

ARGENTINA – CERTAIN MEASURES ON THE PROTECTION OF PATENTS AND TEST DATA

Request for Consultations by the United States

The following communication, dated 30 May 2000, from the Permanent Mission of the United States to the Permanent Mission of Argentina and to the Chairman of 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 Argentina 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 Agreement) (to the extent that it incorporates by reference Article XXII of the General Agreement on Tariffs and Trade 1994), concerning the following matters relating to Argentina's regimes governing patents in Law 24,481 (as amended by Law 24,572), Law 24,603 and Decree 260/96; and data protection in Law 24,766 and Regulation 440/98, and in other related measures. The United States believes that:

- Argentina fails to protect against unfair commercial use of undisclosed test or other data, submitted as a requirement for market approval of pharmaceutical or agricultural chemical products;
- Argentina improperly excludes certain subject matter, including micro-organisms, from patentability;
- Argentina fails to provide prompt and effective provisional measures, such as preliminary injunctions, for purposes of preventing infringements of patent rights from occurring;
- Argentina denies certain exclusive rights for patents, such as the protection of products produced by patented processes and the right of importation;
- Argentina fails to provide certain safeguards for the granting of compulsory licenses, including timing and justification safeguards for compulsory licenses granted on the basis of inadequate working;
- Argentina improperly limits the authority of its judiciary to shift the burden of proof in civil proceedings involving the infringements of process patent rights; and

- Argentina places impermissible limitations on certain transitional patents so as to limit the exclusive rights conferred by these patents, and to deny the opportunity for patentees to amend pending applications in order to claim certain enhanced protection provided by the TRIPS Agreement.

The United States considers that Argentina's legal regimes governing patents and data protection are therefore inconsistent with Argentina's obligations under the TRIPS Agreement, including Articles 27, 28, 31, 34, 39, 50, 62, 65 and 70 of the Agreement.

This request for consultations supplements and does not replace the United States' earlier request for consultations made in WTO Document WT/DS171/1, notified 6 May 1999.

We look forward to receiving your reply to this request and to fixing a mutually convenient date for these additional consultations.
