publicly available in the official language of the Party adopting such texts and, shall be provided, upon request, to any other Party.

**Chapter III****BORDER MEASURES RELATED TO COUNTERFEIT OR PIRATED GOODS****Article 7: Suspension of Customs Clearance**

Parties shall adopt the necessary measures and procedures, whether judicial or administrative, to enable intellectual property rights holders, who may have valid grounds for suspecting that imported goods infringe their trademark or constitute a slavish copy of a work protected by copyright in accordance with the national legislation of the importing country, to obtain the suspension by the customs authorities of clearance from customs of such goods. Such suspension shall be for a limited period of time pending a determination by the competent authorities whether the goods are infringing.

**Article 8: Safeguards against Obstacles to Legitimate Trade**

- (1) Persons initiating the procedure for the suspension of clearance from customs shall be required to provide adequate documentary evidence to satisfy the competent authorities that prima facie there is an infringement of their right to protection in accordance with the relevant laws of the country of importation.
- (2) Such persons shall also be required to provide security by bond or deposit of money in an amount sufficient to indemnify the authorities or to hold the importer harmless from loss or damage resulting from the action undertaken.
- (3) The importers of such goods or other persons affected by the procedure shall be informed promptly of actions taken and shall be entitled to a judicial review of any final decision taken by an administrative authority.

Article 9: Disposal of Infringing Goods

Where it is finally determined that the goods are infringing in accordance with the relevant laws of the importing country, the competent authorities shall provide for the forfeiture, destruction or disposal of the goods in a manner not prejudicial to the interests of the rights holder.

PART II: STANDARDS AND PRINCIPLES CONCERNING THE AVAILABILITY,  
SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS

Preamble

Recognizing the importance of protection of intellectual property rights for promoting innovation and creativity,

Taking into account development, technological and public interest objectives of developing countries,

Recognizing also the special needs of the least developed countries in respect of maximum flexibility in the application of this Agreement in order to enable them to create a sound and viable technological base,

Hereby agree on the following provisions:

Chapter I  
OBJECTIVES AND PRINCIPLES

Article 1: Objectives

With respect to standards and principles concerning the availability, scope and use of intellectual property rights, Parties agree on the following objectives:

- (1) To give full recognition to the needs for economic, social and technological development of all countries and the sovereign right of all States, when enacting national legislation, to ensure a proper balance between these needs and the rights granted to IPR holders and thus to determine the scope and level of protection of such rights, particularly in sectors of special public concern, such as health, nutrition, agriculture and national security;
- (2) To set forth the principal rights and obligations of IP owners, taking into account the important inter-relationships between the scope of such rights and obligations and the promotion of social welfare and economic development.
- (3) To facilitate the diffusion of technological knowledge and to enhance international transfer of technology, and thus contribute to a more active participation of all countries in world production and trade.
- (4) To encourage technological innovation and promote inventiveness in all countries;
- (5) To enable participants to take all appropriate measures to prevent the abuses which might result from the exercise of IPRs and to ensure intergovernmental co-operation in this regard.

Article 2: Principles

- (1) Parties recognize that intellectual property rights are granted not only in acknowledgement of the contributions of inventors and creators, but also to assist in the diffusion of technological knowledge and its dissemination to those who could benefit from it in a manner conducive to social and economic welfare and agree that this balance of rights and obligations inherent in all systems of intellectual property rights should be observed.
- (2) In formulating or amending their national laws and regulations on IPRs, Parties have the right to adopt appropriate measures to protect public morality, national security, public health and nutrition, or to promote public interest in sectors of vital importance to their socio-economic and technological development.
- (3) Parties agree that the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and enhance the international transfer of technology to the mutual advantage of producers and users of technological knowledge.

- (4) Each Party will take the measures it deems appropriate with a view to preventing the abuse of intellectual property rights or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology. Parties undertake to consult each other and to co-operate in this regard.

Chapter II  
**PATENTS, MARKS AND INDUSTRIAL DESIGNS**

Article 3: National Treatment

With respect to laws and regulations governing the protection of patents, marks and industrial designs, Parties shall provide to nationals of other Parties the same treatment that is granted or may hereafter be granted under such laws and regulations to their own nationals, all without prejudice to the rights and obligations specially provided for in the Paris Convention for the protection of industrial property as well as in the present agreement.

Article 4: Patent Protection

- (1) Patent protection shall be available for inventions in all fields of technology which are new, which involve an inventive step and which are industrially applicable, except for:
- (i) inventions whose use would be contrary to public order, law or morality or injurious to public health;
  - (ii) plant or animal varieties or essentially biological processes for the production of plants or animals;
  - (iii) discoveries and materials or substances already existing in nature;
  - (iv) methods of medical treatment for humans or animals;
  - (v) nuclear and fissionable material.
- (2) Parties may exclude from patentability, on grounds of public interest, national security, public health or nutrition, certain kinds of products or processes for the manufacture of those products, provided that such exclusion applies equally to inventions by nationals and foreigners.
- (3) It shall be a matter for national legislation to determine the duration of protection as well as the formalities required for the granting of patents.

Article 5: Rights and Obligations of Patent Owners

- (1) Once a patent has been granted, the owner of the patent shall have the following rights:
- (i) the right to prevent others from working the patented product or the patented process for commercial or industrial purposes;



- (ii) the right to assign, or transfer by succession, the patent and to conclude licence contracts;
  - (iii) the right to a reasonable remuneration<sup>1/</sup> when the competent authorities of a Party to the present agreement use a patent for government purpose or provide for the granting of a licence of right or a compulsory licence.
- (2) The owner of the patent shall have the following obligations:
- (i) to disclose the invention in a clear and complete manner to permit a person versed in the technical field to put the invention into practice and in particular to indicate the best mode for carrying out the invention;
  - (ii) to give information concerning corresponding foreign application and grants;
  - (iii) to work the patented invention in the territory of the Party granting it within the time limits fixed by national legislation and subject to the sanctions provided for in chapter VI;
  - (iv) in respect of licence contracts and contracts assigning patents, to refrain from engaging in abusive or anticompetitive practices adversely affecting the transfer of technology subject to the sanctions provided for in chapters VI and VII.

**Article 6: Use of a Patent for Government Purposes and Licence of Right**

Nothing in this Agreement shall be construed to prevent any Party from taking any action necessary: (i) for the working or use of a patent for government purposes; or (ii) where a patent has been granted for an invention capable of being used for the preparation or production of food or medicine, for granting to any person applying for the same a licence limited to the use of the invention for the purposes of the preparation or production and distribution of food and medicines.

**Article 7: Marks**

- (1) Parties shall provide protection for trademarks and service marks registered in their territories in compliance with the formalities and requirements laid down in their respective national legislation.
- (2) The registration of a trademark or a service mark shall confer upon its registered owner the right to preclude others from the use of the mark or a similar mark for goods or services which are identical or similar to those in respect of which the registration was granted where such use would result in a likelihood of confusion. Rights shall be subject to exhaustion if the trademark goods or services are marketed by or with the consent of the owner in the territories of the Parties to the present Agreement.
- (3) It shall be a matter for national legislation to determine the conditions for the use of a mark as well as the duration of the protection granted.

---

<sup>1/</sup> Such reasonable remuneration will be determined having regard to the economic situation of the Party, the nature of the invention, the cost involved in developing the patent and other relevant factors.

Article 8: Industrial Designs

- (1) Parties shall provide protection for industrial designs which are original and novel. For this purpose, Parties may establish a system of registration of industrial designs.
- (2) The registration of industrial designs shall confer upon the owner the exclusive right to their use throughout the term of protection provided for under national legislation.
- (3) With respect to the obligations of an industrial design owner, the requirements for patented inventions under Article 5 shall apply.

Chapter III

GEOGRAPHICAL INDICATIONS

Article 9: Protection of Geographical Indications Including Appellations of Origin<sup>2/</sup>

Parties undertake to provide protection for geographical indications including appellations of origin against any use which is likely to confuse or mislead the public as to the true origin of the product.

Chapter IV

COPYRIGHT AND NEIGHBOURING RIGHTS

Article 10: National Treatment

With respect to national legislation on copyright and neighbouring rights, Parties shall provide to the nationals of other Parties the rights which their respective laws do now or may hereafter grant to their own nationals with respect to the works protected under copyright law, without prejudice to the rights specially granted by the Berne Convention for the Protection of Literary and Artistic Works, and by any other conventions on neighbouring rights to which Parties may have acceded.

Article 11: Computer Programmes

- (1) Parties shall provide protection for computer programmes. For this purpose, they shall determine in their national legislation the nature, scope and term of protection to be granted to such works.
- (2) In view of the complex legal and technical issues raised by the protection of computer programmes, Parties undertake to co-operate with each other to identify a suitable method of protection and to evolve international rules governing such protection.

---

<sup>2/</sup>Geographical indications are any designation, expression or sign which aims at indicating that a product originates from a country, region or locality.

Chapter V  
INTEGRATED CIRCUIT LAYOUT DESIGNS

Article 12: Protection of Integrated Circuits

Parties agree to provide protection to integrated circuit layout designs in accordance with the provisions of the Treaty on the Protection of Intellectual Property with Regard to Integrated Circuits done in Washington, May 1989.

Chapter VI  
REMEDIES FOR NON-FULFILMENT OF OBLIGATIONS

Article 13: Remedial Measures under National Legislation

Parties may adopt appropriate measures to remedy the non-fulfilment of obligations arising from the protection provided for intellectual property rights under the provisions of this agreement or in accordance with national legislation. Such measures may include:

- (i) in respect of non-working or insufficient working of patents, the granting of a compulsory licence;
- (ii) compulsory licence may also be granted wherever necessary in public interest to secure free competition and to prevent abuses by the holder of the right;
- (iii) where the effective use of a trademark is required by national legislation to maintain trademark rights, the cancellation of the registration of such a trademark after a reasonable period, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner;
- (iv) in respect of abusive or anti-competitive practices in licensing contracts, the annulment of the contract or of those clauses of the contract deemed contrary to the laws and regulations governing competition and/or transfer of technology.

Article 14: Co-operation to Ensure Fulfilment of Obligations

Parties undertake to ensure that intellectual property rights holders who are nationals or domiciliaries of their territories comply with the obligations prescribed by this agreement or by the national legislation of any other Party in accordance with the provisions of this agreement.

Chapter VII  
CONTROL OF ABUSIVE OR ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES

Article 15: National Legislation

Parties may specify in their national legislation practices in licensing contracts deemed to constitute an abuse of intellectual property rights or to have an adverse effect on competition in the relevant market, and adopt appropriate measures to prevent or control such practices.

### Article 16: Consultation and Co-operation

Parties agree that practices which restrain competition, limit access to the technology or to markets or foster monopolistic control, and which are engaged in by licensors, may have harmful effects on trade and transfer of technology among their countries. Accordingly, each Party agrees upon the request of any other Party to consult with respect to any such practices and to co-operate with other Parties with a view to ensuring that IPR owners, who are nationals or domiciliaries of its country, comply with the obligations prescribed in this respect by the national legislation of the Party granting them such rights.

## Chapter VIII ENFORCEMENT

### Article 17: Availability of Enforcement Procedures

- (1) Parties shall ensure that simple, effective and adequate enforcement procedures are available under their national laws so as to enable expeditious action against infringement of IPRs and to provide relief to the owners of such rights.
- (2) Enforcement shall include administrative and civil remedies and, in appropriate cases, penalties under criminal law and shall be provided in consistency with each Party's legal and judicial systems and traditions and within the limits of its administrative resources and capabilities.

### Article 18: National Treatment

- (1) Parties undertake to apply to the nationals of other Parties the same procedures as are applied to nationals for determining whether an enforceable IPR exists and whether it has been infringed.
- (2) Parties shall make available to the nationals of other Parties the same administrative and judicial procedures for enforcement as are made available to nationals.

## Chapter IX SETTLEMENT OF DISPUTES

### Article 19: Consultations

- (1) Where a dispute arises concerning the interpretation or implementation of any provisions of this Agreement, a Party may bring the matter to the attention of another Party and request the latter to enter into consultations with it.
- (2) The Party so requested shall provide promptly an adequate opportunity for the requested consultations.
- (3) Parties engaged in consultations shall attempt to reach, within a reasonable period of time, a mutually satisfactory solution to the dispute.

**Article 20: Other Means of Settlement**

If a mutually satisfactory solution is not reached within a reasonable period of time through the consultations referred to in Article 19, Parties to the dispute may agree to resort to other means designed to lead to an amicable settlement of their dispute, such as good offices, conciliation, mediation and arbitration.

**Article 21: Non-recourse to unilateral measures**

Parties shall refrain, in relation to each other, from threatening or having recourse to unilaterally decided measures of any kind aimed at ensuring the enforcement of intellectual property rights.

**Chapter X**  
**INTERNATIONAL IMPLEMENTATION**

**Article 22: International implementation**

This Agreement shall be implemented in the relevant international organization, account being taken of the multidisciplinary and overall aspects of these issues.