

CANADA - TERM OF PATENT PROTECTION

Request for the Establishment of a Panel by the United States

The following communication, dated 15 July 1999, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 6.2 of the DSU.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (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 existing as of the date of the application of the Agreement to that Member. Canada has been obligated to apply the provisions of the TRIPS Agreement in full since 1 January 1996.

The Canadian Patent Act provides that the term granted to patents issued on the basis of applications filed before 1 October 1989 is 17 years from the date on which the patent is issued. This situation is inconsistent with Canada's obligations under Articles 33 and 70 of the TRIPS Agreement.

On 6 May 1999, the United States Government requested consultations with the Government of Canada 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) regarding the above measure. The United States and Canada held consultations in Geneva on 11 June 1999, but failed to reach a mutually satisfactory 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 Canada's legal regime fails to conform to the obligations of Articles 33 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 further asks that this request for a panel be placed on the agenda for the next meeting of the Dispute Settlement Body, to be held on 26 July 1999, and that the panel be established with standard terms of reference as set out in Article 7 of the DSU.
