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Special Distribution

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

COMPILATION OF WRITTEN SUBMISSIONS AND ORAL STATEMENTS

Prepared by the Secretariat

Addendum

The purpose of this addendum is to add to the compilation the specific additional points made at the Group's meeting of 23 September 1987. These points are introduced with reference to the relevant paragraph of the compilation, except in regard to the question of international dispute settlement for which an additional main section is established.

I. ISSUES IN CONNECTION WITH THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

(a) Enforcement at the border

(i) Discrimination against imported products

Re. Paragraph 8

In regard to the last sentence of this paragraph, it was said that the removal of the limitation to domestic industries of access to procedures and remedies directed specifically at the importation of goods infringing intellectual property rights would not resolve the main problems experienced with these procedures and remedies, and might even exacerbate them.

Re. Paragraph 10

Some participants shared the concern that customs procedures might be misused so as to discriminate against imported goods. Given the scale of the problem of trade in infringing goods, new or strengthened customs procedures were likely to proliferate. There was thus urgent need for multilateral disciplines in GATT to forestall the possibility of their constituting impediments to legitimate trade.

Re. Paragraph 12

It was suggested that GATT Article X as it concerns the publication of trade regulations is relevant to the issue of the transparency of border enforcement mechanisms.

The observation was made that measures to enforce intellectual property law vis-à-vis the importation of goods are taken in a legal and procedural context different from that of pure border measures. Such procedures and measures were more akin to certain domestic procedures and measures, from which they differ largely because of discriminatory aspects against foreign products.

(ii) Inadequate procedures and remedies at the border

Re. Paragraph 18

It was suggested that GATT Article X as it concerns the publication of trade regulations is relevant to the issue of the transparency of border enforcement mechanisms.

II. ISSUES IN CONNECTION WITH THE AVAILABILITY AND SCOPE OF INTELLECTUAL PROPERTY RIGHTS

(a) Inadequacies in the availability and scope of intellectual property rights

Re. Paragraph 37, fifth indent

A further issue raised in connection with compulsory licences is that the procedures for their issuance often lack transparency.

III. ISSUES IN CONNECTION WITH THE USE OF INTELLECTUAL PROPERTY RIGHTS

(a) Governmental restrictions on the terms of licensing agreements

Re. Paragraph 65

The view was expressed that governmental restrictions on the terms of licensing agreements do not relate to trade in goods and, since they therefore do not fall under Part I of the Ministerial Declaration, they were not matters that the Group should deal with.

(a) Abusive use of intellectual property rights

Re. Paragraph 70

In the first line, "Article IX" should read "Article XI".

IV. ISSUES IN CONNECTION WITH THE ENFORCEMENT OF INTERNATIONAL OBLIGATIONS ON INTELLECTUAL PROPERTY RIGHTS

Inadequate dispute settlement mechanisms

Issues

The question of the adequacy of the means available in national law for the effective enforcement of intellectual property rights was already discussed in Section I of the compilation. This additional section reflects points made about the adequacy of the means available under international law for the enforcement of obligations concerning intellectual property that governments have entered into under international agreements.

It has been said that under existing international agreements concerning the protection of intellectual property there are considerable divergences in the way that obligations are incorporated into national legislation by member states, and that there is a lack of means of effective recourse available to a member state believing that its interests are being damaged by the failure of another member state to meet its obligations.

Trade effects

It has been suggested that certain of the practices referred to in Sections I and II of the compilation which are considered to be giving rise to trade problems are in themselves inconsistent with existing international obligations. It has further been said that the effectiveness of the results of the work of the Group in diminishing trade impediments and distortions arising in connection with intellectual property rights will substantially depend on the provisions for notification, consultation and dispute settlement. The view has also been expressed that to link rights accruing under the General Agreement with the fulfilment of obligations in regard to the protection of intellectual property would go beyond the proper scope of the Group's work and would not be in the interests of some countries.

Relevance of GATT provisions

The point has been made that the consultation and dispute settlement procedures under the General Agreement (Articles XXII and XXIII) are relevant to situations where existing GATT obligations are not being fully carried out or where a benefit accruing under the General Agreement is being nullified or impaired for some other reason. The intellectual property rights questions to which existing GATT rules are relevant are discussed in the other sections of the compilation. Reference has been made in the Group to a number of disputes concerning Article XX(d) and Article IX:6. As noted in these sections, it has been widely observed that the General Agreement does not contain provisions specifically addressing many of the intellectual property rights issues raised.