

Peru Memorandum Of Understanding On IPR

MEMORANDUM OF UNDERSTANDING BETWEEN

THE UNITED STATES OF AMERICA AND THE REPUBLIC OF PERU

The Government of Peru confirms that under its legal system all international obligations are of equal stature, and that if there is a conflict between two international obligations, the obligation that was accepted later in time will control. For examples, if there is a conflict between a provision in Andean Pact Decision 344 and Peru's existing obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), such as the so-called standstill obligation in Article 65.5, the TRIPS Agreement obligation will control because it was accepted by Peru later in time than Peru's acceptance of Andean Pact Decision 344.

To prevent such conflicts, the Government of Peru has proposed the following amendments to Legislative Decree No. 823:

- delete Article 43;
- delete Article 28 (e);
- delete Article 27(b) and replace with a provision consistent with Article 27(3)(b) of the TRIPS Agreement; and
- replace the second sentence in Article 71 with; "Use shall also be understood as the import, along with the distribution and marketing of such products."

The Government of Peru will introduce, such amendments to Congress by August 15, 1997, and undertake best efforts to seek their passage by September 30, 1997:

In the interim, the Government of Peru will issue a Supreme Decree Implementing Legislative Decree No. 823 in a manner consistent with Peru's current obligations under the TRIPS Agreement. That Supreme Decree will include the following provisions:

Article 1- The limitation in paragraph b) of Article 27 of Legislative Decree No. 823 includes only plants and animals. Microorganism and processes involving materials which exist in nature or replicas of the same are not included in such limitations and thus could be considered inventions.

Article 2 -The limitation established in paragraph d) of Article 27 of Legislative Decree No. 823 does not include inventions related to or making use of computer programs or software.

Article 3 - The limitation established in paragraph e) of Article 28 of Legislative Decree No. 823 does not include pharmaceutical products that comply with the requirements established in Article 22 of Legislative Decree No. 823.

Article 4 - To clarify Article 43 of Legislative Decree No. 823 of a different use from that found in the state of art will be the object of a new patent if it complies with the requirements established in Article 22 of Legislative Decree No. 823.

Article 5 - Consistent with Article 71 of Legislative Decree No. 823, importation of a patented product, as well as importation of a product produced through the use of a patented process, will be sufficient to meet market demand for such product. Upon Peru's issuance of the Supreme Decree, all intellectual property rights-related impediments to Peru's eligibility for the Debt Swap/Buyback Program will have been resolved. The United States and Peru look forward to a continuing dialogue on the improvement of intellectual property rights.

Done on May 23, 1997, in Washington D.C.

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