

WORLD TRADE ORGANIZATION

WT/GC/W/282
6 August 1999

(99-3343)

General Council

Original: Spanish

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Proposals Regarding the TRIPS Agreement (Paragraph 9(a)(ii) of the Geneva Ministerial Declaration)

Communication from Venezuela

The following communication, dated 26 July 1999, has been received from the Permanent Mission of Venezuela.

I. BUILT-IN AGENDA

The TRIPS Agreement establishes minimum standards on the trade-related aspects of intellectual property. The implementation of the Agreement involves substantial legislative changes which the developing countries must have introduced into their national IP regimes by 1 January 2000. There are also several aspects of the Uruguay Round negotiations which have still not been completely implemented, for example, the multilateral registration of wines and spirits under Article 23.4 and the application of so-called non-violation proceedings under Article XXIII.1(b) and (c) of GATT 1994 to the TRIPS Agreement. With respect to these two points Venezuela offers the following comments:

1. A renewed effort should be made in the Council for TRIPS with a view to establishing, as quickly as possible, a simple, binding and predictable multilateral system of registration of geographical indications for wines and spirits which enables supporting funds to be raised for expanded technical cooperation with the developing countries.
2. A recommendation should be made to the 1999 Ministerial Conference to the effect that the five-year period of non-application of subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 (non-violation complaints), mentioned in Articles 64.2 and 64.3 of the TRIPS Agreement, should be extended for at least another five years. This request for an extension is based on the fact that the Council for TRIPS has not yet been able to define either the scope or the modalities for non-violation complaints, as required by Article 64.3. Moreover, the history of the GATT and the WTO has produced very few precedents relating to proceedings of this type which would enable them to be conducted safely in terms of law. At the same time, we consider that there is a total lack of experience concerning how inter-State non-violation complaints could be applied to intellectual property rights, which are essentially private in nature.

II. REVIEW OF THE TRIPS AGREEMENT IN THE YEAR 2000

The TRIPS Agreement itself is delicately poised between rights and obligations in various areas of intellectual property. However, there are many aspects and areas of interest to the developing and least-developed countries which are left unregulated by the final text of the Agreement. In this connection, it is important to begin a full review and possible renegotiation of the TRIPS Agreement from the development standpoint, taking into account the scope and interpretation which should be given to special and differential treatment and the identification of the policy areas necessary for the achievement of this objective. Venezuela considers that, among other things, a review should involve the following:

1. Include the principles of the United Nations Convention on Biodiversity in the TRIPS Agreement, together with the Indian proposal (document WT/GC/W/225) to prohibit the granting of patents to those inventions made with foreign genetic material that are inconsistent with Article 15 of the CBD relating to the recognition of sovereignty and access to genetic resources.
 2. Establish on a mandatory basis within the TRIPS Agreement a system for the protection of intellectual property, with an ethical and economic content, applicable to the traditional knowledge of local and indigenous communities, together with recognition of the need to define the rights of collective holders.
 3. Extend the list of exceptions to patentability in Article 27.3(b) of the TRIPS Agreement to include the list of essential drugs of the World Health Organization, in order to develop the principles established in Article 8 of the Agreement.
 4. Extend the incentives mentioned in Article 66.2 of the TRIPS Agreement in favour of developing country Members. Review the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement with the aim of making them effective and operational.
 5. Establish mechanisms of support for developing and least-developed countries through electronic commerce which involve strengthening development strategies and modifying the productive structures, as well as facilitating open technology transfer on a reasonable commercial basis.
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