

103^D CONGRESS
2^D SESSION

S. 2041

To encourage beneficiary developing countries to provide adequate protection of intellectual property rights, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 21 (legislative day, APRIL 11), 1994

Mr. LAUTENBERG (for himself and Mr. ROTH) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To encourage beneficiary developing countries to provide adequate protection of intellectual property rights, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rights of Intellectual
5 Property Owners Fairness Facilitation Act of 1994”.

6 **SEC. 2. FINDINGS.**

7 The Congress makes the following findings:

8 (1) United States industry loses billions of dol-
9 lars each year to countries that do not provide ade-
10 quate protection of intellectual property rights.

1 (2) According to the Department of Commerce,
2 United States companies lose approximately
3 \$50,000,000,000 annually as a result of violations of
4 intellectual property rights by foreign countries.

5 (3) It is in the interest of the United States to
6 leverage its foreign policy to achieve certain trade
7 policy objectives, such as adequate, effective, and
8 timely protection of intellectual property rights.

9 (4) Several countries that qualify under the
10 generalized system of preferences provisions have
11 been identified under section 182 of the Trade Act
12 of 1974 (19 U.S.C. 2242) as countries that do not
13 provide adequate and effective protection of patents,
14 copyrights, and trademarks or deny fair and equi-
15 table market access to United States persons that
16 rely on intellectual property rights protection.

17 (5) Several countries that receive United States
18 foreign assistance also have been identified under
19 section 182 of the Trade Act of 1974 as countries
20 that do not provide adequate and effective protection
21 of patents, copyrights, and trademarks or deny fair
22 and equitable market access to United States per-
23 sons that rely on intellectual property rights protec-
24 tion.

1 **SEC. 3. COUNTRIES INELIGIBLE FOR GSP TREATMENT.**

2 (a) IN GENERAL.—

3 (1) IMPLEMENTATION OF AGREEMENT ON
4 TRIPS.—Section 502(b) of the Trade Act of 1974
5 (19 U.S.C. 2462(b)) is amended—

6 (A) by striking “and” at the end of para-
7 graph (6),

8 (B) by striking the period at the end of
9 paragraph (7) and inserting “; and”,

10 (C) by inserting immediately after para-
11 graph (7) the following new paragraph:

12 “(8) if such country is not implementing parts
13 I, II, and III of the Agreement on TRIPS—

14 “(A) beginning on the date that is 1 year
15 (2 years in the case of a country with respect
16 to which the President has made a qualified
17 certification) after the date the Agreement en-
18 ters into force and effect, or

19 “(B) beginning on the date that is 5 years
20 after the date the Agreement enters into force
21 and effect in the case of a least-developed bene-
22 ficiary developing country.”,

23 (D) in the last sentence, by striking “(4),
24 (6), (7), and (8)” and inserting “(4), (5), (6),
25 (7), and (8)”, and

1 (E) by adding at the end the following new
2 sentence: “For purposes of paragraph (8)(A), a
3 ‘qualified certification’ means a certification by
4 the President to the Congress that is made
5 within 1 year after the date the Agreement on
6 TRIPS enters into force and effect and that
7 states that a country is making overall signifi-
8 cant progress in implementing parts I, II, and
9 III of the Agreement.”.

10 (2) CONFORMING AMENDMENT.—Section
11 502(a) of such Act (19 U.S.C. 2462(a)) is amended
12 by adding at the end the following new paragraph:

13 “(5) For purposes of this title—

14 “(A) the term ‘Agreement on TRIPS’
15 means the Agreement on Trade-Related Aspects
16 of Intellectual Property Rights entered into as
17 part of the Uruguay Round Agreements, and

18 “(B) the term ‘Uruguay Round Agree-
19 ments’ means the trade agreements resulting
20 from the Uruguay Round of multilateral trade
21 negotiations under the auspices of the General
22 Agreement on Tariffs and Trade.”.

23 (b) DESIGNATION AS ELIGIBLE GSP COUNTRY.—
24 Section 502 of such Act (19 U.S.C. 2462) is amended by
25 adding at the end the following new subsection:

1 “(f) DESIGNATION WHERE COUNTRY ADHERES TO
2 THE AGREEMENT ON TRIPS; ANNUAL REPORTS.—

3 “(1) DESIGNATION AS BENEFICIARY DEVELOP-
4 ING COUNTRY.—A country—

5 “(A) which has been denied designation as
6 a beneficiary developing country on the basis of
7 subsection (b)(8), or

8 “(B) with respect to which such designa-
9 tion has been withdrawn or suspended based on
10 subsection (b)(8),

11 may be designated as a beneficiary developing coun-
12 try under this title, if the President determines that
13 the country is fully implementing parts I, II, and III
14 of the Agreement on TRIPS and reports the deter-
15 mination to the Congress.

16 “(2) ANNUAL REPORT.—Not later than the
17 date that is 1 year after the date the Agreement on
18 TRIPS enters into force and effect, and annually
19 thereafter, the President shall determine whether
20 each country designated as a beneficiary developing
21 country under this title is fully implementing parts
22 I, II, and III of the Agreement and shall report such
23 findings to the Congress.”.

1 **SEC. 4. COORDINATION OF TRADE POLICY AND FOREIGN**
2 **POLICY.**

3 (a) OTHER EFFORTS TO IMPROVE PROTECTION OF
4 INTELLECTUAL PROPERTY RIGHTS.—The United States
5 Trade Representative shall notify the Secretary of State,
6 the Secretary of Commerce, and the Administrator of the
7 Agency for International Development on a regular basis
8 of any country which is not fully implementing parts I,
9 II, and III of the Agreement on TRIPS.

10 (b) ENCOURAGING IMPLEMENTATION OF AGREE-
11 MENT ON TRIPS.—The Secretary of State, the Secretary
12 of Commerce, and the Administrator of the Agency for
13 International Development shall cooperate with the United
14 States Trade Representative by encouraging any country
15 that receives foreign assistance and is not fully implement-
16 ing the Agreement on TRIPS to enact and enforce laws
17 that will enable the country to implement the Agreement
18 on TRIPS. To further this objective, the Secretary of
19 State shall instruct the head of each United States diplo-
20 matic mission abroad to include intellectual property
21 rights protection as a priority objective of the mission.

22 (c) OTHER ACTIONS TO ENCOURAGE PROTECTION
23 OF INTELLECTUAL PROPERTY RIGHTS.—Notwithstanding
24 any other provision of law, the President is authorized to
25 undertake the following actions, where appropriate, with
26 respect to a developing country to encourage and help the

1 country improve the protection of intellectual property
2 rights:

3 (1) Provide Overseas Private Investment Cor-
4 poration insurance for intellectual property assets.

5 (2) Require foreign assistance programs to pro-
6 vide support for the development of national intellec-
7 tual property laws and regulations and for the devel-
8 opment of the infrastructure necessary to protect in-
9 tellectual property rights.

10 (3) Establish technical cooperation committees
11 on intellectual property standards within regional or-
12 ganizations.

13 (4) Establish, as a joint effort between the
14 United States Government and the private sector, a
15 council to facilitate and provide intellectual property-
16 related technical assistance through the Agency for
17 International Development and the Department of
18 Commerce.

19 (5) Require United States representatives to
20 multilateral lending institutions to seek the estab-
21 lishment of programs within the institutions to sup-
22 port strong intellectual property rights protection in
23 recipient countries that have fully implemented parts
24 I, II, and III of the Agreement on TRIPS.

25 (d) DEFINITIONS.—For purposes of this section:

1 (1) AGREEMENT ON TRIPS.—The term “Agree-
2 ment on TRIPS” means the Agreement on Trade-
3 Related Aspects of Intellectual Property Rights
4 entered into as part of the trade agreements result-
5 ing from the Uruguay Round of multilateral trade
6 negotiations under the auspices of the General
7 Agreement on Tariffs and Trade.

8 (2) DEVELOPING COUNTRY.—The term “devel-
9 oping country” means any country which is—

10 (A) eligible to be designated a beneficiary
11 developing country pursuant to title V of the
12 Trade Act of 1974 (19 U.S.C. 2461 et seq.), or

13 (B) designated as a least-developed bene-
14 ficiary developing country pursuant to section
15 504(c)(6) of such Act (19 U.S.C. 2464(c)(6)).

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