TRADE AND INTELLECTUAL PROPERTY RIGHTS

The following communication, dated 7 July 1986, has been received from the delegation of the United States with the request that it be circulated to all members of the Preparatory Committee.
TRADE AND INTELLECTUAL PROPERTY RIGHTS

Intellectual property protection is critically important to international trade and the world economy. Infringement of intellectual property rights (e.g., patents and copyrights) can severely distort and impede international trade by depriving innovators, creators and inventors of rewards and opportunities generated by innovations that enhance production and export capacity and demand for traded goods and services.

Adequate and effective protection fosters creativity and know-how, encouraging investment research and development and new facilities for international trade purposes. Innovation stimulates economic growth, employment and demand for traded goods and services. Technological progress is an increasingly important aspect of international competitiveness. In all countries, improved intellectual property protection can foster domestic technologies and attract foreign know-how and investment.

Trade distortions and impediments arise when a country's sales of products of innovation and creation are lost to foreign infringement activities which result in sales of duplicated or similar products in the country's home market, sales in the market where the infringing activities take place, or sales in third markets. Trade distortions occur disproportionately in technology intensive products (e.g., chemicals, transport equipment parts) and in products of artistic creation or expression (e.g., books, motion pictures).

Infringement activities can distort international trade to the detriment of all Contracting Parties' exports and foreign remittances. Certain countries fail to enforce intellectual property laws adequately. Further, some countries have adopted practices that have the effect of sanctioning abuse of intellectual property rights.

The provisions of some international intellectual property conventions are too weak to prevent trade distortions and impediments. The international intellectual property conventions were established before the development of the extensive international network of trade that exists today in products dependent on patents, copyrights and trademarks. For example, the dispute settlement and enforcement mechanisms of existing international intellectual property conventions are
ineffective or are non-existent. Further, the product coverage and terms of patents may be too restricted and subject to unreasonable working requirements and licensing policies, while they are still consistent with these conventions.

The GATT can and should play an important role in reducing and eliminating trade-distortive deficiencies in intellectual property protection. This can best be accomplished if the GATT's work complements rules and efforts of existing international intellectual property conventions and organizations. The Standards Code, negotiated in the last round of multilateral trade negotiations, provides one model for a GATT approach to this issue.

The Contracting Parties should conclude in the new GATT round of multilateral trade negotiations an enforceable multilateral trade agreement against trade-distorting practices arising from inadequate national protection of intellectual property. The Contracting Parties should examine incorporating into such an agreement the guaranteed or minimum protections contained in existing international intellectual property conventions where they are adequate. Where the guaranteed or minimum protections are inadequate, the GATT should provide an impetus for developing greater protection. Such an agreement should contain dispute settlement procedures, adequate enforcement, transparency of governmental actions and regulations and a commitment not to use intellectual property laws to distort international trade. The agreement should draw on the trade expertise of the General Agreement on Tariffs and Trade and the intellectual property expertise of the World Intellectual Property Organization.

The Contracting Parties should also work to resolve the problems of counterfeiting through the early adoption of an anti-counterfeiting code and to strengthen existing standards through the World Intellectual Property Organization.

The Contracting Parties, recognizing the competence of the GATT to deal effectively with trade distortions due to deficiencies in intellectual property protection, should seek to negotiate an agreement to reduce distortions. Existing GATT articles, such as Articles XX(d), XII, and XVIII already make reference to intellectual property protection. These articles, along with others, should be examined to determine how the GATT can best address trade distortions caused by deficiencies in intellectual property protection.
In summary, negotiations should aim to reduce distortions and impediments to international trade arising from a lack of adequate and effective protection of intellectual property rights and to provide a stronger framework for the expansion of world trade in innovative and creative works. Such negotiations should take into account the relevant existing international agreements and address the aspects of those agreements that need strengthening.

There should be close cooperation between the GATT and the World Intellectual Property Organization in their complementary efforts to find solutions to these pressing trade and intellectual property problems. Further, the WIPO should be encouraged to enhance the international standards of protection in order to help provide an improved framework for international trade.