

WORLD TRADE ORGANIZATION

WT/GC/W/362
12 October 1999

(99-4318)

General Council

Original: Spanish

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Proposal on Protection of the Intellectual Property Rights Relating to the Traditional Knowledge of Local and Indigenous Communities

Communication from Bolivia, Colombia, Ecuador, Nicaragua, and Peru

The following communication, dated 4 October 1999, has been received from the Permanent Mission of Peru.

Background

1. Both the ongoing evolution of intellectual property and the introduction of this subject into the Uruguay Round of multilateral trade negotiations in 1996 have been based on a view of economic and technological development that recognizes intellectual property as a necessary ingredient and essential requisite for achieving the developmental goals of global trade. The WTO Members, including the signatories of this communication, confirmed this recognition by adopting and undertaking to comply with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

2. The system of intellectual property protection as recognized today is the result of a continuous evolutionary process driven by the desire to achieve accelerated commercial and technological development. Over time, the scope of intellectual property has been expanded by recognizing new subject matter of protection. This broadening has taken place by the inclusion of special (*sui generis*) systems of protection or through the widening of the traditional categories of protection so as to cover new subjects. In recent decades, the laws of WTO Members as well as international instruments have recognized as new subject matter of protection, for instance, plant varieties (in 1950 and 1960), biological material, plants and animals (in 1970 and 1980), layout designs (topographies) of integrated circuits (1980), computer software (in 1980 and 1990) and databases and compilations of data (in 1980 and 1990).

3. Seen from a historical perspective, the evolution and widening of intellectual property through the recognition of new rights and subjects of protection was prompted by the legitimate needs of industries and producers whose economic interests depended on recognition of their creations and innovations as protectable subject matter. The needs and expectations of these sectors were in due course accepted by the governments of the Member States concerned and eventually recognized and formalized at the international level.

4. Nevertheless, the entire modern evolution of intellectual property has been framed by principles and systems which have tended to leave aside a large sector of human creativity, namely the traditional knowledge possessed by local and indigenous communities. In many cases, this traditional knowledge is linked to the use and application of genetic, biological and natural resources,

or the management and conservation of such resources and the environment, in ways that have economic, commercial as well as cultural value. More broadly, traditional knowledge also comprises artistic and cultural expressions which have a fundamental value for their holders, as they are the cement binding their individual and collective identity, as well as the guarantee of their continued survival.

5. Traditional knowledge consists largely of innovations, creations and cultural expressions generated or preserved by its present possessors, who may be defined and identified as individuals or whole communities, natural or legal persons, who are holders of rights. The economic, commercial and cultural value of this traditional knowledge for its possessors warrants and justifies a legitimate interest that this knowledge be recognized as subject matter of intellectual property. This expectation on the part of those concerned that their traditional knowledge should be given legal recognition has found expression in an increasing number of national, regional and international forums, and is quite as legitimate as the expectations which in the past justified the recognition of the new subjects of intellectual property that were mentioned above by way of example.

6. On the threshold of a new round of international trade negotiations, these needs and expectations cannot be ignored or disregarded. They deserve full consideration in the framework of the future development of intellectual property at the global level. The future development of intellectual property must be based on mutual recognition of the creations and intangible goods generated by the various sectors concerned in the different WTO Members. For many WTO Members, the cultural and economic value of traditional knowledge is just as important as that of modern technological innovations for other Members.

7. Traditional knowledge has been under study in some WTO Members for a number of years with a view to establishing *sui generis* legislation at national and/or regional level. Nevertheless, international recognition of traditional knowledge as protectable subject matter would afford its holders the legal possibility of obtaining enforcement of their rights outside their own countries, thus enabling them to share in the economic benefits derived from that knowledge. Such recognition would also lead to a reduction in the misappropriation and unauthorized exploitation of such knowledge, and diminish the risk of erosion or destruction of these intangible goods and of the cultures that have generated them.

8. An international legal framework should enable the legitimate holders of traditional knowledge to exercise effective control over access, use, reproduction, imitation, exploitation and transmission and other commercial activities relating to traditional knowledge or expressions and manifestations thereof, and ensure that these rights are accompanied by effective means of enforcement at least equal to those already provided for in the TRIPS Agreement.

9. International recognition of traditional knowledge as protectable subject matter would also provide additional means of dealing at international level with, among other things, aspects related to the protection of innovations under Article 27.3(b), of the TRIPS Agreement and the obligation to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities provided for in Article 8(j) of the Convention on Biological Diversity.

Proposal

10. For the foregoing reasons, the above signatory Members propose that the Seattle Ministerial Conference establish, within the framework of this Round, a mandate with the following purposes:

- (a) To carry out studies, in collaboration with other relevant international organizations, in order to make recommendations on the most appropriate means of recognizing and protecting traditional knowledge as the subject matter of intellectual property rights.

- (b) On the basis of the above-mentioned recommendations, initiate negotiations with a view to establishing a multilateral legal framework that will grant effective protection to the expressions and manifestations of traditional knowledge.
- (c) To complete the legal framework envisaged in paragraph (b) above in time for it to be included as part of the results of this round of trade negotiations.
