

105TH CONGRESS
1ST SESSION

S. 1426

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

IN THE SENATE OF THE UNITED STATES

NOVEMBER 7, 1997

Mr. LAUTENBERG 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 1997”.

6 **SEC. 2. FINDINGS.**

7 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
24 protection.

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

2 (a) IN GENERAL.—

3 (1) IMPLEMENTATION OF AGREEMENT ON
4 TRIPS AND OTHER AGREEMENTS RELATING TO IN-
5 TELLECTUAL PROPERTY RIGHTS.—Section 502(b)(2)
6 of the Trade Act of 1974 (19 U.S.C. 2462(b)(2)) is
7 amended—

8 (A) by inserting immediately after sub-
9 paragraph (G) the following new subpara-
10 graphs:

11 “(H) Such country is not implementing
12 parts I, II, and III of the Agreement on
13 TRIPS—

14 “(i) beginning on the date that is 1
15 year after the date of enactment of the
16 Rights of Intellectual Property Owners
17 Fairness Facilitation Act of 1997; or

18 “(ii) by January 1, 2000, in the case
19 of a least-developed beneficiary developing
20 country.

21 “(I) Beginning on the date that is 90 days
22 after the date of enactment of the Rights of In-
23 tellectual Property Owners Fairness Facilita-
24 tion Act of 1997, such country is not imple-
25 menting—

1 “(i) article 70(9) of part VII of the
2 Agreement on TRIPS; or

3 “(ii) any bilateral or multilateral
4 agreement (other than an agreement de-
5 scribed in subparagraph (H) or clause (i))
6 to protect and enforce intellectual property
7 rights entered into with the United
8 States.”.

9 (B) in the last sentence, by striking “(D),
10 (E), (F), and (G)” and inserting “(D), (E),
11 (F), (G), (H), and (I)”.

12 (2) CONFORMING AMENDMENT.—Section 507
13 of such Act (19 U.S.C. 2467) is amended by adding
14 at the end the following new paragraph:

15 “(6) AGREEMENT ON TRIPS.—

16 “(A) TRIPS.—The term ‘Agreement on
17 TRIPS’ means the Agreement on Trade-Relat-
18 ed Aspects of Intellectual Property Rights en-
19 tered into as part of the Uruguay Round
20 Agreements.

21 “(B) URUGUAY ROUND AGREEMENTS.—
22 The term ‘Uruguay Round Agreements’ means
23 the trade agreements resulting from the Uru-
24 guay Round of multilateral trade negotiations

1 under the auspices of the General Agreement
2 on Tariffs and Trade.”.

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

6 “(g) DESIGNATION WHERE COUNTRY ADHERES TO
7 THE AGREEMENT ON TRIPS AND OTHER INTELLECTUAL
8 PROPERTY RIGHTS AGREEMENTS; ANNUAL REPORTS.—

9 “(1) DESIGNATION AS BENEFICIARY DEVELOP-
10 ING COUNTRY.—A country—

11 “(A) which has been denied designation as
12 a beneficiary developing country on the basis of
13 subsection (b)(2)(H) or (I), or

14 “(B) with respect to which such designa-
15 tion has been withdrawn or suspended based on
16 subsection (b)(2) (H) or (I),

17 may be designated as a beneficiary developing coun-
18 try under this title, if the President determines that
19 the country is fully implementing parts I, II, III and
20 article 70(9) of part VII of the Agreement on
21 TRIPS, and any other agreement entered into with
22 the United States that relates to intellectual prop-
23 erty rights, and reports the determination to
24 Congress.

25 “(2) REPORTS.—

1 “(A) ANNUAL REPORTS.—Not later than
2 the date that is 1 year after the date of enact-
3 ment of the Rights of Intellectual Property
4 Owners Fairness Facilitation Act of 1997, and
5 annually thereafter, the President shall deter-
6 mine whether each country designated as a ben-
7 eficiary developing country under this title is
8 fully implementing parts I, II, and III of the
9 Agreement on TRIPS and shall report such
10 findings to Congress.

11 “(B) OTHER REPORTS.—Not later than 90
12 days after the date of enactment of the Rights
13 of Intellectual Property Owners Fairness Facili-
14 tation Act of 1997, and annually thereafter, the
15 President shall determine whether each country
16 designated as a beneficiary developing country
17 under this title is fully implementing article
18 70(9) of part VII of the Agreement on TRIPS
19 and any other agreement entered into with the
20 United States that relates to intellectual prop-
21 erty rights and shall report such determination
22 to 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, III and article 70(9) of part VII of the Agreement on
10 TRIPS, and any other agreement entered into with the
11 United States that relates to intellectual property rights.

12 (b) ENCOURAGING IMPLEMENTATION OF AGREE-
13 MENT ON TRIPS.—The Secretary of State, the Secretary
14 of Commerce, and the Administrator of the Agency for
15 International Development shall cooperate with the United
16 States Trade Representative by encouraging any country
17 that receives foreign assistance and is not fully implement-
18 ing the Agreement on TRIPS or any other agreement en-
19 tered into with the United States that relates to intellec-
20 tual property rights to enact and enforce laws that will
21 enable the country to implement the Agreement on TRIPS
22 and any other intellectual property rights agreement. To
23 further this objective, the Secretary of State shall instruct
24 the head of each United States diplomatic mission abroad
25 to include intellectual property rights protection as a pri-
26 ority objective of the mission.

1 (c) OTHER ACTIONS TO ENCOURAGE PROTECTION
2 OF INTELLECTUAL PROPERTY RIGHTS.—Notwithstanding
3 any other provision of law, the President is authorized to
4 undertake the following actions, where appropriate, with
5 respect to a developing country to encourage and help the
6 country improve the protection of intellectual property
7 rights:

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

10 (2) Require foreign assistance programs to pro-
11 vide support for the development of national intellec-
12 tual property laws and regulations and for the devel-
13 opment of the infrastructure necessary to protect in-
14 tellectual property rights.

15 (3) Establish technical cooperation committees
16 on intellectual property standards within regional
17 organizations.

18 (4) Establish, as a joint effort between the
19 United States Government and the private sector, a
20 council to facilitate and provide intellectual property-
21 related technical assistance through the Agency for
22 International Development and the Department of
23 Commerce.

24 (5) Require United States representatives to
25 multilateral lending institutions to seek the estab-

1 lishment of programs within the institutions to sup-
 2 port strong intellectual property rights protection in
 3 recipient countries that have fully implemented parts
 4 I, II, III and article 70(9) of part VII of the Agree-
 5 ment on TRIPS, and any other agreement entered
 6 into with the United States that relates to intellec-
 7 tual property rights.

8 (d) DEFINITIONS.—In this section:

9 (1) AGREEMENT ON TRIPS.—The term “Agree-
 10 ment on TRIPS” means the Agreement on Trade-
 11 Related Aspects of Intellectual Property Rights en-
 12 tered into as part of the trade agreements resulting
 13 from the Uruguay Round of multilateral trade nego-
 14 tiations under the auspices of the General Agree-
 15 ment on Tariffs and Trade.

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

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

21 (B) designated as a least-developed bene-
 22 ficiary developing country pursuant to section
 23 502 of such Act (19 U.S.C. 2462).

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