

MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND

RESTRICTED  
MTN.GNG/NG11/W/73  
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

DRAFT AMENDMENT TO THE GENERAL AGREEMENT  
ON TARIFFS AND TRADE ON THE PROTECTION OF  
TRADE-RELATED INTELLECTUAL PROPERTY RIGHTS

Communication from Switzerland

The attached communication, dated 14 May 1990, has been received from the delegation of Switzerland, with the request that it be circulated to the members of the Negotiating Group.

**DRAFT AMENDMENT TO THE GENERAL  
AGREEMENT ON TARIFFS AND TRADE ON THE PROTECTION OF TRADE-RELATED  
INTELLECTUAL PROPERTY RIGHTS**

**PART V (GATT\*)**

**TRADE AND INTELLECTUAL PROPERTY**

**OBJECTIVES**

The contracting parties,

- (a) Recalling the Ministerial Declaration of Punta del Este of September 20, 1986;
- (b) Desiring to strengthen the role of GATT and its basic principles and to bring about a wider coverage of world trade under agreed, effective and enforceable multilateral disciplines;
- (c) Recognizing that the lack of protection, or insufficient or excessive protection, of intellectual property rights causes nullification and impairment of advantages and benefits of the General Agreement on Tariffs and Trade and distortions detrimental to international trade, and that such nullification and impairment may be caused both by substantive and procedural deficiencies, including ineffective enforcement of existing laws, as well as by unjustifiable discrimination of foreign persons, legal entities, goods and services;
- (d) Recognizing that adequate protection of intellectual property rights is an essential condition to foster international investment and transfer of technology;

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\*Enumeration of Articles not yet adjusted to GATT

- (e) Recognizing that adequate protection of intellectual property rights both internally and at the border is necessary to deter and persecute piracy and counterfeiting;
- (f) Recognizing the need for appropriate transitional arrangements for developing countries and least developed countries with a view to achieve successfully strengthened protection and enforcement of intellectual property rights;
- (g) Recognizing the need to prevent disputes by providing adequate means of transparency of national laws regarding protection and enforcement of intellectual property rights;
- (h) Recognizing the need to settle disputes on matters related to the protection of intellectual property rights on the basis of effective multilateral mechanisms and procedures, and to refrain from applying unilateral countermeasures inconsistent with such procedures to PARTIES to this PART of the General Agreement;
- (i) Recognizing the efforts to harmonize and promote intellectual property laws by international organizations specialized in the field of intellectual property law and that this PART of the General Agreement aims at further encouragement of such efforts;

Hereby agree as follows:

**SECTION ONE**  
**GENERAL PROVISIONS, RIGHTS AND OBLIGATIONS**

**Article 100**  
**Scope and Coverage**

This PART of the General Agreement applies in respect of all contracting parties which accept or accede to it (hereinafter the PARTIES) and to all areas of intellectual property law, including copyright and related rights, trademarks, geographical indications, including appellations of origin, industrial designs, patents, lay-out designs (topographies) of integrated circuits, and proprietary information.

**Article 101**  
**National Treatment**

- (1) Each PARTY shall provide to the nationals of all other PARTIES treatment no less favourable than that accorded to the PARTY's own nationals with respect to all laws, regulations and requirements governing the protection and enforcement of intellectual property rights.
- (2) The principle of National Treatment equally applies to domiciliaries and other legal entities and persons having real and effective industrial or commercial establishment within the jurisdiction of a PARTY. Additional beneficiaries are defined in accordance with the

Berne Convention of Literary and Artistic Works of September 9, 1886, as revised at Paris in 1971 (Berne Convention, Paris Act) and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention (1961)).

(3) The following are exempted from such obligation

- procedural requirements imposed on beneficiaries of national treatment which are necessary to secure reasonably efficient administration and security of the law, including the designation of an address for service or the appointment of an agent within the jurisdiction of a PARTY, and to the extent that such requirements do not impair access to, and equality of opportunity on, the market of such PARTY;
- additional exceptions provided for in the Berne Convention (Paris Act) and the Rome Convention (1961).

Article 102  
General Most-Favoured Nation Treatment

(1) Any advantage, favour, privilege or immunity, granted by a PARTY on the basis of domestic legislation, regulations, practices or international agreements governing the protection and enforcement of intellectual property rights to persons and legal entities under the jurisdiction of another country shall be accorded immediately and unconditionally to similar persons and legal entities of all PARTIES.

(2) The following are exempted from such obligation

- Any advantage, favour, privilege or immunity deriving from international agreements on judicial assistance and law enforcement of a general nature and not particularly confined to the protection of intellectual property rights;
- Any advantage, favour, privilege or immunity deriving from bilateral agreements related to the protection of geographical indications, including appellations or origin, provided that the PARTIES to that agreement are prepared to enter into negotiations in good faith with other interested PARTIES in order to expand such recognition of respective geographical indications and appellations of origin with a view to avoid arbitrary and unjustifiable discrimination of competing products or disguised restrictions on international trade;
- Any advantage, favour, privilege or immunity deriving from international agreements relating to customs unions, free-trade areas and regional economic spaces, provided that it does not constitute a means of arbitrary or unjustifiable discrimination or disguised restrictions on international trade.

**Article 103**  
**Transitional Provisions Related to**  
**Most-Favoured Nation Treatment**

- (1) Any advantage, favour, privilege or immunity deriving from international agreements related to intellectual property law which entered into force prior to the entry into force of this PART shall not be affected, provided that such agreements do not constitute an arbitrary and unjustifiable discrimination of nationals and other beneficiaries of other PARTIES.
- (2) PARTIES, however, undertake the commitment to phase out any existing advantage, favour, privilege or immunity granted to persons and legal entities under the jurisdiction of another country, which is inconsistent with the principle of Most-Favoured Nation Treatment until [X] years after it comes into effect for such PARTY but not later than the year [Z].

**SECTION TWO**

**STANDARDS AND PRINCIPLES CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS**

**Article 200**  
**Appropriate Levels of Protection**

In order to ensure adequate protection of intellectual property rights and to prevent counterfeiting and piracy, PARTIES shall undertake to comply at least with levels of protection pursuant to the standards and principles concerning the availability, scope and use of intellectual property rights set forth in this Section.

**Sub-section A: Copyright and Related Rights**

**Article 201**  
**Definition of a Work**

"Work" means any original intellectual creation, of literary or artistic character, irrespective of its commercial value, its literary or artistic merits, or its purpose.

**Article 202**  
**Protection**

- (1) Authors and their successors-in-title shall enjoy at least the rights conferred upon them by the Berne Convention (Paris Act).
- (2) Computer software and data bases shall be protected under copyright law, provided they satisfy the requirements of Article 201.

**Article 203**  
**Term of Protection**

- (1) The duration of protection shall amount to the lifespan of the author and at least 50 years in addition. Other terms of protection may be granted to certain categories of works in conformity with the Berne Convention (Paris Act).
- (2) The term of protection of computer software shall be 50 years from the date of creation.

**Article 204**  
**Rights Conferred**

- (1) The copyright shall include the right for its owner to prevent third parties not having his consent from:
  - copying or reproducing the work in any form, such as printed matter, phonograms, videograms, or data carriers;
  - offering to the public, selling or otherwise distributing copies of the work;
  - performing publicly the work, directly or indirectly by any means or process, live or in a place other than that of the performance;
  - broadcasting the work by radio wave, by cable or other devices;
  - retransmitting the transmitted work by technical means or processes, including cables or other devices, the exploitation of which is not made by the initial broadcaster;
  - communicating broadcasts or retransmitted broadcasts.
- (2) The owner of a computer software shall have in addition the right to prevent third parties not having his consent from:
  - using the software;
  - renting, lending or importing the software or copies thereof.
- (3) Whenever originals or copies of protected works are rented, or otherwise made available against payment, the authors of these works are entitled to a remuneration.

There is no obligation for remuneration for works of architecture or of applied art.

**Article 205**  
**Limitations, Exemptions and Compulsory Licensing**

- (1) Limitations and exemptions to rights, including compulsory licensing, may be made in accordance with the Berne Convention (Paris Act).
- (2) Limitations made to the rights in favour of private use shall not apply to computer software.

**Article 206**  
**Protection of Related Rights**

Protection shall be available to performers, producers of phonograms and videograms, and broadcasters.

**Article 207**  
**Term of Protection**

The term of protection of related rights shall be no less than 50 years from the date of the performance, of the production of the phonogram or videogram, and of the broadcast.

**Article 208**  
**Rights Conferred to Performers**

The protection provided to performers shall include the right to prevent all third parties not having their consent from:

- producing their performance in any place other than that of the performance;
- broadcasting the performance by any technical means or process, such as by radio wave, by cable or by other devices;
- affixing the performance on phonograms, videograms or data carriers, and from reproducing such fixations;
- offering to the public, selling, or otherwise distributing copies of the fixation containing the performance.

**Article 209**  
**Rights Conferred to Producers of Phonograms and Videograms**

The protection provided to producers of phonograms and videograms shall include the right to prevent all third parties not having their consent from reproducing the phonograms or videograms, and from putting on the market, from selling, or from otherwise distributing copies thereof.

**Article 210  
Rights Conferred to Broadcasters**

The protection provided to broadcasters shall include the right to prevent all third parties not having their consent from:

- retransmitting their broadcast;
- communicating it;
- affixing it on phonograms, videograms, or data carriers, and from reproducing such fixations;
- putting on the market, selling, or from otherwise distributing copies of the broadcast.

**Sub-section B: Trademarks**

**Article 211  
Definition of a Trademark**

- (1) A trademark is a sign capable of distinguishing the goods or services of one undertaking from those of another undertaking.
- (2) It may in particular consist of words, letters, numerals, graphical representations, three-dimensional shapes, colours, or any combination of these elements.
- (3) The term "trademark" shall include service marks, collective and certification marks.

**Article 212  
Protection of Trademarks**

- (1) Protection shall be denied in particular to marks which are
  - (i) devoid of any distinctive character,
  - (ii) contrary to public order or to accepted standards of morality,
  - (iii) of such a nature as to deceive the public, for instance as to the nature, quality or geographical origin of the goods or services.
- (2) Protection shall also be denied to signs which are in conflict with rights acquired by third parties on trademarks, or in conflict with well-known trademarks.

**Article 213  
Acquisition of Trademark Rights**

- (1) Trademark rights may derive from registration or from use.

- (2) A system for the registration of trademarks without exclusion of any goods or services shall be provided.
- (3) Actual use of the trademark prior to the application for registration shall not be required.

Article 214  
Grant, Maintenance, Cancellation of Trademark Rights;  
Other Procedures

- (1) Trademark rights shall be granted within a reasonable time period and at reasonable cost.
- (2) Paragraph (1) shall also apply to other procedures such as the renewal or cancellation of trademark rights, or, if so required by the national law, to opposition procedures.
- (3) Final administrative decisions taken in procedures mentioned in paragraphs (1) and (2) above shall be subject to the right of appeal in a judicial or quasi-judicial body. Decisions shall indicate the competent body, and the time-limit, for filing an appeal.

Article 215  
Rights Conferred by a Trademark

The registered trademark shall confer the right on its owner to prevent all third parties not having his consent from using in the course of trade any sign:

- (a) which is identical with a prior protected trademark for identical goods or services;
- (b) which is identical with a prior protected trademark for similar goods or services, if there is a likelihood of confusion;
- (c) which is similar to a prior protected trademark for identical or similar goods or services, if there is a likelihood of confusion.

Article 216  
Term of Protection

Trademarks shall be registered for no less than 10 years from the filing date and may be renewed indefinitely for further terms each of no less than 10 years.

Article 217  
Use of Trademarks

- (1) The use of a trademark shall not be encumbered by any special requirements, such as use in a special form or use which reduces the indication of source or use with another trademark.

- (2) If use of the registered trademark is compulsory, the registration may be cancelled only after the trademark has not been used during an uninterrupted period of not less than five years, and provided that such non-use cannot be justified. Justified non-use shall include non-use due to import restrictions on products protected by the trademark or other governmental laws, regulations, policies or practices.
- (3) Use of the trademark by another person with the consent of the right-holder shall be deemed use of the trademark for the purpose of maintaining the registration.

**Article 218  
Compulsory Licencing of Trademarks**

The compulsory licencing of a trademark shall not be permitted.

**Article 219  
Assignment of Trademarks**

Trademarks may be assigned with or without the transfer of the enterprise to which they belong.

**Sub-section C: Geographical Indications,  
Including Appellations of Origin**

**Article 220  
Protection and Definition of Geographical Indications  
and Appellations of Origin**

- (1) Geographical indications and appellations of origin shall be protected.
- (2) A geographical indication is any direct or indirect reference to the geographical origin of a product, including characteristics or qualities which are related to that origin.
- (3) An appellation of origin is a qualified geographical indication denominating a country, region or locality indicating that a product is originating therefrom and has qualities, reputation or other characteristics which are essentially or exclusively attributable to the geographical origin, including natural or human factors. A denomination which has acquired a geographical character in relation to a product which has such qualities, reputation or characteristics is also deemed to be an appellation of origin.
- (4) Protection of geographical indications shall also be granted to services.
- (5) Geographical names or signs which are not considered by interested circles as references to a determined origin of the products shall not be deemed to be geographical indications within the meaning of this Article.

**Article 221**  
**Use of Geographical Indications, Including**  
**Appellations of Origin**

- (1) Geographical indications shall be protected against any use which is likely to mislead the public. Shall notably be considered to constitute such use:
  - any direct or indirect use in trade in respect of products not originating from the place indicated or evoked in the geographical indication in question;
  - any usurpation, imitation or evocation, even where the true origin of the product is indicated or the designation is used in translation or accompanied by expressions such as "kind", "type", "style" or "imitation";
  - the use of any means in the designation or presentation of the product likely to suggest a link between the product and any geographical area other than the true place of origin.
- (2) Appropriate measures shall be taken so as to prevent a geographical indication from developing into a designation of a generic character as a result of its use in trade for products of a different origin.
- (3) The registration of a trademark which contains or consists of a geographical or other indication designating or suggesting a country, region or locality with respect to products not having this origin shall be refused or invalidated, if the use of such indication is likely to mislead the public.

**Sub-section D: Industrial Designs**

**Article 222**  
**Definition**

An industrial design consists of a two- or three-dimensional form, sole or combined with colours, to be used as a prototype for the manufacturing of a product.

**Article 223**  
**Protection**

- (1) Protection of industrial designs shall be granted, upon registration, if they are new.
- (2) Protection shall not extend to features required by technical reasons.
- (3) Such protection shall be granted without prejudice to the protection under copyright law or other laws.

**Article 224**  
**Grant, Maintenance, Cancellation**  
**of Industrial Design Rights; Other Procedures**

- (1) Industrial design rights shall be granted within a reasonable time period and at reasonable cost. In particular, the acquisition of industrial design rights in textiles shall not be encumbered by any special requirements such as ex officio examination of novelty before registration, compulsory publication of the design itself or disproportionate fees for multiple users of the registration.
- (2) Paragraph (1) shall also apply to other procedures such as the renewal or cancellation of industrial design rights, or, if so required by the national law, to opposition procedures.
- (3) Final administrative decisions in procedures mentioned in paragraphs (1) and (2) above shall be subject to the right of appeal in a judicial or quasi-judicial body. Decisions shall indicate the competent body, and the time-limit, for filing an appeal.

**Article 225**  
**Industrial Design Rights**

The owner of the industrial design right is entitled to prevent third parties not having his consent from manufacturing, offering, putting on the market or importing for these purposes, goods which infringe his industrial design right.

**Article 226**  
**Term of Protection and Renewal**

The term of registration shall be five years from the date of application with a possibility of renewal for two consecutive periods of five years each.

**Article 227**  
**Compulsory Licencing of Industrial Designs**

The compulsory licencing of an industrial design shall not be permitted.

**Article 228**  
**Exploitation**

The protection of industrial designs shall not be subject to any forfeiture by reason of failure to exploit.

**Sub-section E: Patents**

**Article 229  
Patentability; Patent Protection**

- (1) Patents shall be granted for any inventions, whether products or processes, which are susceptible of industrial application, which are new and which involve an inventive step.
- (2) Patents shall be available for all fields of technology.
- (3) Patents may not be granted for inventions the publication or exploitation of which would be contrary to public order, to the basic principle of human dignity, or generally accepted standards of morality.
- (4) PARTIES shall be given the possibility to introduce the protection of plant varieties under the patent system in parallel with a *sui generis* system.
- (5) Patents shall be available according to the first-to-file principle.

**Article 230  
Grant, Maintenance, Cancellation of  
Patent Rights; Other Procedures**

- (1) Patent rights shall be granted within a reasonable time period and at reasonable cost.
- (2) Paragraph (1) shall also apply to other procedures such as the maintenance or cancellation of patent rights, or, if so required by the national law, to opposition procedures.
- (3) Final administrative decisions in procedures mentioned in paragraphs (1) and (2) above shall be subject to the right of appeal in a judicial or quasi-judicial body. Decisions shall indicate the competent body, and the time-limit, for filing an appeal.

**Article 231  
Patent Term**

- (1) The term of a patent shall be for no less than 20 years counted from the filing date of the application.
- (2) An extension of the patent term should be provided for in order to compensate for delays regarding the exploitation of the patented invention due to regulatory approval procedures.

**Article 232  
Patent Rights**

- (1) A patent shall confer on its owner the right to prevent third parties not having his consent from making, putting on the market or using a

product which is the subject matter of the patent, or importing or stocking the product for these purposes.

- (2) If the subject matter of the patent is a process, the patent confers on its owner the right to prevent third parties not having his consent from using that process, and from offering, putting on the market, using, or importing or stocking for these purposes at least the product directly obtained by that process.
- (3)(a) If the subject matter of a patent is a process for making a new product, the same product when produced by any other party shall, in the absence of proof to the contrary, be deemed to have been made by the patented process.
- (b) If the subject matter is a process for making a product which is not new, the provisions in sub-paragraph (a) shall also apply if there is a substantial likelihood that the product was so made in contravention of the patented process.
- (c) In the absence of proof to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

**Article 233**  
**Compulsory Licences**  
**and Exploitation for Governmental Purposes**

- (1) Compulsory licences shall be non-exclusive and non-assignable except with that part of the enterprise or goodwill which exploits such licences.
- (2) Compulsory licences may be given in the event that the acts of manufacturing, selling or importing of the patented product or using of the patented process and the performance of any of these acts regarding the product obtained by the process does not suffice to satisfy the basic needs of the local market before the expiration of a period of four years from the date of the patent application, or three years from the date of the grant of the patent, whichever period expires last, and provided that the patent owner had refused to grant a contractual licence on terms that are in line with normal commercial practices.
- (3) Where the exploitation of the patented invention is required by a reason of an overriding public interest, the possibility of exploitation of the patent invention by the government, or by third persons authorized by it, may be made available by means of a compulsory licence at any time, provided that the patent owner had refused to grant a contractual licence on terms that are in line with normal commercial practices.
- (4) Where the invention claimed in a later patent cannot be exploited without infringing an earlier patent, a compulsory licence may be given to the extent necessary to avoid infringement of the patent,

provided that the invention claimed in the later patent involves an important technical advance in relation to the invention claimed in the earlier patent or serves an entirely different purpose.

- (5) Compulsory licences shall be granted to permit local manufacture only.
- (6) Given the possibilities of compulsory licences, there shall be no revocation of the patent, except for invalidity.
- (7) Any compulsory licence shall not concern know-how related to the exploitation of the invention.
- (8) Compulsory licences shall be revoked when the circumstances which led to its granting cease to exist and are unlikely to recur, taking into account the legitimate interests of the patent owner and of the licensee. The continued existence of these circumstances shall be reviewed upon request of the patent owner.
- (9) Any decision relating to the grant of a compulsory licence or to the exploitation for governmental purposes, including the payment of an equitable remuneration to the patent owner corresponding to the economic value of the licence, shall be subject to judicial review.

#### **Sub-section F: Lay-out Designs of Integrated Circuits**

##### **Article 234 Subject Matter for Protection**

- (1) Protection shall be granted to any three-dimensional disposition of an integrated circuit (topography), irrespective of the manner by which such disposition is fixed or encoded, and provided that it is not commonplace.
- (2) Such protection shall not prevent protection under other laws.
- (3) A system of registration may be required.

##### **Article 235 Grant, Maintenance, Cancellation of Topography Rights**

- (1) The rights relating to a topography shall, if a system for registration is required, be granted within a reasonable time period and at reasonable cost.
- (2) Paragraph (1) shall also apply to other procedures such as cancellation of topography rights.
- (3) Final administrative decisions in procedures mentioned in paragraphs (1) and (2) above shall be subject to the right of appeal in a judicial or quasi-judicial body. Decisions shall indicate the competent body, and the time-limit, for filing an appeal.

**Article 236  
Term of Protection**

- (1) Topographies shall be protected for a term of no less than ten years from the filing date or from the date of the first commercial exploitation, whichever is earlier.
- (2) If registration is required by law, and no application is filed, the protection of the topography shall lapse after two years from the date of the first commercial exploitation.
- (3) Notwithstanding the preceding, protection shall lapse 15 years after the creation of the topography.

**Article 237  
Rights Conferred**

The owner of the topography right shall have the right to prevent third parties not having his consent from:

- copying the topography by any means or in any form;
- putting on the market, offering to the public, selling, renting, lending, importing or otherwise distributing the topography or copies thereof.

**Article 238  
Limitation of Rights Conferred**

- (1) It is lawful to reproduce topographies for the purposes of research and teaching.
- (2) Further developments of topographies may be exploited independently, provided they are not commonplace.

**Article 239  
Acquisition Made in Good Faith**

The act of importing, selling or otherwise commercially distributing a product incorporating an infringing topography shall not itself be an infringement if the persons performing the act in question did not know and had no reasonable grounds for believing that the product was infringing at the time they acquired it. However, for such acts committed after those persons come into knowledge or have reasonable grounds for believing that the product incorporates an infringing topography, they shall be liable to pay an equitable remuneration to the right-holder.

**Article 240  
Compulsory Licencing**

The conditions set out in Article 233 shall also apply to the grant of any compulsory licenses for, or government use of, topographies.

**Sub-section G: Acts Contrary to Honest Commercial Practices**

**Protection of Proprietary Information**

**Article 241  
Protection of Proprietary Information**

- (1) In the course of ensuring effective protection against unfair competition as provided for in Article 10bis of the Paris Convention for the Protection of Intellectual Property (Stockholm Act of 1967), PARTIES shall provide in their domestic law and practice that natural and legal persons that are owners of proprietary information have the legal means to prevent this information from being disclosed to, acquired by, or used by others without their consent provided that:
  - (i) such information is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known or easily accessible;
  - (ii) actual or potential commercial value results from the secrecy; and
  - (iii) the person in possession of the information has taken reasonable steps under the circumstances to keep it secret.
- (2) PARTIES shall not limit the duration of protection as long as the conditions defined in paragraph (1) above exist.

**Article 242  
Licencing**

- (1) PARTIES shall not discourage or impede voluntary licencing of proprietary information by imposing excessive or discriminatory conditions on such licences or conditions which dilute the value of such proprietary information.
- (2) There shall be no compulsory licencing of proprietary information.

**Article 243  
Exceptions**

- (1) Proprietary information submitted to a government agency for purposes of regulatory approval procedures such as clinical or safety tests, shall not be disclosed without the consent of the proprietor, except to other governmental agencies if necessary to protect human, plant or animal life, health or the environment.

Governmental agencies shall not be entitled to use the information for commercial purposes. They may disclose it only with the consent of the proprietor or to the extent indispensable to inform the general public about the actual or potential danger of a product.

- (2) Disclosure of any proprietary information to a third party, or other governmental agencies, in the context of an application for obtaining intellectual property protection, shall be subject to an obligation to hear the applicant and to judicial review.

Third parties and governmental agencies having obtained such information shall be prevented from further disclosure and commercial use of it without the consent of the proprietor.

### **SECTION THREE**

#### **ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

##### **Article 300 Appropriate Levels of Enforcement**

In order to ensure adequate enforcement of intellectual property rights and to prevent and contend counterfeiting and piracy, PARTIES shall undertake to comply with obligations on protection and enforcement of intellectual property rights set forth in this Section.

These procedures shall be applied in a manner to avoid the creation of obstacles to legitimate trade and provide for safeguards against abuse.

##### **Sub-section A: General Provisions**

##### **Article 301 Fair and Equitable Procedures**

- (1) Procedures concerning the enforcement of intellectual property rights shall be fair and equitable.
- (2) Procedures shall not be unnecessarily complicated, costly, or time-consuming, nor shall they be subject to unreasonable time-limits, or unwarranted delays.
- (3) Defendants in a judicial procedure shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims.
- (4) Parties shall be allowed to be represented by independent counsel, and procedures shall not impose overly burdensome requirements concerning personal appearances.

- (5) Parties to the procedures shall be duly entitled to substantiate their claims and to present the evidence, including, for example, expert testimony and test data, relevant for the establishment of the facts and determination of the validity and infringement of the intellectual property rights concerned, as well as to exercise their rights of defence.
- (6) The procedures shall provide means to effectively identify and protect confidential information without prejudice to the legitimate interests of any party to substantiate its claims.
- (7) Subject to inaudita altera parte proceedings and without prejudice to the provisions of Article 311, decisions shall be taken only after an opportunity to be heard was given to the parties.

**Article 302**  
**Evidence of Proof**

- (1) Where a party has presented a coherent case and has identified evidence relevant to the substantiation of its claims and which lies in the control of the opposing party, the court may order that this evidence be produced by the opposing party, subject to conditions which ensure the protection of confidential information.
- (2) In cases in which a PARTY refuses access to or impedes a party's compliance with a request to provide necessary information, or a party to the proceeding refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action, preliminary and final determinations, affirmative or negative, may be made on the basis of the complaint or the allegation presented by the party adversely affected by the denial of access to information and/or on other facts and evidence before the court, subject to providing the parties an opportunity to be heard on the allegations or evidence.

**Article 303**  
**Decisions**

Decisions on the merits of a case shall, as a general rule, be in writing and reasoned. They shall be made known at least to the parties to the dispute without undue delay.

**Article 304**  
**Judicial Review**

Final administrative decisions and initial judicial decisions on the merits of a case concerning the protection of an intellectual property right shall be subject to the right of appeal in a court of law. Decisions shall indicate the competent body, and the time-limit, for filing an appeal.

**Sub-section B: Civil and Administrative  
Procedures and Remedies**

**Article 305  
Injunctions**

The judicial authorities shall be authorised, upon request, and irrespective of whether the defendant has acted with intent or negligence, to issue enforceable orders ascertaining that the requesting party is the actual holder of the intellectual property right or enjoining that the infringement be refrained from or discontinued.

**Article 306  
Damages**

- (1) The right-holder shall be entitled to claim from the infringer adequate compensation for the injury he has suffered because of a deliberate or negligent infringement of his intellectual property right, and to recover the costs, including attorney fees, reasonably incurred in the proceedings.
- (2) In appropriate cases, recovery of profits may be granted even where the infringer has not acted intentionally or negligently.

**Article 307  
Other Remedies**

- (1) Where an intellectual property right has been found to be infringed, the right-holder can request that the infringing goods, including materials and implements predominantly used in their creation, be, without compensation of any sort, forfeited, and destroyed, or disposed of outside the channels of commerce, in such a manner as to minimise any harm caused to him.
- (2) Such a request shall only be granted where such measures are not out of proportion to the seriousness of the infringement in question.
- (3) Infringing goods may also be prevented from entering commercial channels, including the prevention of their importation and exportation.
- (4) With regard to counterfeit goods, the simple removal of the trademark or of the geographical indication unlawfully affixed shall not be considered sufficient to permit release of the goods into commercial channels.

**Article 308  
Right of Information**

PARTIES may provide that, unless this would be out of proportion to the seriousness of the infringement, the infringer may be ordered by a court to

give to the right-holder information on the identity of third persons involved in the production and distribution of the infringing goods or services, and their channels of distribution.

**Article 309**  
**Indemnification of the Defendant**

- (1) Parties wrongfully enjoined or restrained by any measure taken for the purpose of enforcing intellectual property rights shall be entitled to claim adequate compensation for the injury suffered because of an abuse of enforcement procedures and to recover the costs, including attorney fees, reasonably incurred in the proceedings.
- (2) PARTIES may provide for the possibility that these parties may in appropriate cases claim compensation from the authorities. They shall provide for such possibility only where PARTIES have a system of administrative ex officio action.

**Article 310**  
**Administrative Procedures**

When PARTIES provide for administrative procedures concerning the enforcement of intellectual property rights, these procedures shall conform to principles equivalent to those applied to judicial procedures.

**Sub-section C: Provisional Measures**

**Article 311**

- (1) PARTIES shall provide for judicial procedures for the adoption, upon request, of prompt and effective provisional measures, if there is reason to believe that such measures are suitable
  - (i) to prevent an infringement of any intellectual property right from occurring or being continued, and in particular to prevent the goods from entering commercial channels, including their importation and exportation, and
  - (ii) to preserve the relevant evidence with regard to the alleged infringement.

Where appropriate, urgent provisional measures may be adopted inaudita altera parte, in particular where any delay is likely to cause irreparable harm to the right-holder, or where there is a demonstrable risk of evidence being destroyed.

- (2) The applicant shall be required to provide any reasonably available evidence so as to permit the court to establish with a sufficient degree of certainty that his right is being infringed or that such infringement is imminent.

The court shall be entitled to ask the applicant to provide a security if the provisional measures are of such a nature that they might cause an injury to the defendant.

- (3) Where provisional measures have been adopted inaudita altera parte, the parties affected shall be given prompt notice, at the latest immediately after the execution of the measures. A review shall take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked, or confirmed.
- (4) Where provisional measures according to paragraph 1(i) are to be carried out by customs authorities, the applicant may be required to supply any other information necessary for the identification of the goods concerned.
- (5) Without prejudice to paragraph (3), provisional measures taken under paragraph (1) shall, upon request of the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a time limit fixed by the court.

The court may ex officio revoke the provisional measures if it finds that the circumstances leading to such measures do not exist anymore.

- (6) Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the defendant shall be entitled to claim from the applicant an adequate compensation of any injury caused by these measures.
- (7) PARTIES may provide for provisional administrative procedures. Article 310 shall apply accordingly.

#### **Sub-section D: Special Requirements Related to Border Measures**

##### **Article 312 Suspension of Release by Customs Authorities**

- (1) PARTIES shall provide for procedures establishing that, wherever a right-holder has reasons to suspect that an importation of goods likely to infringe his intellectual property right may take place, he may lodge an application in writing with the competent authorities for the suspension of the release into free circulation of such goods.
- (2) PARTIES may provide for corresponding procedures concerning the suspension by the customs authorities of the release of such goods destined for exportation from their territory.

Article 313  
Application

The application under Article 312 must contain prima facie evidence of the alleged infringement and that the applicant is the right-holder. It must contain all pertinent information known or reasonably available to the applicant to enable the competent authority to act in knowledge of the facts at hand, and a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. It must specify the length of period for which the customs authorities are requested to take action. The applicant may also be required to supply any other information necessary for the identification of the infringing goods. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and the period for which it will remain in force.

Article 314  
Security or Equivalent Assurance; Fee

- (1) PARTIES shall seek to avoid border enforcement procedures being abused by means of unjustified or frivolous applications. For this purpose, they may require the applicant to provide a security or equivalent assurance. Such security or equivalent assurance shall not however unreasonably deter recourse to these procedures.
- (2) The customs authorities may require the payment of a fee in order to cover the administrative expenses incurred by such a request.

Article 315  
Duration of Suspension

- (1) Where an application has been lodged under Article 312, and the customs authorities have reasons to suspect that the importation of the goods would contravene an intellectual property right, they shall promptly notify the importer and the applicant of the suspension of the release of the goods.
- (2) If, within ten working days after the reception of the notification, the customs authorities have not been informed that the matter has been referred to the authority competent to take a decision on the merits of the case, or that the duly empowered authority has taken provisional measures, the goods shall be released, provided that all other conditions for importation or exportation have been complied with.

Article 316  
Indemnification of the Importer  
and of the Owner of the Goods

The importer or the owner of the goods shall be entitled to claim from the applicant adequate compensation for any injury caused to him by the

suspension of the release of goods if there is no request for provisional measures or if the measures are not founded.

**Article 317**  
**Right of Information and Inspection**

Without prejudice to the protection of confidential information, the competent authority shall be empowered to give the right-holder sufficient opportunity to inspect products detained by the customs authorities in order to substantiate his claims, if there are reasons to suspect that such products would infringe his intellectual property rights. Unless this would be contrary to provisions of domestic law, the customs authorities shall inform the right-holder, upon request, of the names and addresses of the consignor, importer, consignee and of the quantity of goods in question.

**Article 318**  
**Ex Officio Action**

- (1)(a) PARTIES shall provide that the customs authorities have the right, but not an obligation, to inform the right-holder or his representative, wherever they have reasons to suspect an imminent importation of products the release of which into free circulation would contravene intellectual property rights of that right-holder.
- (b) The exercise of this right of information shall not imply any liability for the customs authorities.
- (c) This right of information is without prejudice to the provisions of Articles 312 to 317, 319 and 320.
- (2)(a) PARTIES may require customs authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired a sufficient degree of certainty that an intellectual property right is being infringed.
- (b) In this case, the customs authorities may at any time seek from the right-holder any information that may assist them in exercising these powers.
- (c) The importer and the right-holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the customs authorities, the requirements provided in Article 315 shall also apply.
- (d) With regard to the importer's rights to claim compensation, the provisions of Article 316 shall apply.

**Article 319**  
**Remedies**

- (1) Without prejudice to the other rights of action open to the right-holder, and subject to the right of the defendant to lodge an appeal to the judicial authorities, the competent authorities shall provide for the forfeiture, destruction or disposal of the infringing goods in accordance with the principles set in Article 307 above.
- (2) Other than in exceptional circumstances, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure.

**Article 320**  
**De Minimis Imports**

PARTIES may exclude the application of the above provisions to small quantities of goods of a non-commercial nature in travellers' personal luggage or sent in small consignments.

**Sub-section E: Criminal Procedures**

**Article 321**

- (1) PARTIES shall provide for criminal procedures and penalties to be applied in cases of willful infringements, on a commercial scale, of intellectual property rights covered by this PART.
- (2) Such remedies shall include imprisonment and monetary fines sufficient to provide an effective deterrent and in appropriate cases the seizure, forfeiture and destruction of the infringing goods and of devices used in the commission of the offence.

**SECTION FOUR**

**TRANSITIONAL ARRANGEMENTS FOR DEVELOPING COUNTRIES AND  
TECHNICAL CO-OPERATION**

**Article 400**  
**Developing Countries**

- (1) With a view to achieve full and successful adjustment and compliance with levels of protection and enforcement set forth in Section Two and Section Three of this PART, and provided that existing levels of protection and enforcement are not reduced, developing PARTIES may not apply such standards for a period of a total of [X] years beginning with the date of acceptance or accession of such PARTY, but not later than the year [Z].

- (2) Delay in implementation of obligations under Section Two and Section Three may be extended upon duly motivated request for a further period not exceeding [X] years by the Committee established under Article 600. Such decision shall take into account the level of technological and commercial development of the requesting PARTY.
- (3) Non-application of levels of protection set forth in Section Two and Section Three after final expiration of the transitional period agreed shall entitle other PARTIES, without prejudice to other rights under the General Agreement, to suspend the application of Articles 101 and 102 and grant protection of intellectual property rights on the basis of reciprocity.

**Article 401**  
**Least Developed Countries**

- (1) With a view to achieve full and successful adjustment and compliance with levels of protection and enforcement set forth in Section Two and Section Three of this PART, least developed PARTIES are not expected to apply such standards for a period of a total of [X+Y] years.
- (2) Delay of implementation of obligations may be further extended upon request by the Committee established under Article 600.

**Article 402**  
**Technical Co-operation**

PARTIES to this Agreement shall provide for technical co-operation to developing and least developed PARTIES upon coordination by the Committee established under Article 600 in collaboration with the World Intellectual Property Organization, and other international organizations, as appropriate. Upon request, such co-operation includes support and advice as to training of personnel, the introduction, amendment and implementation of national laws, regulations and practices, and assistance by the Committee for settlement of disputes.

**SECTION FIVE**

**TRANSPARENCY, DISPUTE PREVENTION AND DISPUTE SETTLEMENT**

**Article 500**  
**Transparency**

- (1) PARTIES shall promptly publish all international agreements and decisions of international bodies, national laws, regulations, judicial decisions and administrative rulings of a precedential value, related to intellectual property laws.

- (2) The Committee established under Article 600 shall ensure, in co-operation with the World Intellectual Property Organization and other international organizations, as appropriate, access to all international agreements, decisions of international bodies, national laws, regulations, judicial decisions and administrative rulings of a precedential value, related to the intellectual property laws of the PARTIES.
- (3) PARTIES shall promptly notify all international agreements, national laws and regulations, judicial decisions and administrative rulings of a precedential value relying upon an exception of the principles of National Treatment and Most-Favoured Nation Treatment through the Committee to the other PARTIES.
- (4) PARTIES shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from other PARTIES and persons and legal entities thereof regarding the PARTY's laws, regulations, and requirements for protection and enforcement of intellectual property rights.