

FEW PROVISIONS ON IP IN THE GATT

- Some to prevent trade rules standing in way of IP enforcement and procedures (Arts. XX(d); XII:3(c)(iii); XVIII:10)
- Some to ensure IP rules not unnecessarily discriminate against imported goods or constitute a disguised restriction on trade (Art. III:4 and conditions to Art. XX(d))
- Cooperation on the protection of distinctive regional or geographical names (Article IX:6)

Significant DS cases – Section 337(2); Manufacturing Clause

WORK ON TRADE IN COUNTERFEIT GOODS 1978-85

- 1978. US Tokyo Round proposal on trade in counterfeit goods
- 1979. Not included in Tokyo Round results
- 1982. Ministerial work programme – Council to determine the appropriateness of joint action in GATT framework
- 1984. Group of Experts
- 1985. Report of Group – case for enhanced international action but no agreement on GATT framework

EVOLUTION OF THE URUGUAY ROUND MANDATE

- Development of US proposals
 - 1984. Revision of Section 301
 - April 1986. Presidential statement
- 1985/86. Preparatory process for UR
- Spring 1986. OECD Ministerial
- September 1986. Punta Decision

URUGUAY ROUND TRIPS MANDATE (in Trade in Goods part)

In order to reduce the distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, **the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines.**

Negotiations shall aim to develop a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods, taking into account work already undertaken in the GATT.

These negotiations shall be without prejudice to other complementary initiatives that may be taken in the World Intellectual Property Organization and elsewhere to deal with these matters.

WORK OF URUGUAY ROUND NEGOTIATING GROUP 1986-1988

- 1986-88. Submission of issues and concerns. Debate on interpretation of mandate
- Dec. 1988 Montreal “mid-term” Ministerial. No agreement on TRIPS, agriculture, safeguards and textiles
- April 1989. Mid-term review decision

TRIPS MID-TERM REVIEW DECISION

3. Ministers agree that the outcome of the negotiations is not prejudged and that these negotiations are **without prejudice to the views of participants concerning the institutional aspects of the international implementation of the results** of the negotiations in this area, which is to be decided pursuant to the final paragraph of the Punta del Este Declaration.
4. Ministers agree that negotiations on this subject shall continue in the Uruguay Round and shall encompass the following issues:
 - (a) the applicability of the **basic principles** of the GATT and of relevant international intellectual property agreements or conventions;
 - (b) the provision of **adequate standards** and principles concerning the availability, scope and use of trade-related intellectual property rights;
 - (c) the provision of **effective and appropriate means for the enforcement** of trade-related intellectual property rights, taking into account differences in national legal systems;
 - (d) the provision of effective and expeditious procedures for the **multilateral prevention and settlement of disputes** between governments, including the applicability of GATT procedures;
 - (e) **transitional arrangements** aiming at the fullest participation in the results of the negotiations.
5. Ministers agree 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.
6. In respect of 4(d) above, Ministers emphasise the importance of reducing tensions in this area by reaching **strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures**.

TRIPS NEGOTIATIONS 1989 - 1990

- 1989. Study of proposals on basis of synoptic tables setting out existing and proposed rules
- Spring 1990. Draft legal texts. US, EC, Japan, Switzerland and 14 developing countries. Also from Australia on GIs.
- Composite draft text June 1990
- June-December 1990. Intensive negotiations. Six Chairman's drafts July-November 1990

BRUSSELS MINISTERIAL 1990

- TRIPS text sent to Brussels (MTN.TNC/W/35/Rev.1). Common language for large parts, but:
 - Two approaches to GATTability
 - Dispute settlement
 - About 25 other issues outstanding, mainly:
 - patents/undisclosed information
 - copyright
 - GIs
 - transition periods
- Work in Brussels
- Breakdown - agriculture

TRIPS NEGOTIATIONS AUTUMN 1991

- Patent complex – scope and timing of rights
 - exceptions from patentability
 - compulsory licensing/government use
 - exhaustion
 - term
 - protection of test data
 - transition periods
 - protection of existing subject-matter (Art. 70)

- GATTability question and MTO/WTO

- Draft Final Act, 20 December 1991 (MTN.TNC/W/FA)

TRIPS NEGOTIATIONS AUTUMN 1993

- Proposals for changes to Draft Final Act
 - compulsory licensing of semiconductor technology (Art.31(c))
- Non-violation dispute settlement cases (Art.64)