
General Council

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PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

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

Communication from Cuba, Honduras, Paraguay and Venezuela

The following communication, dated 20 September 1999, has been received from the Permanent Mission of Cuba.

Introduction

1. In the process of applying the TRIPS Agreement the above signatory countries have observed that the traditional knowledge of local and indigenous communities should be protected through one of the existing intellectual property systems or through a new ad hoc system so as to put an end to the defencelessness of our communities with regard to the enjoyment and protection of their knowledge.
2. Although some international conventions have sought in some way to redefine the rights of these peoples by indirectly recognizing their intellectual property rights, we cannot ignore the fact that the debates concerning these disputes have intensified since the entry into force of the TRIPS Agreement. Various activities have also been undertaken on this complex issue at WIPO, such as the round table on indigenous intellectual property held on 23 and 24 July 1998.
3. At present, intellectual property is defined as a form of property, generally private, which is a temporary exception to free competition to allow exploitation of specific creations of human ingenuity.
4. This exception does not offer protection for the traditional knowledge of local and indigenous communities, which have a wealth of medicinal practices, art, music, literature, handicrafts and so forth, simply because this knowledge represents collective rights of a community and does not have a known author or creator.
5. We consider it fair to recognize the specific contribution of indigenous and tribal peoples and local communities to the cultural diversity and social and ecological harmony of mankind.
6. We therefore propose that the aspirations of these peoples to participate in global economic development should be recognized, without discrimination and under conditions of trade permitting access of their products and knowledge to other countries with due protection. We also propose that the need to facilitate exports of value-added products resulting from their ancestral knowledge be acknowledged, to allow their economic value thus to be better quantified and enable them to earn the means to promote development and welfare in their communities.
7. We consider it unjust that countries with such communities are compelled automatically to accept the accelerated pace of technological development and to give protection to emerging

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technologies without obtaining recognition or protection for the rights of the holders-custodians of this traditional knowledge.

Proposal

8. We therefore request that at the Seattle Ministerial Conference a mandate be established to:
 1. Carry out a detailed study of how to protect the moral and economic intellectual property rights relating to the traditional knowledge, medicinal practices and expressions of folklore of local and indigenous communities.

This study should be carried out under the TRIPS Council within two years and a final report should be presented to the fourth Ministerial Conference.

2. On the basis of this study and the final report, negotiations should be initiated to establish multilateral rules to accord effective moral and economic intellectual property rights to traditional knowledge, medicinal practices and expressions of folklore and take into account the social and collective nature of these rights.

The agreed multilateral rules should become provisions of the TRIPS Agreement and enter into force on 1 January 2004.
