
General Council

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PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

Proposals Regarding the TRIPS Agreement in terms of Paragraph 9(a)(i)
of the Geneva Ministerial Declaration

Communication from India

The following communication, dated 2 July 1999, has been received from the Permanent Mission of India.

Issues

1. For developing countries, TRIPS was an area of new commitments and new obligations. It is true that obligations for developing countries under this Agreement are onerous. In most cases they have involved drastic change of legislations. Problems have arisen in implementing commitments undertaken under this Agreement. The proposals below may be seen in this light. Some are aimed at making the TRIPS Agreement more compatible with Multilateral Environmental Agreements such as the Convention on Biological Diversity. Other proposals are to make the TRIPS Agreement more balanced between the task of promoting intellectual property rights and promoting developmental objectives.

2. It may be noted that the TRIPS Agreement is not about harmonization of standards but about minimum standards of intellectual property rights. Similarly, TRIPS, unlike GATT and GATS is not about regulating competitive relationships. At any rate, comparisons between GATT and TRIPS especially in the non-violation context, are not correct.

Proposals

3. In the light of the provisions contained in Article 23 and 24 of the TRIPS Agreement, additional protection for geographical indications must be extended for products other than wines and spirits.

4. It is widely agreed that the TRIPS Agreement is incompatible with the Convention on Bio-Diversity. There is first need therefore to incorporate a provision that patents inconsistent with Article 15 of the CBD must not be granted.

5. Article 64, paragraph 2 must be modified so as to make it clear that subparagraphs (b) and (c) of Article XXIII of GATT 1994 shall not apply to the TRIPS Agreement.

6. Articles 7 and 8 of the TRIPS Agreement to be operationalized by providing for transfer of technology on fair and mutually advantageous terms.
