

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

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Communication from Ecuador

The following communication dated 9 June 1994 has been received from the Permanent Mission of Ecuador.

The Permanent Mission of Ecuador has the pleasure to transmit herewith the information on TRIMS and TRIPS requested by various contracting parties, for circulation in the GATT working languages at the next meeting of the Working Party on the Accession of Ecuador.

INFORMATION RELATING TO THE AGREEMENT ON
TRADE-RELATED INVESTMENT MEASURES (TRIMS)

The following information is provided as a supplement to that furnished by Ecuador in the document circulated by the Secretariat in connection with Ecuador's accession to GATT.

The country has made great efforts to liberalize, on its own initiative, its economy and external trade, modernize its production structure and reconvert its industry, within a process of macroeconomic adjustment aimed at strengthening fiscal and exchange stability.

In September 1992 it launched a macroeconomic programme whose primary objectives are to curb inflation, reduce the fiscal deficit, balance financial and monetary variables, reduce interest rates and achieve a definite exchange stability, while also improving conditions for the development of foreign investment.

Foreign investment in Ecuador is subject to specific treatment by the national authorities, and is also set within the legal framework of the Cartagena Agreement on Andean subregional integration.

Foreign investment legislation has been liberalized to provide better guarantees for foreign capital. Under a policy of economic modernization and openness to foreign capital, substantial legal and economic reforms have been carried out for some years now with a view to providing better facilities so as to make foreign investment in Ecuador more attractive and profitable. The latest reforms in this field provide a wide range of investment possibilities for foreign investors, who are guaranteed the same conditions as national investors, while a number of restrictions and conditions which used to limit the inflow of foreign capital have been eliminated.

With regard to the legal structure for foreign investment, under the new principles and guidelines established by the Commission of the Cartagena Agreement in order to deepen Andean integration, important mechanisms have been included in the integration process.

Thus, Ecuador adopted Decision 291 on the common regime for the treatment of foreign capital and on trade marks, patents, licences and royalties; implemented Decree No. 415 establishing the regulations for this Decision; and at the end of 1993 adopted the Law on the Modernization of the State in order to encourage the flow of direct foreign investment, since it involves deregulation, demonetization and simplification of all administrative procedures that hindered the participation of national or foreign investors in sectors reserved for the State.

Ecuador has reviewed the Agreement on Trade-Related Investment Measures and is willing to comply with the commitments it lays down as soon as they become part of the General Agreement.

With respect to national treatment and quantitative restrictions, Ecuador will undertake not to maintain measures inconsistent with the provisions of Articles III and XI of GATT 1994.

With regard to exceptions to the Agreement on Trade-Related Investment Measures, Ecuador will ensure that such exceptions are covered by the provisions of GATT 1994.

When it becomes a member of the WTO, Ecuador will notify within the prescribed time-limits all the TRIM it applies that are not in conformity with the provisions of the TRIMS Agreement.

The rules in Ecuador are transparent and publicly known, as they are published in the Official Journals of the Government of Ecuador (Registro Oficial) and of the Cartagena Agreement (Gaceta Oficial), as provided for in the General Agreement, thereby facilitating compliance with the provisions of Article 6 of the TRIMS Agreement.

INFORMATION RELATING TO THE AGREEMENT ON TRADE-RELATED
INTELLECTUAL PROPERTY RIGHTS (TRIPS)

General points

The following information is provided as a supplement to that furnished by Ecuador in the document circulated by the Secretariat in connection with its GATT accession process.

Following the conclusion of the Uruguay Round, which incorporates the TRIPS Agreement, the Government of Ecuador confirms that it will comply with the provisions and basic principles set out in that Agreement when it becomes a member of the World Trade Organization, after the latter has entered into force and Ecuador's accession to GATT has been completed.

Ecuadorian law on intellectual property rights consists primarily of the following texts:

Copyright

The Copyright Law, enacted by Supreme Decree No. 610 and published in the Official Journal, No. 0149 of 13 August 1976, and the regulations thereto, issued through Decision (Acuerdo) No. 10824 and promulgated in Official Journal No. 4945 of 13 December 1977. Supreme Decree No. 2821 published in Official Journal No. 0735 of 20 December 1978 amended this Law, including in it protection against piracy in the reproduction, distribution or sale of illegal copies of phonograms.

On 17 December 1993, Ecuador and the Andean Group member countries adopted Decision 351 establishing a common regime on copyright and neighbouring rights. This regime provides adequate and effective protection of authors of literary, artistic and scientific works as well as of performers, producers of phonograms and broadcasting organizations (radio and television), and also obliges Andean Group member countries to grant protection no less favourable than that granted to their nationals.

Decision 351 allows retroactive application of these provisions by establishing in Article 58 that "computer programmes, as works expressed in writing, and data bases, as compilations, shall enjoy copyright protection even where they have been created prior to the entry into force of this Decision".

With regard to the rights that are recognized and protected, the Andean Group Decision recognizes authorship of the work, integrity and other rights of a moral nature that may be exercised by the author, his heirs or the State in their absence. It also recognizes the ownership rights consisting in the exclusive right of the author to authorize or prohibit the reproduction, marketing, translation, arrangement or transformation of his works. The duration of the rights recognized in Decision 351 shall be no less than the life of the author and 50 years after his death. When ownership of the rights is vested in a legal person, the period shall be no less than 50 years from the date of making of the work in the form of disclosure or publication of the work.

The Decision provides in measures for cases of infringement of the recognized rights and the national competent authority is empowered to order immediate cessation of the unlawful activity; seizure, distraint, or preventive confiscation of unlawfully produced copies or of the devices or means used to commit the offence.

The national competent authority may also order payment to the holder of the infringed right of adequate compensation for the injury suffered.

The protection granted by this common regime covers literary, artistic and scientific works that may be reproduced or divulged by any means known or that becomes known. Such works include works expressed in writing (books, pamphlets, etc); lectures, addresses, speeches; dramatic, dramatico-musical and choreographic works and entertainments in dumb show; fine arts works, drawings, paintings, sculptures, engravings, etc; illustrations, maps, sketches; computer programmes (software); anthologies or compilations of various works and data bases which by reason of the selection or arrangement of their contents constitute personal creations.

Neighbouring rights

Decision 351 also grants protection of neighbouring rights, which are the rights of persons who take part not in the creation of the works but rather in their dissemination. The protection covers performers, producers of phonograms and broadcasting organizations.

Industrial property

The new common regime for industrial property adopted by the Commission of the Cartagena Agreement by Decision 344 came into force in January 1994. This new regime, which is applied in Ecuador, is compatible with the provisions of international conventions on this subject, and in particular with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Thus, it contains rules not only governing the grant of trade marks and patents but also protecting for the first time industrial secrets and appellations of origin.

Patents

With regard to patents, Decision 344 further broadens the scope of patentability (compared with the earlier legislation in force, Decision 313 and Decision 85), and establishes a mechanism to strengthen rights of patentees. The Decision covers not only patent protection for medicaments (other than those included in the WHO list of essential medicaments) but also inventions that were previously not patentable in the areas of biotechnology and nuclear and fissionable materials.

Decision 344 states that the patentee may institute legal proceedings for damages against anyone who without his consent has exploited the patented process or product. In cases of unlawful appropriation or theft of a patented process, the burden of proof lies no longer the patentee but rather with the defendant, who must prove that he is not using the process.

With regard to the term of patent protection, the new decision brings the Andean regime into line with the provisions of the Uruguay Round Agreement on Trade-Related Aspects of Intellectual Property Rights, extending the term to 20 years counted from the filing date.

Utility models and industrial designs

The legislation in force as proposed by the common regime for industrial property established by Decision 344 provides protection for industrial designs and utility models. A patent on a utility model is granted for 10 years to any new form, configuration or arrangement of elements of any device, instrument or mechanism or other object or any part thereof enabling it to function better or differently. Utility model patents do not cover processes or matters that cannot be protected by an inventor's patent. Sculptures, architectural works, paintings, engravings, lithographic works or any other object of a purely aesthetic nature are not considered utility models.

To be registered, industrial designs must be new. The right conferred by registration of an industrial design is that of preventing third parties from exploiting it.

Trade marks

Decision 344 provides in Article 81 that "signs that are perceptible, sufficiently distinctive and capable of graphical representation may be registered as trademarks."

The Decision defines a trademark as any perceptible sign capable of distinguishing in the market the products or services produced or marketed by one person from those produced or marketed by another person. Among the requirements for registration of a trademark is the exclusion of those that cannot be registered for intrinsic reasons and those that harm the rights of others. A distinction is also made for the treatment of "well-known marks", which are granted due protection. The criteria to be taken into account for them to be considered as such are spelled out.

With regard to rights conferred, registration of a trademark confers upon the holder the right to institute legal proceedings against any third party who, without his consent, commits any of the following acts: (a) uses or applies the trademark or a sign resembling it in a manner liable to mislead the public; (b) sells, offers, stores or offers services with the trademark; (c) imports or exports products with the trademark; (d) uses in trade a sign identical or similar to the registered trademark for products or services other than those for which the trademark has been registered.

Decision 344 states that registration of a trademark shall be for a term of 10 years from the date of registration and may be renewed automatically for successive periods of 10 years without having to prove use of the trademark.

The legislation also protects commercial slogans and collective marks which may be registered in accordance with the provisions of the chapter on trade marks.

Industrial secrets

In line with the Agreement on Trade-Related Aspects of Intellectual Property Rights, the industrial property regime in force in Ecuador through the adoption of Decision 344 includes a chapter on industrial secrets, protecting a person in control of an industrial secret against disclosure, acquisition or use of the secret without his consent.

Information in the public domain, or which is obvious to a specialist in the field concerned, or which must be disclosed for legal or judicial reasons, is not considered an industrial secret under the current provisions.

A person keeping an industrial secret may transmit it to or authorize its use by a third party, who has the obligation not to disclose it by any means unless otherwise agreed with the person who transmitted it to him or authorized him to use it.

The Ecuadorian Legislation and the Agreement on Trade-Related Aspects of Intellectual Property Rights

In view of the foregoing, the Government of Ecuador considers that it will have no difficulties, as far as trade-related aspects of intellectual property rights are concerned, in entering into the commitments in this field deriving from its membership of the World Trade Organization. The legislation in force in Ecuador, which incorporates the Andean Pact common regime, covers the commitments the country will enter into. In some cases, as stipulated in paragraph 1 of the TRIPS Agreement, the national legislation confers broader protection than that required under the Agreement of the Final Act.