

INDIA - PATENT PROTECTION FOR PHARMACEUTICAL
AND AGRICULTURAL CHEMICAL PRODUCTS

Request for the Establishment of a Panel

The following communication, dated 7 November 1996, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated at the request of this mission.

The Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") requires all Members of the World Trade Organization ("WTO") to grant patents for the subject matter specified in Article 27 of the Agreement. Article 70.8 of the TRIPS Agreement provides that where a Member takes advantage of the transitional provisions under the Agreement and does not make product patent protection available for pharmaceutical and agricultural chemical inventions as of the date of entry into force of the WTO Agreement (i.e., January 1, 1995), that Member must implement measures to permit parties to file patent applications drawn to such inventions on or after that date. When product patent protection is established, these applications must be examined according to the criteria for patentability set forth in the Agreement, based on the earliest effective filing date claimed for the application. Patents granted on these applications must enjoy the term and rights mandated by the TRIPS Agreement.

The TRIPS Agreement further requires Members subject to the obligations of Article 70.8 to provide exclusive marketing rights to those parties that have filed an application under the interim filing procedures, provided that the product covered by the invention has been granted marketing approval in the Member providing protection and another Member, and a patent has been granted on the invention in another Member.

The legal regime in India currently does not make patent protection available for inventions as specified in Article 27 of the TRIPS Agreement, or provide systems that conform to obligations of the TRIPS Agreement regarding the acceptance of applications and the grant of exclusive marketing rights. As a result, India's legal regime appears to be inconsistent with the obligations of the TRIPS Agreement, including but not necessarily limited to Articles 27, 65 and 70.

In a communication dated July 2, 1996 (WT/DS50/1), the United States requested consultations with India pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Article 64 of the TRIPS Agreement to the extent that it incorporates by reference Article XXII of the General Agreement on Tariffs and Trade 1994. Consultations were held on July 29, 1996, but did not result in a resolution of the dispute.

Accordingly, the United States respectfully requests the establishment of a panel to examine this matter in light of the TRIPS Agreement, and to find that India's legal regime fails to conform to the obligations of Articles 27, 65 and 70 of the TRIPS Agreement, and nullifies or impairs benefits accruing directly or indirectly to the United States under the TRIPS Agreement.

The United States asks that this request be placed on the agenda for the meeting of the Dispute Settlement Body scheduled to be held on November 20, 1996, and that the panel be established with standard terms of reference as set out in Article 7 of the DSU.