

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2041

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

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## 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

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## 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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