

WORLD TRADE ORGANIZATION

RESTRICTED

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PORTUGAL - PATENT PROTECTION UNDER THE INDUSTRIAL PROPERTY ACT

Request for Consultations by the United States

The following communication, dated 30 April 1996, from the Permanent Mission of the United States to the Permanent Mission of Portugal and to the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of Portugal pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU") and Article 64 of the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") (to the extent that it incorporates by reference Article XXII of the General Agreement on Tariffs and Trade 1994) regarding the term of patents in Portugal.

The TRIPS Agreement obligates all Members of the World Trade Organization ("WTO") to grant a term of protection for patents that runs at least until twenty years after the filing date of the underlying application. The TRIPS Agreement also requires each Member to grant this minimum term to all patents that were in force in that Member on the date of the application of the Agreement to that Member. In light of Portugal's status as a developed country, the TRIPS Agreement applied to it on January 1, 1996.

The term granted existing patents under the Portuguese Industrial Property Act appears to be inconsistent with Portugal's obligations under the TRIPS Agreement, including but not necessarily limited to TRIPS Agreement Articles 33, 65, and 70.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.