

103^D CONGRESS
2^D SESSION

S. 2173

To improve the protection of intellectual property rights through the implementation of the Uruguay Round Agreements, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 9 (legislative day, JUNE 7), 1994

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

A BILL

To improve the protection of intellectual property rights through the implementation of the Uruguay Round Agreements, 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. INTERNATIONAL INTELLECTUAL PROPERTY**
4 **PROTECTION OBJECTIVES.**

5 The principal objectives of the United States regard-
6 ing international protection of intellectual property rights
7 are—

8 (1) to accelerate the full implementation of
9 parts I, II, and III of the Agreement on Trade-Re-

1 lated Aspects of Intellectual Property Rights (here-
2 after referred to as the “Agreement on TRIPS”);

3 (2) to seek enactment and effective implementa-
4 tion by foreign countries of standards for protection
5 and enforcement of intellectual property rights that
6 supplement and strengthen the standards and obli-
7 gations contained in the Agreement on TRIPS and
8 the North American Free Trade Agreement, includ-
9 ing, but not limited to—

10 (A) supplementing and strengthening such
11 standards and obligations through bilateral and
12 multilateral agreements to assure the protection
13 of new and emerging technologies, and new
14 methods of transmission, distribution, and use,
15 and

16 (B) eliminating discrimination, unreason-
17 able exceptions, or preconditions with respect to
18 the protection, enforcement, or commercial en-
19 joyment of the full economic benefits arising
20 from any use or exploitation of intellectual
21 property rights;

22 (3) to secure fair, equitable, and nondiscrim-
23 inatory market access opportunities for United
24 States persons holding intellectual property rights,
25 including rights that are currently or that may later

1 be granted by a foreign country to its own nationals
2 with respect to the use or exploitation of intellectual
3 property;

4 (4) to take an active role in the development of
5 the intellectual property regime under the World
6 Trade Organization (hereafter referred to as the
7 “WTO”), particularly with respect to monitoring im-
8 plementation of the regime by WTO members and
9 use of the WTO dispute settlement procedures;

10 (5) to take an active role in the World Intellec-
11 tual Property Organization (hereafter referred to as
12 the “WIPO”) and to ensure that the WIPO and the
13 WTO work together in a mutually supportive fash-
14 ion;

15 (6) to establish and maintain a Model Intellec-
16 tual Property Agreement which sets forth a high
17 level of intellectual property rights protection and to
18 ensure that all future international trade agreements
19 entered into by the United States are based on the
20 Model Intellectual Property Agreement;

21 (7) to make protection of intellectual property
22 rights a priority factor for determining eligibility to
23 participate in future free trade agreements and the
24 generalized system of preferences;

1 (8) to ensure that countries or fast-growing eco-
2 nomic entities that seek to accede to the WTO agree
3 to full and effective implementation of parts I, II,
4 and III of the Agreement on TRIPS and resolve any
5 major outstanding intellectual property-related is-
6 sues of concern to the United States prior to acces-
7 sion;

8 (9) to require that United States diplomatic
9 missions abroad include intellectual property rights
10 protection as a priority objective of the mission; and

11 (10) to take appropriate action, including the
12 establishment of technical cooperation committees,
13 to encourage and help foreign countries improve the
14 protection of intellectual property rights.

15 **SEC. 2. REQUIREMENTS FOR ENTRY INTO NEW FREE**
16 **TRADE AGREEMENTS.**

17 (a) **IN GENERAL.**—Notwithstanding any other provi-
18 sion of law, the President may not negotiate any new free
19 trade agreement with a foreign country, unless the Presi-
20 dent first determines that such country—

21 (1) is fully implementing parts I, II, and III of
22 the Agreement on TRIPS, and

23 (2) is willing to enter into an agreement with
24 the United States to provide intellectual property
25 rights protection in line with the protection set forth

1 in the Model Intellectual Property Agreement devel-
2 oped pursuant to section 6.

3 (b) UPGRADING EXISTING FREE TRADE AGREE-
4 MENTS.—If, after the date of the enactment of this Act,
5 the United States enters into a free trade agreement with
6 a foreign country that provides greater protection of intel-
7 lectual property rights than a free trade agreement pre-
8 viously negotiated with another country, the President
9 shall seek to amend such previously negotiated agreement
10 to provide for such greater protection of intellectual prop-
11 erty rights.

12 (c) NOTICE TO CONGRESSIONAL COMMITTEES.—The
13 President shall provide written notice to the Committee
14 on Finance of the Senate and the Committee on Ways and
15 Means of the House of Representatives of—

16 (1) any determination made under subsection
17 (a), and

18 (2) any progress made in amending a previously
19 negotiated free trade agreement under subsection
20 (b).

21 **SEC. 3. IDENTIFICATION OF COUNTRIES THAT DENY ADE-**
22 **QUATE PROTECTION OR MARKET ACCESS**
23 **FOR INTELLECTUAL PROPERTY RIGHTS.**

24 Section 182 of the Trade Act of 1974 (19 U.S.C.
25 2242) is amended—

1 (1) in subsection (a)(1)—

2 (A) by striking “or” at the end of subpara-
3 graph (A),

4 (B) by striking “and” at the end of sub-
5 paragraph (B) and inserting “or”, and

6 (C) by adding at the end the following new
7 subparagraph:

8 “(C) deny the opportunity to enjoy on a
9 nondiscriminatory basis full commercial benefits
10 associated with exercising rights in protected
11 works, fixations, or products embodying pro-
12 tected works, and”;

13 (2) in subsection (b), by adding at the end the
14 following new paragraph:

15 “(4) In identifying a priority foreign country
16 under subsection (a) (1) and (2), the Trade Rep-
17 resentative shall take into account—

18 “(A) the history of intellectual property
19 protection laws and practices of the foreign
20 country, including any past identification of the
21 country under such paragraphs (1) and (2),
22 and

23 “(B) the history of the efforts of the Unit-
24 ed States and the responses of the foreign coun-

1 try to achieve adequate and effective protection
2 of intellectual property rights.”; and

3 (3) in subsection (d)—

4 (A) by amending paragraph (2) to read as
5 follows:

6 “(2) A foreign country denies adequate and ef-
7 fective protection of intellectual property rights, if—

8 “(A) the foreign country is not implement-
9 ing parts I, II, and III of the Agreement on
10 TRIPS, or

11 “(B) in the case of a foreign country that
12 is implementing parts I, II, and III of the
13 Agreement on TRIPS, or has entered into any
14 other bilateral, regional, or multilateral agree-
15 ment with respect to the United States, the for-
16 eign country—

17 “(i) continues to deny adequate and
18 effective opportunity for persons who are
19 not citizens or nationals of such foreign
20 country to secure, exercise, and enjoy full
21 commercial benefits with respect to intel-
22 lectual property rights, or

23 “(ii) does not enforce rights relating
24 to patents, process patents, registered

1 trademarks, copyrights and related rights,
2 trade secrets, and mask works.”;

3 (B) by amending so much of paragraph (3)
4 as precedes subparagraph (A) to read as fol-
5 lows:

6 “(3) A foreign country denies fair and equitable
7 market access if the foreign country effectively de-
8 nies access to a market for a product protected by
9 a patent, process patent, registered trademark, copy-
10 right or related right, trade secret, or mask work
11 through the use of laws, procedures, or regulations
12 which—”; and

13 (C) by adding at the end the following new
14 paragraphs:

15 “(4) A foreign country denies the opportunity
16 to enjoy the commercial benefits associated with ex-
17 ercising rights in protected works, fixations, or prod-
18 ucts embodying protected rights, if the foreign coun-
19 try grants access to methods of distribution or col-
20 lection of revenues generated from the use or fixa-
21 tion of a product embodying protected rights, or any
22 other benefit relating to such works, fixations, or
23 products embodying protected rights, on terms more
24 advantageous to its own nationals than to nationals
25 of another country.

1 “(5) The term ‘Agreement on TRIPS’ means
2 the Agreement on Trade-Related Aspects of Intellec-
3 tual Property Rights entered into as part of the
4 Uruguay Round Agreements resulting from the mul-
5 tilateral trade negotiations conducted under the aus-
6 pices of the General Agreement on Tariffs and
7 Trade.”.

8 **SEC. 4. EXPANSION OF TRADE SANCTIONS.**

9 (a) IN GENERAL.—Section 301(c) of the Trade Act
10 of 1974 (19 U.S.C. 2411(c)) is amended by adding at the
11 end the following new paragraph:

12 “(7) The President is authorized to take such
13 other action with respect to the United States rela-
14 tions with a foreign country as is necessary and ap-
15 propriate to enforce the rights of the United States
16 under any trade agreement or to eliminate an act,
17 policy, or practice described in subsection (a) or
18 (b).”.

19 (b) UNREASONABLE ACTS, POLICIES, OR PRAC-
20 TICES.—Section 301(d)(3)(B)(i)(II) of such Act (19
21 U.S.C. 2411(d)(3)(B)(i)(II)) is amended to read as fol-
22 lows:

23 “(II) provision of adequate and
24 effective protection of intellectual
25 property rights, without regard to

1 whether the country is fully imple-
2 menting parts I, II, and III of the
3 Agreement on TRIPS or the obliga-
4 tions of any other bilateral, regional,
5 or multilateral agreement, or”.

6 (c) CONFORMING AMENDMENT.—Section 301(d) of
7 such Act (19 U.S.C. 2411(d)) is amended by adding at
8 the end the following new paragraph:

9 “(10) The term ‘Agreement on TRIPS’ means
10 the Agreement on Trade-Related Aspects of Intellec-
11 tual Property Rights entered into as part of the
12 Uruguay Round Agreements resulting from the mul-
13 tilateral trade negotiations conducted under the aus-
14 pices of the General Agreement on Tariffs and
15 Trade.”.

16 **SEC. 5. ELIGIBILITY FOR GSP TREATMENT.**

17 Section 504(b) of the Trade Act of 1974 (19 U.S.C.
18 2464(b)) is amended to read as follows:

19 “(b) CHANGED CIRCUMSTANCES AND IDENTIFICA-
20 TION UNDER SECTION 182(a).—

21 “(1) IN GENERAL.—The President shall, after
22 complying with the requirements of section
23 502(a)(2), withdraw or suspend the designation of
24 any country as a beneficiary developing country if,
25 after such designation, the President determines—

1 “(A) that as the result of changed cir-
2 cumstances such country would be barred from
3 designation as a beneficiary developing country
4 under section 502(b), or

5 “(B) such country has been identified
6 under section 182(a) and, after completion of
7 an investigation under title III, such country
8 has not implemented measures to eliminate the
9 reason for such country’s identification under
10 section 182(a)(1).

11 Such country shall cease to be a beneficiary develop-
12 ing country on the day on which the President issues
13 an Executive order or Presidential proclamation re-
14 voking his designation of such country under section
15 502.

16 “(2) REDESIGNATION.—Subject to the provi-
17 sions of section 501, the President may redesignate
18 a country as a beneficiary developing country if—

19 “(A) such country’s designation was with-
20 drawn or suspended pursuant to paragraph
21 (1)(B), and

22 “(B) such country is taking action to
23 eliminate the reasons for which it was identified
24 under section 182(a)(1).”.

1 **SEC. 6. MODEL INTELLECTUAL PROPERTY AGREEMENT.**

2 (a) IN GENERAL.—The United States Trade Rep-
3 resentative, in consultation with appropriate United States
4 Government agencies and the private sector, shall—

5 (1) develop and maintain a Model Intellectual
6 Property Agreement which contains provisions for a
7 high level of protection of intellectual property rights
8 that supplement and strengthen the standards and
9 obligations contained in the Agreement on TRIPS
10 and the North American Free Trade Agreement,
11 and

12 (2) review periodically the Model Intellectual
13 Property Agreement to ensure that it reflects ade-
14 quate protection for new and emerging technologies.

15 (b) USE OF MODEL.—The Model Intellectual Prop-
16 erty Agreement shall represent the negotiating objectives
17 of the United States in all international negotiations in-
18 volving the protection of intellectual property rights.

19 **SEC. 7. ANNUAL INTERNATIONAL INTELLECTUAL PROP-**
20 **ERTY PROTECTION REPORT.**

21 Section 163(a)(2) of the Trade Act of 1974 (19
22 U.S.C. 2213(a)(2)) is amended—

23 (1) by striking “and” at the end of subpara-
24 graph (J), and

25 (2) by striking the period at the end of sub-
26 paragraph (K) and inserting: “, and

1 “(L) a review of the efforts undertaken
2 during the preceding calendar year by each
3 agency of the United States in support of inter-
4 national protection of intellectual property
5 rights.”.

6 **SEC. 8. PRIVATE SECTOR INVOLVEMENT IN INTER-**
7 **NATIONAL DISPUTE SETTLEMENT.**

8 Not later than 90 days after the date of the enact-
9 ment of this Act, the United States Trade Representative
10 shall develop and implement a procedure for interested
11 persons from the private sector to participate in the prepa-
12 ration for dispute settlement proceedings which involve in-
13 tellectual property rights and with respect to which the
14 United States is a party.

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